Human Rights

Politics and Practice

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Contents

Chapter 1 Meaning of Human Rights in International Preview 1

Chapter 2 International Human Rights Standards and their Development 40

Chapter 3 Global Application of HR Norms.....57

Chapter 4 United Nations Strategies and Action to Promote Human Rights.....93

Chapter 5 International Criminal Courts 122

Chapter 6 Regional Application of HR Norms.....175

Chapter 7 The Office of the High Commissioner for Human Rights (OHCHR) and Partners.....227

Chapter 8 Non-Governmental Organizations and HR.....237

Chapter 9 Transnational Corporations and HR 269

1

Meaning of Human Rights in International Preview

INTRODUCTION

Human rights are "rights (Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory. Rights are of essential importance in such disciplines as law and ethics, especially theories of justice and deontology.

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 (10 December 1948 at Palais de Chaillot, Paris).

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 WITH HR

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.

HUMAN RIGHTS IN FOREIGN POLICY: A PROBLEMATIC AREA

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.

PRIORITY OF DOMESTIC IMPERATIVES: THE NATIONAL INTEREST

It is also argued that, even if the universality of human rights is accepted, states should not take up human rights as a project because it is a moral fault "for they neglect thereby their citizens". The prime responsibility of the government is towards its own

people. The rights and needs of compatriots come first; any universalist responsibility claim for national governments disregards the immediate rights of the compatriots. Especially in a democratic regime, the government is accountable to the people for what it has done for the security and welfare of its nationals, not those of the international community. People may approve a human rights policy in principle, but not at the expense of their own interest.

From a utilitarian perspective, promotion of the rights of people in foreign countries may seem rather peripheral to foreign-policy making because the purpose of the state is to advance the security and welfare of its citizens, which are not brought about through pursuing a human rights policy abroad. Instead, the security and economic interests of the state are best served by pursuing a pragmatic foreign policy. Criticism of the domestic human rights record of a government would cause reaction, and harm to bilateral relations. Not only will diplomatic relations, which are designed to keep communication channels open to maintain "good relations" between governments, be put in jeopardy, but economic and political relations will also suffer.

But the problem in this line of argument is that the pursuit of human rights in foreign policy does not necessarily hamper the interest of the citizens at large; it will not directly put people's interest in jeopardy. An international awareness about the rights of every individual threatened by his or her own government does not harm the interests of people in democratic countries. Diplomatic protests and cutting off military and economic assistance are not necessarily pursued at the expense of citizens' interests.

Quite contrary to the argument that democracy and international concern about human rights are not compatible, the very existence of democracy forces governments to take an international stand against the violation of human rights in other countries. International human rights are a reflection of democratic principles and values, and a product of the democratization process through which domestic interest and pressure arose to include human rights concern in foreign policy. In this context, one can observe that the presence and activities of NGOs in liberal

democracies have played a very significant role in the process of including human rights concerns in the foreign-policy making of major Western governments. A related group of arguments against human rights in foreign policy is based on the view that such a policy may constrain the pursuit of national interest as the primary goal of foreign policy. Economic and strategic considerations must always be given priority in the conduct of foreign policy.

Therefore, human rights should not be allowed to upset the stability of interstate relations and the pursuit of strategic interests. National security interests also compel the treatment of allies and adversaries differently. Hence, we can not put all violations of human rights in foreign countries in one basket. Once the human rights issue conflicts with other foreign policy objectives, the priority should be given to the latter.

As for the argument that security and economic interests override all other secondary concerns, it could be maintained that both security and economic interests and the objectives of human rights policy can be obtained at the same time. One can even argue that there is an interdependency between international peace and security, on the one hand, and respect for human rights on the other. A political regime based on the values of human rights reinforces international security and facilitates global economic integration providing the framework for national welfare.

Furthermore, when economic and strategic interests are set within a long-term perspective in foreign policy, the advancement of human rights in a foreign country may serve the other objectives too. The case of the transformation of Eastern Europe is a relevant example. Though we cannot exclusively attribute the liberal revolutions that took place in Eastern Europe to Western human rights policy vis-a-vis the East, democratisation of Eastern Europe served both Western economic and strategic interests and the betterment of human rights conditions for the local peoples.

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.

STATE-CENTRIC VIEW OF INTERNATIONAL POLITICS

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.

HUMAN RIGHTS ALSO AS IMPORTANT AND PERVASIVE SOFT LAW, NOT JUST AS THE OCCASIONAL HARD LAW OF COURT PRONOUNCEMENTS

INTRODUCTION

In order to understand international environmental law, it is of value to have some basic understanding of general international law. International environmental law isa sub-sector of international law, and international law has been developing over along period of time. A significant part of international environmental law is incorporated in Multilateral Environmental Agreements (MEAs).

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.

SOURCES OF INTERNATIONAL LAW

Treaties

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:

1. The State practice should be consistent with the so-called 'rule of constant and uniform usage',
2. 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.

NEGOTIATING MULTILATERAL ENVIRONMENTAL AGREEMENTS

There is no definite procedure established on how to negotiate a Multilateral Environmental Agreement, but from the practice of States over the last few decades some common elements may be derived. The first step is for an adequate number of countries to show interest in regulating a particular issue through a multilateral mechanism.

In certain cases this may be as few as two. For example, the draft Convention on Cloning was tabled in the Sixth Committee of the General Assembly by Germany and France. In other cases, a larger number of countries need to demonstrate a clear desire for a new instrument.

Once this stage is overcome, States need to agree on a forum for the negotiation of the instrument. Usually an existing international organisation such as the United Nations or an entity such as UNEP will provide this forum. The United Nations has frequently established special for a for the negotiation of MEAs through General Assembly resolutions. The UN Framework Convention on Climate Change was negotiated by a specially established body.

It is also possible to conduct the negotiations in a subsidiary body of the General Assembly such as the Sixth Committee, which is the Legal Committee. Treaty bodies could also provide the for a for such negotiations. For example, pursuant to Art.19(3) of the Convention on Biological Diversity, the Conference of the Parties, by its decision II/5, established an Open-ended Ad Hoc Working Group on Bio safety to develop a draft protocol on bio safety, which later resulted in an agreed text and subsequent adoption of the Cartagena Protocol on Bio safety.

Subsequently, the negotiating forum will start the negotiating process, by establishing a committee or convene an international conference to consider the particular issue. This could take many forms, from an informal ad hoc group of governmental experts to a formal institutional structure as in the case of the Intergover-

nmental Negotiating Committee (INC) for the negotiation of the Framework Convention on Climate Change. It is also possible for an international organization to establish a subsidiary body to prepare a text for consideration and adoption by an Intergovernmental Diplomatic Conference. Certain treaties were first drafted by the International Law Commission and subsequently negotiated adopted by intergovernmental bodies. Governments also often draft negotiating texts.

During the negotiations, delegates generally remain in close contact with their governments; they have (preliminary) instructions which are usually not communicated to other parties. At any stage they may consult their governments and, if necessary, obtain fresh instructions. Governments could also change their positions depending on developments.

The host organization will organize preparatory committees, working groups of technical and legal experts, scientific symposia and preliminary conferences. The host body will also provide technical back-up to the negotiators. In the negotiating forum, States are the most important actors, since treaties only carry direct obligations for States.

However, implementation of and compliance with a treaty cannot be achieved without involving a whole range of non-State actors, including civil society groups, non-governmental organizations, scientific groups, business and industry, among others. Therefore these groups are also regularly included in the negotiating process that leads to an MEA.

Some national delegations to intergovernmental negotiations now contain NGO representatives while some smaller States might even rely on NGOs to represent them at such negotiations. In such situations NGOs may have a notable influence on the outcomes.

The role of NGOs has been often significant in the treaty negotiating process, as well as in stimulating subsequent developments within treaty regimes. An example is the influence of the International Council for Bird Preservation and the International Waterfowl and Wetlands Research Bureau, two NGOs, in the conclusion on the implementation of the 1971 Ramsar Convention. NGO influence is achieved primarily through the mechanism of participation, as observers in international

organisations, at treaty negotiations, and within treaty institutions. Some NGOs are well prepared with extensive briefs. Some national delegations rely on NGOs for background material. The inclusion of NGOs may be seen as representing a wider trend towards viewing international society in terms broader than a community of States alone.

In the INC process, ideally one starts with the identification of needs and goals, before the political realities get in the way. Research must have been undertaken and show the need for international legally binding instrument to counteract the perceived problem.

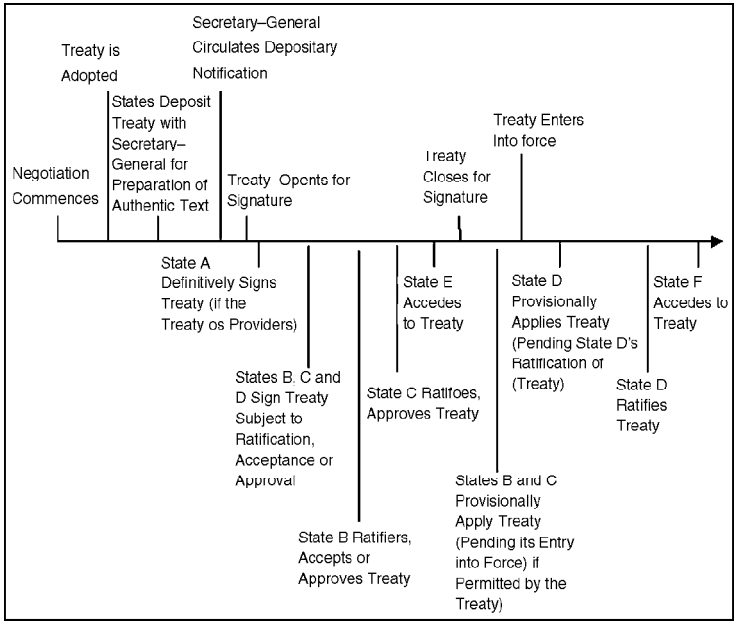
During treaty negotiations, States will often cite scientific evidence that justifies the general policies they prefer. At the time the first formal discussions take place, information has been disseminated, the preliminary positions of States are established, and the initial scope of the agreement is further defined.

Therewith the process to international consensus-building starts, often lasting for years and with many lengthy drafts, negotiated over and over again. Negotiations may be open-ended in time or established for a limited period. *E.g.*, the UN Convention on the Law of the Sea negotiations took nearly ten years to complete, while the negotiations for the Convention on Biological Diversity were concluded in about fifteen months.

Once the draft text has been negotiated it needs to be adopted and opened for signature. The text itself is usually finalized by the negotiators and might even be initialed at that stage. Most United Nations sponsored treaties are adopted in the six official languages of the Organisation.

If the negotiations had been conducted in one language (these days, usually English) the text is translated into the other languages. The mechanism of a final act might also be employed to adopt the text. For this purpose, a conference of plenipotentiaries might be convened.

These are representatives of governments with the authority to approve the treaty. Subsequently, the adopted text will be 'opened' for signature. Below is a timeline showing a possible sequence of events after adoption of a treaty, as a treaty enters into force and States become parties to it.



International environmental treaty-making may involve a two-step approach, the 'Framework Convention—Protocol' style. In this event, the treaty itself does only contain general requirements, directions and obligations. Subsequently the specific measures and details will be negotiated, as it happened with the 2000 Cartagena Protocol on Bio safety with the Biodiversity Convention; or additional non-legally binding instruments can elaborate on these measures to be taken by the parties, as was the case with the 2002 Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits arising out of their Utilization, with the same Convention. The convention-protocol approach allows countries to 'sign on' at the outset to an agreement even if there is no understanding on the specific actions that need to be taken under it subsequently. Among the major shortcomings of the convention-protocol approach is that it encourages a process that is often long and drawn out.

ADMINISTERING TREATIES

Treaties do not only comprise of obligations for the State parties, but do often also create their own administrative structure

to assist parties to comply with its provisions and to provide a forum for continued governance.

Most environmental treaties institute.

- A Conference of the Parties (COP).
- A Secretariat.
- Subsidiary Bodies:
  - *Conference of the Parties:* The COP forms the primary policy-making organ of the treaty. All parties to a treaty meet, usually annually or biannually, and survey the progress achieved by the treaty regime, the status of implementation, possibilities for amendments, revisions, additional protocols, etc.
  - *Secretariat:* The Secretariat of a convention is responsible for the daily operations. In general, it provides for communication among parties, organises meetings and meeting documents in support of the COP, assists in implementation and it may assist in activities such as capacity building. The Secretariat gathers and distributes information and it increasingly coordinates with other legal environmental regimes and secretariats.
  - *Subsidiary Bodies:* Many environmental regimes provide for a scientific commission or other technical committee, comprised of experts. In most cases they include members designated by governments or by the COP, although they generally function independently. They can be included in the treaty, or by a decision.
  - *COP*: For example, the 1992 Biodiversity Convention has a Subsidiary Body on Scientific, Technical and Technological Advice, the 1998 PIC Convention provides for a Chemical Review Committee', and the Committee for Environmental Protection was established by the 1991 Protocol on Environmental Protection.
  - *Antarctic Treaty:* They can address recommendations or proposals to the COP or to other treaty bodies. They usually provide informative reports in the area

of their specialization related to the convention and its implementation.

NOTION OF STATE SOVEREIGNTY IS UNDERGOING FUNDAMENTAL CHANGE

TWO ASPECTS OF NATIONAL SOVEREIGNTY

Territorial Sovereignty

Perhaps the prime element of statehood is the occupation of territorial area. This involves the notion of 'territorial sovereignty' which implies that jurisdiction is exercised over the land area, citizens and property of that State. State functions include the independent right to exercise control over its land and citizens, to the exclusion of any other State/s and their citizens.

The right to sovereignty and the independent function of a State is reinforced by the UN Charter. Notwithstanding this, there is a contemporary viewpoint (reinforced by humanitarian concepts) that suggest that a State can no longer exercise absolute control over its people to the exclusion of their individual rights. In other words, where there is clear evidence that acts of international crime, ie. genocide and crimes against humanity are being perpetrated upon the peoples of a State, then the territorial sovereignty of a State may be violated in order to cease such violations and breaches of human rights from being conducted. Take a look at the principle of 'sovereignty' and the modern doctrine of 'humanitarian intervention'. A nation's 'sovereignty' (and what this entails) is a concept which is changing in the international arena. Issues of statehood (and how it is defined) in the former Balkans States, the Middle-East and Central Asia are all ready examples.

State Sovereignty

In its most basic sense, the common notion of 'Sovereignty' is undergoing change. This is not necessarily being done by the capitalist notions of 'Globalization' and 'International Co-operation', but rather by the actions of the citizens of Nation States themselves. A new wave of democracy has meant that States are now widely understood to be instruments at the service of their

peoples, and not vice-versa. At the same time, personal freedoms, *i.e.* the fundamental freedom of each individual (as enshrined in the UN Charter and the Universal Declaration of Human Rights) are being challenged by the effect of 'The War on Terror'. States are reviewing their rights to exercise their sovereignty, particularly how they protect their borders.

The manner in which extremists have altered the rights of citizens through their violent approach to idealism has caused almost every State to tighten and restrict the screening of personnel at airports, railheads and other areas in which people gather in large numbers. The so-called Islamic 'Jihad' (or 'Holy War') which is being perpetrated against the West by Islamic fundamentalists has created a most disturbing situation. The notion of 'Human Security' is a subject which is gaining more and more relevance, especially with the increased measures of 'home security' by governments.

Intervention by States Although the concept of intervening in the internal affairs of a sovereign State in order to prevent 'systematic and long-extended cruelty and oppression' had been forcibly articulated by Theodore Roosevelt in his 1904 State of the Union address, such rhetoric only served US interests to justify their Intervention against Spanish oppression in Cuba and Panama. While there had been punitive expeditions by European powers into the Ottoman empire during the 19th century, in all other respects the breaching of a State's territorial integrity was an act of aggression which constituted an 'act of war' for which of 'self-defence' was a legitimate recourse (for instance, Germany's invasion of Poland in 1939 led to the outbreak of WWII).

THE UN POSITION ON SOVEREIGNTY

'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.' Article 2(7) of the UN Charter One must also ask whether this article remains valid in light of how 'Terrorism' has so significantly altered international

security, and hence State sovereignty? Article 2, UN Charter is perhaps the most important article with respect to a State's Sovereignty, and the potential for intervention in the event that a State's citizens are endangered.

Notwithstanding this, UN Secretary-General Kofi Annan's position is this: 'When we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them.' Ponder on the Secretary-Generals words—do you agree with them? Surely, after the effect of the 'War on Terror' upon all citizens of this World, Kofi Annan's words are as relevant now as they were at the time of their drafting following WWII in which enormous horror and wanton carnage was perpetrated against defence less people.

2

International Human Rights Standards and their Development

INTRODUCTION

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.

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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.

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

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.

LANDMARK HUMAN RIGHTS CONFERENCES

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.

FEHRAN WORLD CONFERENCE ON HUMAN RIGHTS–1968

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.

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.

3

Global Application of HR Norms

INTRODUCTION

Human rights norms are often studied as an independent body of law with tribunals dedicated to interpreting and enforcing those norms. However, human rights norms are also increasingly incorporated into the development of substantive law in fields as diverse as labour law, corporate governance, environmental law, torts, intellectual property, and armed conflict.

The symposium brought together scholars in diverse areas of substantive law to discuss the impact of human rights norms in their fields.

It included the following questions:

- Are human rights norms used to define elements of causes of action, legal responsibility, or defences?
- How are human rights norms taken into account in law reform efforts?
- Have human rights norms been the driving force behind law reform?
- To what extent is the law of human rights balanced with another area of law in judicial decisions? How is that balanced achieved?
- What are the consequences of greater incorporation of human rights norms?
- What happens when national and international institutions adopt conflicting interpretations of human rights norms?
- Is fragmentation necessarily problematic or can it serve useful purposes, such as facilitating experimentation

with diverse approaches or providing a check on hegemonic ambitions?

- Alternatively, if harmonization should be a priority in this field, what kinds of processes and institutions are best positioned to advance it?

UNITED NATIONS ORGANS

This part outlines the relationship between the Office of the High Commissioner for Human Rights and those other organs having responsibility for human rights. Whilst many United Nations staff members may be familiar with certain structures and mandates of these organs, it is worth reviewing the broader canvas of the United Nations system.

THE CHARTER-BASED ORGAN

The United Nations Charter provided for the creation of six principal organs mandated to carry out the overall work of the United Nations. Inasmuch as they were created by the Charter, these bodies are commonly referred to as Charter-based organs. The six principal organs are outlined below, as well as other major bodies resulting from these organs.

List of Charter-Based Bodies

Organs Under The UN Charter

for th2e formulation, drafing and adoption of instruments, supervision:

- The general assembly.
- The economic and social council:
  - (1) Commissio on human rights.
  - (1a) Sub–commission on the promotion and protection of huma rights (formerly, the Sub–Commission on prevention of discrimination and protection of minorities.
  - (2) Commission on the Stauts of women.
- The Security council:
  - (1) Internationl tribunal for the former yugoslavia.
  - (2) International tribunal for Rwanda.
  - (3) International criminal court.

- The International court of justice.
- The Secretariat (Secretary–General).
- The Trusteeship council (suspended 1:11.95).

Each organ was mandated by the Charter to perform varying human rights functions. Naturally, these roles have evolved over time.

THE GENERAL ASSEMBLY (UNGA)

The United Nations General Assembly is the main deliberative, supervisory and reviewing organ of the United Nations. It is composed of representatives of all Member States, each one having one vote. Most decisions are reached by simple majority. Decisions on important questions such as peace, admission of new members and budgetary matters, require a two-thirds majority.

Powers and Function

The United Nations Charter sets out the powers and functions of the General Assembly. The main functions of the General Assembly in relation to human rights include the following: initiating studies and making recommendations for promoting international political cooperation; the development and codification of international law; the realization of human rights and fundamental freedoms for all; and international collaboration in the economic, social, cultural, education and health fields. This work is carried out by a number of committees established by the General Assembly, international conferences called for by the General Assembly and by the Secretariat of the United Nations. Most items relating to human rights are referred to the "Third Committee" (the Social, Humanitarian and Cultural Committee) of the General Assembly. The General Assembly's competence to explore issues concerning human rights is almost unlimited, in that, under Article 10, it is allowed to.discuss any questions or any matters within the scope of the present Charter. and to make "recommendations" to Member States on these subjects. Decisions of the UNGA are referred to as resolutions which reflect the will of the majority of Member States. General Assembly resolutions largely determine the work of the United Nations.

Sessions

The General Assembly meets in regular session in New York each year on the third Tuesday of September and continues until mid December. It may also meet in special or emergency sessions at the request of the Security Council or at the request of the majority of the members of the United Nations.

THE ECONOMIC AND SOCIAL COUNCIL (ECOSOC)

The Economic and Social Council was established by the United Nations Charter as the principal organ to coordinate the economic and social work of the United Nations and the specialized agencies. The Council has 54 members elected for three-year terms by the General Assembly. Voting is by simple majority, each member having one vote.

Powers and Functions

Some of the main powers and functions of the Economic and Social Council are as follows:

- To serve as the central forum for the discussion of international economic and social issues of a global or an inter-disciplinary nature and the formulation of policy recommendations addressed to Member States and to the United Nations system as a whole;
- To promote respect for, and observance of, human rights and fundamental freedoms for all;
- To make or initiate studies and reports and make recommendations on international economic, social, cultural, educational, health and related matters;
- To call international conferences and prepare draft conventions for submission to the General Assembly on matters falling within its competence;
- To make recommendations and to co-ordinate activities of specialized agencies;
- Co-ordinate, rationalize and, to some extent, programme the activities of the United Nations, its autonomous organs and the specialized agencies in all of these sectors through consultations with and recommendations to the General Assembly and members of the United Nations.

Consultation with Non-Governmental Organizations

A further function of the Economic and Social Council is to consult with non-governmental organizations concerned with matters falling within the Council's competence. The Council recognizes that these organizations should have the opportunity to express their views and that they often possess special experience or technical knowledge of value to the Council and its work. Those NGOs having consultative status may send observers to public meetings and submit written statements relevant to the Council's work. Over 1,500 non-governmental organizations have consultative status with the Council.

They are classified in the following three categories:

1. *General Consultative Status:* For large, international NGOs whose area of work covers most of the issues on the Council's agenda.
2. *Special Consultative Status:* For NGOs that have special competence in a few fields of the Council's activity.
3. *Inclusion on the Roster:* For NGOs whose competence enables them to make occasional and useful contributions to the work of the United.

Nations and who are available for consultation upon request. NGOs on the Roster may also include organizations having consultative status with a specialized agency or other United Nations body.

Sessions

The Economic and Social Council generally holds one five to six-week substantive session each year, alternating between New York and Geneva, and one organizational session in New York. The substantive session includes a high-level special meeting, attended by Ministers and other high officials, to discuss major economic and social issues. The year-round work of the Council is carried out in its subsidiary bodies. commissions and committees -which meet at regular intervals and report back to the Council.

Commissions of the Economic and Social Council

Between 1946 and 1948, the Council took a number of key

institutional decisions concerning human rights. In 1946, pursuant to Article 68 of the Charter, it established the Commission on Human Rights and the Commission on the Status of Women.

Commission on Human Rights (CHR)

When the Commission met for the first time, its prime function was to oversee the drafting of the Universal Declaration of Human Rights. That task was accomplished and the Declaration was adopted by the General Assembly on 10 December 1948. Today, the Commission on Human Rights serves as the main subsidiary organ of the United Nations dealing with human rights matters. The Commission comprises 53 representatives of Member States of the United Nations.

Powers and Functions

The Commission submits proposals, recommendations and reports to the Economic and Social Council regarding: international declarations or conventions; the protection of minorities; the prevention of discrimination on grounds of race, sex, language or religion; and any other matter concerning human rights. The Commission considers questions relating to the violation of human rights and fundamental freedoms in various countries and territories as well as other human rights situations. If a particular situation is deemed sufficiently serious, the Commission may decide to authorize an investigation by an independent expert or it may appoint experts to assess, in consultation with the Government concerned, the assistance needed to help restore enjoyment of human rights.

The Commission also assists the Council in the co-ordination of activities concerning human rights in the United Nations system. The Commission has increasingly turned its attention in the 1990s to the needs of States to be provided with advisory services and technical assistance to overcome obstacles to the enjoyment of human rights. At the same time, more emphasis has been placed on the promotion of economic, social and cultural rights, including the right to development and the right to an adequate standard of living. Increased attention is also being given to the protection of the rights of vulnerable groups in society,

including minorities and indigenous people. Protection of the rights of the child and the rights of women, including the eradication of violence against women and the attainment of equal rights for women, falls into this category. The Commission is authorized to convene ad hoc working groups of experts and the Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-Commission on Prevention of Discrimination and Protection of Minorities).

Sessions

The Commission on Human Rights meets once a year in Geneva, for six weeks in the March/April period. It can also meet exceptionally between its regular sessions, if a majority of States members agree. To date, there have been four extra-ordinary sessions.

THE SUB-COMMISSION ON THE PROMOTITN AND PROTECTION OF HUMAN RIGHTS (FORMERLY SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES)

The Sub-Commission is the main subsidiary body of the Commission on Human Rights. It was established by the Commission at its first session in 1947 under the authority of the Economic and Social Council. The Sub-Commission is composed of experts acting in their personal capacity, elected by the Commission with due regard for equitable geographical representation. Half of the members and their alternates are elected every two years and each serves for a term of four years. In addition to the members and alternates, observers attend sessions of the Sub-Commission from States, United Nations bodies and specialized agencies, other intergovernmental organizations and non-governmental organizations having consultative status with the Economic and Social Council.

Powers and Functions

- To undertake studies, particularly in the context of the Universal Declaration;

- To make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms, and the protection of racial, national, religious, and linguistic minorities;
- Tto perform any other functions which may be entrusted to it by the Economic and Social Council or the Commission on Human Rights. Studies prepared by 1members of the Sub-Commission have been undertaken on topics such as harmful practices affecting the health of women and children, discrimination against people infected with HIV/AIDS, freedom of expression, the right to a fair trial, the human rights of detained juveniles, human rights and the environment, the rights of minorities and indigenous peoples, the question of impunity concerning violations of human rights and the right to adequate housing.

Working Groups

The Sub-Commission is assisted by special reporters an individual expert working on a particular issue and working groups (a group of independent experts working together on a particular issue):

- *Special Rapporteurs on:* Impunity Concerning Economic, Social and Cultural Rights; Impunity Concerning Civil and Political Rights; the Human Rights Dimension of Population Transfers; Human Rights and Income Distribution; Traditional Practices Affecting the Health of Women and the Girl Child; Systematic Rape and Sexual Slavery During Armed Conflict; Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations; Indigenous Peoples and Their Relationship to Land; the Question of Human Rights and States of Emergency; Privatization of Prisons; Freedom of Movement; Terrorism and Human Rights; Scientific Progress and Human Rights;
- *Working Groups on:* Communications Contemporary Forms of Slavery; Indigenous Populations; Minorities.

Sessions

The Sub-Commission meets annually in August for a four-week session in Geneva. The session is attended by observers from Member and nonmember States of the United Nations and from United Nations departments and specialized agencies, other inter-governmental organizations and nongovernmental organizations.

COMMISSION ON THE STATTUS OF WOMEN (CSW)

The Commission on the Status of Women is the principal technical body of the United Nations for the development of substantive policy guidance with regard to the advancement of women. The Commission presently consists of 45 government experts elected by the Economic and Social Council for a period of four years.

Members, who are appointed by Governments, are elected in accordance with the following criteria of geographical representation: thirteen from African States; eleven from Asian States; four from Eastern European States; nine from Latin American and Caribbean States; and eight from Western European and Other States.

Powers and Function

The functions of the Commission are to promote women's rights through:

- The preparation of recommendations and reports to the Economic and Social Council on promoting women's rights in the political, economic, social and educational fields; the formulation of recommendations to the Council on.urgent. problems. The Council has stated that urgent aspects of women's rights should be aimed at achieving de facto observance of the principle of equality between men and women and that the Commission should propose ways of implementing such recommendations. Following the 1995 Fourth World Conference on Women, the General Assembly mandated the Commission on the Status of Women to play a catalytic role, regularly reviewing the critical areas of

concern in the Platform for Action adopted by the Conference.

Session

Between 1971 and 1989, the Commission's sessions. each of three weeks duration. were held every two years in New York or Geneva. However, since 1989, sessions of the Commission are held annually in New York. Sessions are attended by members and alternates and by observers for other Member States of the United Nations, representatives of bodies of the United Nations system, intergovernmental organizations and non-governmental organizations.

THE SECURITY COUNCIL

The United Nations Charter established the Security Council as one of the principal organs of the United Nations. It comprises 5 permanent members (China, France, Russia, United Kingdom and United States) and 10 nonpermanent members elected for two years by the United Nations General Assembly. Each member has one vote and permanent members have the power to block the adoption of any resolution (known as the veto power). Decisions require a majority of nine votes and the agreement of all five permanent members.

Powers and Functions

In accordance with the United Nations Charter, the Security Council has primary responsibility for:

- The maintenance of peace and international security;
- Investigation of any dispute, or any situation that might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security. By joining the United Nations, all Member States agree to accept and carry out decisions of the Security Council.

Human Rights

The Security Council has the authority to:

- Put human rights mandates into peace-keeping operations or to mandate separate human rights operations;
- Consider gross human rights violations that are threats to peace and security under article 39 of the Charter and recommend enforcement measures;
- Establish international criminal tribunals.

International Criminal Tribunal for Former Yugoslavia

Faced with a situation characterized by widespread violations of international humanitarian and human rights law in the former Yugoslavia, including the existence of concentration camps and the continuance of the practice of.ethnic cleansing., the Security Council initially adopted a series of resolutions requesting that all parties concerned in the conflict comply with the obligations under international law, more particularly under the Geneva Conventions. The Security Council reaffirmed the principle of the individual criminal responsibility of persons who commit or order the commission of grave breaches of the Geneva Conventions or other breaches of international humanitarian law. Owing to a lack of compliance with its early resolutions, the Security Council eventually decided that an international tribunal would be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 and requested the Secretary-General to prepare a report on this matter.

The report of the Secretary-General incorporating the Statute of the International Tribunal was submitted to the Security Council, which, acting under Chapter VII of the Charter of the United Nations, adopted it in its resolution 827 (1993) of 25 May 1993, thereby establishing an international tribunal for the former Yugoslavia in The Hague. The statute defines the Tribunal's authority to prosecute four clusters of offences: grave breaches of the 1949 Geneva Conventions; violations of the laws or customs of war; genocide; and crimes against humanity. From the date of its establishment to January 1999, the Tribunal has handed down indictments against 93 individuals.

International Criminal Tribunal for Rwanda

The scale and severity of gross human rights abuses and ethnic cleansing in Rwanda during 1994, led to the adoption by the Security Council, on 8 November 1994, of resolution 955 (1994) creating the International Criminal Trib0unal for Rwanda, eighteen months after the International Tribunal for the Former Yugoslavia had been established by Security Council resolution 827 of 25 May 1993.

The Security Council resolution decided "to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States" The Statute gives the Tribunal the power to prosecute genocide, crimes against humanity, violations of common Article 3 of the Geneva Conventions and Additional Protocol II.

The Tribunal's jurisdiction covers crimes ommitted by Rwandans in the territory of Rwanda and in the territory of neigh bouring States as well as non-Rwandan citizens for crimes committed in Rwanda between 1 January and 31 December 1994. The Tribunal is based in Arusha, Tanzania As at January 1999, the Tribunal had issued 28 indictments against 45 individuals.

International Criminal Court

An international criminal court is considered the missing link in the international legal system for the reason that the International Court of Justice at The Hague handles only cases between States, not individuals. In the absence of an international criminal court for dealing with individual responsibility as an enforcement mechanism, acts of genocide and egregious violations of human rights often go unpunished. In the last 50 years, there have been many instances of crimes against humanity and war crimes for which no individual has been held accountable.

Following long and intense negotiations, in 1998 the United Nations adopted the Rome Statute of the International Criminal Court. Following the entry into force of the Statute, the Court will

be established as a permanent institution with the power to exercise its jurisdiction over persons for the most serious crimes of international concern. The Court is meant to be complementary to national criminal jurisdictions. According to article 126 of its final clauses, the Statute will "enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations". As at March 2000, 7 States had ratified the Statute.

THE INTERNATIONAL COURT OF JUSTICE (ICJ)

The International Court of Justice was established by the United Nations Charter as the judicial organ of the United Nations. It is composed of 15 independent judges elected by the Security Council on the recommendation of the General Assembly. In accordance with the provisions of article 36 of the Statute of the Court annexed to the Charter, only States may be seized before the Court.

This means that individuals, entities having legal personality and international or non-governmental organizations may not be parties in litigation before the Court. International human rights instruments do not specifically provide for adjudication by the Court. However, from time to time, the Court has taken decisions in an adjudicatory or advisory capacity on questions regarding the existence or protection of human rights.

The Court's deliberations on these issues are of considerable interest, since its decisions have played a significant role in defining international human rights law. In this respect, the judicial practice of the ICJ is consistent with the decisions handed down by its predecessor, the Permanent Court of International Justice.

International Human Rights Law

The formal expression of inherent human rights is through international human rights law. A series of international human rights treaties and other instruments have emerged since 1945 conferring legal form on inherent human rights. The creation of the United Nations provided an ideal forum for the development

and adoption of international human rights instruments. Other instruments have been adopted at a regional level reflecting the particular human rights concerns of the region. Most States have also adopted constitutions and other laws which formally protect basic human rights.

Often the language used by States is drawn directly from the international human rights instruments. International human rights law consists mainly of treaties and customs as well as, inter alia, declarations, guidelines and principles.

- *Treaties*: A treaty is an agreement by States to be bound by particular rules. International treaties have different designations such as covenants, charters, protocols, conventions, accords and agreements. A treaty is legally binding on those States which have consented to be bound by the provisions of the treaty -in other words are party to the treaty. A State can become a party to a treaty by ratification, accession or succession. Ratification is a State's formal expression of consent to be bound by a treaty. Only a State that has previously signed the treaty (during the period when the treaty was open for signature) can ratify it. Ratification consists of two procedural acts: on the domestic level, it requires approval by the appropriate constitutional organ (usually the head of State or parliament). On the international level, pursuant to the relevant provision of the treaty in question, the instrument of ratification shall be formally transmitted to the depositary which may be a State or an international organization such as the United Nations. Accession entails the consent to be bound by a State that has not previously signed the instrument.

  States ratify treaties both before and after the treaty has entered into force. The same applies to accession. A State may also become party to a treaty by succession, which takes place by virtue of a specific treaty provision or by declaration. Most treaties are not self-executing. In some States treaties are superior to domestic law, whereas in other States treaties are given Constitutional status, and

in yet others only certain provisions of a treaty are incorporated into domestic law. A State may, in ratifying a treaty, enter reservations to that treaty, indicating that, while it consents to be bound by most of the provisions, it does not agree to be bound by certain specific provisions.

However, a reservation may not defeat the object and purpose of the treaty. Further, even if a State is not a party to a treaty or if it has entered reservations thereto, that State may still be bound by those treaty provisions which have become part of customary international law or constitute peremptory rules of international law, such as the prohibition against torture.

- *Custom*: Customary international law (or simply.custom.) is the term used to describe a general and consistent practice followed by States deriving from a sense of legal obligation. Thus, for example, while the Universal Declaration of Human Rights is not in itself a binding treaty, some of its provisions have the character of customary international law.
- *Declarations, Resolutions etc. Adopted by UN Rgans*: General norms of international law principles and practices that most States would agree are often stated in declarations, proclamations, standard rules, guidelines, recommendations and principles. While no binding legal effect on States ensures they nevertheless represent a broad consensus on the part of the international community and, therefore, have a strong and undeniable moral force on the practice of States in their conduct of international relations. The value of such instruments rests on their recognition and acceptance by a large number of States, and, even without binding legal effect, they may be seen as declaratory of broadly accepted principles within the international community.

THE SECRETARIAT OF THE UNITED NATIONS

The United Nations Charter provided for the creation of a

Secretariat which comprises the Secretary-General as the chief administrative officer of the Organization, and such staff as the Organization may require. More than 25,000 men and women from some 160 countries make up the Secretariat staff.

As international civil servants, they and the Secretary-General answer solely to the United Nations for their activities, and take an oath not to seek or receive instructions from any Government or outside authority. The Secretariat is located at the headquarters of the United Nations in New York and has major duty stations in Addis Ababa, Bangkok, Beirut, Geneva, Nairobi, Santiago and Vienna.

Organization

The Secretariat consists of a number of major organizational units, each headed by an official accountable to the Secretary-General. These include, inter alia, the Executive Office of the Secretary-General; Office for the Coordination of Humanitarian Affairs; Department for General Assembly Affairs and Conference Services; Department of Peacekeeping Operations; Department of Economic and Social Affairs; Department of Political Affairs, Department for Disarmament and Arms Regulation; Office of Legal Affairs; Department of Management.

Subsequent to the Secretary-General's reform package presented in document available, the work of the Organization falls into four substantive categories: peace and security, development cooperation, international economic and social affairs; and humanitarian affairs.

Human rights is designated as a cross-cutting issue in all four categories. Each area is co-ordinate by an Executive Committee which manages common, cross-cutting and overlapping policy concerns. In order to integrate the work of the Executive Committees and address matters affecting the Organization as a whole, a cabinet-style Senior Management Group, comprising the heads of department under the chairmanship of the Secretary-General, has been established.

It meets weekly with members in Geneva, Vienna, Nairobi and Rome participating through tele-conferencing. A Strategic Planning Unit has also been established to enable the Group to

consider individual questions on its agenda within broader and longer-term frames of reference. The Office of the High Commissioner for Human Rights forms part of the Secretariat and is responsible for the overall promotion and protection of human rights.

The High Commissioner, entrusted by General Assembly resolution of 20 December 1993 with principal responsibility for United Nations human rights activities, comes under the direction and authority of the Secretary-General and within the framework of the overall competence, authority and decisions of the General Assembly, the Economic and Social Council and the Commission on Human Rights. The High Commissioner is appointed by the Secretary-General with the approval of the General Assembly and is a member of all four Executive Committees.

Powers and Functions

According to the United Nations Charter, the Secretary-General is required to: participate in all meetings and to perform all functions entrusted to him by the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council; report annually to the General Assembly on the work of the Organization; and to bring to the attention of the Security Council any matter which, in his opinion, threatens international peace and security. The Secretary-General therefore functions as both the conscience of the international community and the servant of Member States.

The work carried out by the Secretariat is as varied as the problems dealt with by the United Nations. These range from mediating international disputes to issuing international stamps. The Secretariat's functions are, inter alia, to: provide support to the Secretary-General in fulfilling the functions entrusted to him or her under the Charter; promote the principles of the Charter and build understanding and public support for the objectives of the United Nations; promote economic and social development, development cooperation, human rights and international law; conduct studies, promote standards and provide information in various fields responding to the priority needs of Member States; and organize international conferences and other meetings. The

work of the Secretary-General entails routine daily consultations with world leaders and other individuals, attendance at sessions of various United Nations bodies, and worldwide travel as part of the overall effort to improve the state of international affairs. The Secretary-General issues an annual report in which he appraises the work of the Organization and presents his views on future priorities.

Good Offices (Article 99 of the Charter)

The Secretary-General may be best known to the general public for using his impartiality to engage and intervene in matters of international concern. This is commonly referred to as his.good offices. and is indicative of the steps taken by the Secretary-General or his senior staff, publicly and in private, to prevent international disputes from arising, escalating or spreading.

The Secretary-General can use his good offices to raise sensitive human rights matters with Governments. His intervention may be at his own discretion or at the request of Member States.

HUMAN RIGHTS MECHANISMS

A number of conventional mechanisms and extra-conventional mechanisms are in place to monitor the implementation of international human rights standards and to deal with complaints of human rights violations.

INTERNATIONAL HUMAN RIGHTS ECHANISMS

A *Conventional Mechanisms*: Treaty–Monitoring Bodies:

- Committee on economic, socil and culture right (monitors the implementation of the international covenant on economic, social and culture right).
- Human right committee (monitors the implementation of the international covernant on civil and political right).
- Committee of the international conventional for the elimination of all forms racial discrimination).
- Committee against torture (monitors the implementation of the convention against torture

and otber cruel, inbuman or degrading treatment or punishment).
- Committee on the elimination of discrimination against women monitors the implemention of the convention on the elimination of all forms or discrimination against women.
- Committee on the right of the child (monitors the implementation of the convention on the rights of the child).

B. *Extra–Conventional Mechanisms*: Special Procedures:
- Special rapporteurs, special representatives, special envoys and Independent experts, working groups–thematic or country (urgent actions).
- Complaints procedure 1503.

"Conventional mechanisms" refer to committees of independent experts established to monitor the implementation of international human rights treaties by States parties. By ratifying a treaty, States parties willingly submit their domestic legal system, administrative procedures and other national practices to periodic review by the committees. These committees are often referred to as treaty-monitoring bodies (or "treaty bodies"). In contrast, "extra-conventional mechanisms" refer to those mechanisms established by mandates emanating, not from treaties, but from resolutions of relevant United Nations legislative organs, such as the Commission on Human Rights or the General Assembly. Extra-conventional mechanisms may also be established by expert bodies, such as the Sub-Commission on the Promotion and Protection of Human Rights (formerly the Sub-Commission on Prevention of Discrimination and Protection of Minorities). They normally take the form of an independent expert or a working group and are often referred to as "special procedures".

CONVENTIONAL MECHANISMS

Treaty–Monitoring Bodies

- *Overview of the Conventional Mechanisms*: Conventional mechanisms monitor the implementation of the major

international human rights treaties. The different committees established are composed of independent experts acting in their individual capacity and not as representatives of their Governments, although they are elected by representatives of States Parties. The committees comprise 18 members each, with the exception of the Committee Against Torture and Committee on the Rights of the Child (both 10 members) and Committee against the Elimination of all forms of Discrimination Against Women (23 members). Members are elected according to the principle of equitable geographic representation, thus ensuring a balanced perspective and expertise in the major legal systems.

The main functions of the treaty bodies are to examine reports submitted by States parties and to consider complaints of human rights violations:

- *State Reporting:* All States parties to the international treaties are required to submit reports stating progress made and problems encountered in the implementation of the rights under the relevant treaty.
- *Individual Complaints:* Three of the international treaties currently allow for individuals to lodge complaints about alleged violations of rights. (the Optional Protocol to the International Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Racial Discrimination and the Convention against Torture and Other Cruel or Inhuman Treatment or Punishment).
- *State-to-State Complaints:* The same three treaties, in addition to the Convention on the Elimination of All Forms of Discrimination against Women, as listed above, also make provision for States parties to lodge complaints relating to alleged human rights abuses against another State party. This procedure has never been resorted to.

By virtue of their responsibilities, treaty bodies serve as the most authoritative source of interpretation of the

human rights treaties that they monitor. Interpretation of specific treaty provisions can be found in their "views" on complaints and in the "concluding observations" or "concluding comments" which they adopt on State reports. In addition, treaty bodies share their understanding on and experience of various aspects of treaty implementation through the formulation and adoption of general comments or "general recommendations". At present, there is a large body of general comments and recommendations serving as another valuable resource with regard to treaty interpretation. Complaints of human rights violations are technically referred to as "communications".

- *Reporting Procedure*: All treaties require States parties to report on the progress of implementation of the rights set forth in the treaty.

  The common procedure is as follows:
  - Each State party is required to submit periodic reports to the Committee.
  - The reports are examined by the treaty body in light of information received from a variety of sources including non-governmental organizations, United Nations agencies, experts. Some treaty bodies specifically invite NGOs and United Nations agencies to submit information.
  - After considering the information, the treaty body issues concluding observations/comments containing recommendations for action by the State party enabling better implementation of the relevant treaty. The treaty body monitors follow-up action by the State party on the concluding comments/ observations during examination of the next report submitted. On several occasions, treaty-body recommendations set out in the concluding comments/observations have served as the basis for new technical cooperation projects.
- *Communications Procedure for Individual Complaints*: The communications procedure set out in the Optional

Protocol to the ICCPR -article 22 (CAT) and article 14 (CERD)—is conditional on the following:

- The individual must first exhaust local remedies. In other words, the individual must have explored available legal remedies in the State concerned including appeal to the highest court, unless.
- There is no legal process in that country to protect the rights alleged to have been violated.
- Access to remedies through the local courts has been denied or prevented.
- There has been an unreasonable delay locally in hearing the complaint.
- A consistent pattern of gross violations of human rights makes any prospect of remedies meaningless.
- The remedies are unlikely to bring effective relief to the victim.
- The communication must not be anonymous or abusive.
- The communication must allege violations of rights as stipulated in the treaty which the committee oversees.
- The communication must come from an individual who lives under the jurisdiction of a State which is party to the particular treaty.
- The communication must not be under current or past investigation in another international procedure.
- The allegations set out in the communication must be substantiated.

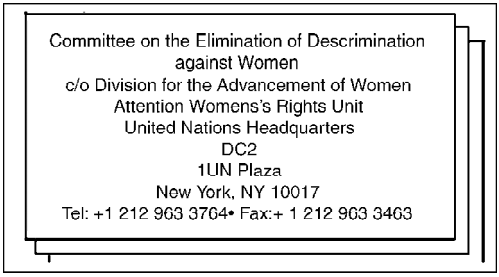
• *How to Contact the Committees*: Five committees are serviced by the Office of the High Commissioner for Human Rights:

1. The Committee on Economic, Social and Cultural Rights.
2. The Human Rights Committee.
3. The Committee against Torture.
4. The Committee on the Elimination of All Forms of Racial Discrimination.
5. The Committee on the Rights of the Child.

Communications, submissions or correspondence for these treaty bodies may be directed to:

The Committee for the Elimination of All Forms of Discrimination Against Women is serviced by the Division for the Advancement of Women.

Submissions or correspondence may be directed to:



Committee on Economic, Social and Cultural Rights (CESCR)

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council with a view to assisting the Council fulfill its responsibilities to the International Covenant on Economic, Social and Cultural Rights.

It is composed of 18 independent experts:

- *Reporting Procedure*: States parties submit their first report within two years of becoming parties to the Covenant. Subsequent reports must be submitted at least every five years thereafter or whenever the Committee so requests.
- *General Discussion Days*: The Committee usually devotes

one day of its regular sessions to a general discussion on a specific right or particular article of the Covenant in order to develop a greater depth of understanding on the issue, such as human rights education, the rights of elderly persons, the right to health and the right to housing. The discussion, in which representatives of international organizations and NGOs participate, is normally announced in advance. The relevant decision of the Committee can be found in its annual report. All interested parties, including NGOs, are invited to make written contributions.

- *Sessions*: The Committee is convened in Geneva twice a year, in May and November; each session is of three weeks. duration. A pre-seasonal working group comprising five members is normally convened for one week immediately following each Committee session to prepare for the different session.

Human Rights Committee (HRC)

The Human Rights Committee was established pursuant to article 28 of the International Covenant on Civil and Political Rights. It is composed of 18 members, acting in their personal capacity, who are nominated and elected by States parties to the Covenant for a term of four years. Its functions are to monitor the Covenant by examining reports submitted by States parties and to receive individual communications concerning alleged violations of the Covenant by States parties to the Optional Protocol to the Covenant.

Communications are examined in a quasi-judicial manner leading to the adoption of.views. which have a similarity to the judgments of international courts and tribunals. Implementation of the Committee.s decision is monitored by a Special Reporters who also conducts field missions.

- *Reporting Procedure*: Under the Covenant, States parties must submit initial reports to the Committee within one year of the entry into force of the Covenant for the State concerned and thereafter whenever the Committee so requests. Other than initial reports, periodic reports are

submitted every five years. The Committee regularly established a pre-sessional working group of four Committee members to assist in the drafting of issues to be considered in connection with States reports. Consideration of reports takes place over two or three meetings held in public. After the report is introduced to the Committee, the State representative has an opportunity to respond to written or oral questions raised by members of the Committee. NGOs are permitted to send submissions to the Committee. Following consideration, the Committee adopts its.comments. in a closed meeting making suggestions and recommendations to the State party. Comments are issued as public documents at the end of each session of the Committee and included in the annual report to the General Assembly.

- *Complaints by Individuals*: Under the Optional Protocol to the Covenant, a communication may be submitted by an individual who claims that his or her rights, as set out in the Covenant, have been violated. The Committee considers communications in light of written information made available to it by the individual and by the State party concerned and issues its "views" accordingly. When it appears that the alleged victim cannot submit the communication, the Committee may consider a communication from another person acting on his or her behalf. An unrelated third party having no apparent links with the alleged victim may not submit communications. A follow-up procedure is aimed at monitoring implementation of the Committee's "views".
- *Sessions*: The Committee is convened three times a year for sessions of three weeks. duration, normally in March, at United Nations headquarters in New York and in July and October/November at the United Nations Office at Geneva. Each session is preceded by a one-week working group session. It reports annually to the General Assembly.

Committee on the Elimination of all Forms of Racial Discrimination (CERD)

The Committee on the Elimination of Racial Discrimination was established under the International Convention on the Elimination of All Forms of Racial Discrimination. It is composed of 18 experts, acting in their personal capacity, who are nominated and elected by States parties to the Convention for a four-year term. The Committee monitors the implementation of the Convention by examining reports submitted by States parties which are due every two years. It also examines individual communications concerning violations of the Convention by States parties which have accepted the optional complaints procedure under article 14 of the Convention.

The Committee can also examine situations under its urgent action and prevention procedure:

- *Reporting Procedure*: Each State report receives the attention of a member designated as Country Reporters. He or she undertakes a detailed analysis of the report for consideration by the Committee and leads the discussion with the representatives of the State party. The Committee has also developed an urgent action and prevention procedure under which situations of particular concern may be examined. In order to prevent long overdue reports, if a report is more than five years overdue, the Committee may examine the country situation in the absence of a report.
- *Individual Communications Procedure*: The procedure concerning communications from individuals or groups claiming to be victims of violations of the Convention came into operation in 1982. Such communications may only be considered if the State concerned is a party to the Convention and has made the declaration under article 14 that it recognizes the competence of CERD to receive such complaints. Where a State party has accepted the competence of the Committee, such communications are confidentially brought to the attention of the State party concerned but the identity of the author is not revealed.

- *Sessions*: The committee meets in two sessions annually in Geneva, in March and August, each of three weeks' duration.

Committee Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

The Committee against Torture was established under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It is composed of 10 experts, acting in their personal capacity, who are nominated and elected by States parties to the Convention for a four- year term. The primary functions of the Committee are to monitor the implementation of the Convention by examining reports submitted by States parties, to receive individual communications concerning violations of the Convention by States parties which have accepted the optional procedure under article 22 of the Convention and to conduct inquiries into the alleged systematic practice of torture in States which have accepted the procedure under article 20.

- *Reporting Procedure*: Under the Convention, each State Party must submit a report to the Committe on measures taken to give effect to its undertakings under the Convention. The first report must be submitted within one year after the entry into force of the Convention for the State concerned. Thereafter, reports shall be submitted every four years on subsequent developments. The Committee designates a country rapporteur to undertake a detailed analysis of the report for consideration by the Committee. The Committee may also request further Reports and additional information.
- *Enquiry Procedure*: If the Committee receives reliable information which it considers to be based on well-founded indications that "torture is being systematically practiced"in a State, the Committee is empowered to make a confidential inquiry. If the Committee considers that the information gathered "warrants" further examination, it may designate one or more of its members to"make a confidential inquiry and to report

to the Committee urgently". The Committee then invites the State party concerned to cooperate in the inquiry. Accordingly, the Committee may request the State party to designate a representative to meet with the members of the Committee in order to provide the necessary information. The enquiry may also include, with the agreement of the State, a visit to the alleged site. After examining the findings of the inquiry, the Committee transmits them together with its comments and recommendation to the State party, inviting it to indicate the action which it intends to take in response. Finally, after consultation with the State Party, the Committee may decide to publish a summary of the proceedings separately or in its annual report.

- *Individual Communication Procedure*: A communication may be submitted directly or, under certain conditions, through representatives, by individuals who claim to be victims of torture by a State which has accepted the competence of the Committee. The function of the Committee is to gather relevant information, consider the admissibility and merits of complaints and to issue its "views". If the alleged victim is not in a position to submit the communication on his or her own behalf, a relative or representative may act in that capacity.
- *Sessions*: The Committee meets in Geneva twice each year in November and in the April-May period for two or three weeks. However, special sessions may be convened by decision of the Committee itself at the request of a majority of its members or of a State party to the Convention. The committee reports annually on its activities to the States parties to the Convention and to the General Assembly.

Committee on the Elimination of Discrimination Against Women

The Committee on the Elimination of Discrimination against Women was established in accordance with the International Convention on the Elimination of All Forms of Discrimination

against Women. The Committee is composed of 23 experts acting in their personal capacity, who are nominated and elected by the States parties to the Convention for a four-years term. The Committee's main function is to monitor the implementation of the Convention based on consideration of reports from States parties.

The new Optional Protocol establishes two procedures: an individual communications procedure which will allow communications to be submitted by or on behalf of individuals or groups of individuals claiming to be victims of a violation of any of the rights set out in the Convention; and a procedure which will allow the Committee to enquire into grave or systematic violations by a State party of those rights. In addition, no reservations are permissible, although any State accepting the Protocol may.opt-out. of the enquiry procedure.

- *Reporting Procedure*: A State party must submit its first report within one year after it has ratified or acceded to the Convention. Subsequent reports must be submitted at least every four years or whenever the Committee so requests. To consider States parties' reports adequately, the Committee established a pre-sessional working group with the mandate to consider periodic reports. The pre-sessional working groups are composed of five members of the Committee who prepare lists of issues and questions to be sent in advance to the reporting Stat. This enables reporting States to prepare replies for presentation at the session and thus contribute to a speedier consideration of the second and subsequent reports. The Committee has established two standing working groups which meet during the regular session to consider ways and means of improving the work of the Committee and of implementing article 21 of the Convention under which the Committee may issue suggestions and recommendations on implementation of the Convention. The consideration of reports by the Committee takes place in public session, whereas the adoption of the concluding observations, intended to guide the State Party in the preparation of its next

report, is subsequently held in private. State representatives are given the opportunity to introduce the report orally and members then raise questions relating to specific articles of the Convention.
They focus on the actual position of women in society in an effort to understand the true extent of the problem of discrimination. The Committee will accordingly request specific information on the position of women from a variety of sources. Following consideration of the report in public session, the Committee proceeds to draft and adopt its "Comments" in a series of private sessions. The Comments enter the public domain once adopted. They are immediately sent to the State party and included in the annual report to the General Assembly. The report is also submitted to the Commission on the Status of Women.

- *Sessions*: The Committee meets in New York twice per year for a duration of three weeks. The week following the close of each session is reserved for the Working Group which establishes the agenda for the next meeting. The Committee is serviced by the UN Division for the Advancement of Women which is based in New York.

Committee on the Rights of the Child (CRC)

The Committee on the Rights on the Child was established under the Convention on the Rights of the Child. It comprises 10 independent members elected for a four-year term. The main function of the Committee is to monitor the implementation of the Convention on the Rights of the Child based on examination of State reports in close cooperation with the United Nations Children's Fund (UNICEF), specialized agencies and other competent bodies (including NGOs).

- *Reporting Procedure*: States parties are required to submit reports to the Committee two years after becoming parties to the Convention, and thereafter every five years, on measures taken to give effect to the rights in the Convention and on the progress made in the

enjoyment of children's rights. The pre-sessional working groups comprising all members of the Committee meet in closed meeting at the end of each session to consider reports scheduled for the next session. Its mandate is to identify those areas in the reports which require clarification or raise concerns and to prepare a list of issues for transmission to States parties. States provide written replies to be considered in conjunction with the report.

- *General Discussion*: The Committee devotes one or more meetings of its regular sessions to general discussion on one particular article of the Convention or on specific issues such as the situation of the girl child, the economic exploitation of children and children in the media. Representatives of international organizations and NGOs participate in the Committee discussion which is normally announced in the report of the session immediately preceding that in which the discussion takes place.

  All interested parties including NGOs are invited to make written contributions. Individual complaints There is no procedure outlined in the Convention for individual complaints from children or their representatives. The Committee may, however, request. Further information relevant to the implementation of the Convention. Such additional information may be requested from Governments if there are indications of serious problems.
- *Sessions*: The Committee hold three annual sessions in Geneva, each of three weeks. duration. It also holds three pre-sessional working groups, each of one week's duration.

EXTRA-CONVENTIONAL MECHANISMS

Special Procedures

- *Thematic and Country Mandates*: The Commission on Human Rights and the Economic and Social Council

have, over time, established a number of other extra-conventional mechanisms or special procedures, meaning they were not created either by the United Nations Charter or by an international treaty. Extra-conventional mechanisms also monitor the implementation and enforcement of human rights standards.

These mechanisms have been entrusted to working groups of experts acting in their individual capacity or individuals designated as Special Rapporteurs, Special Representatives or independent experts. The mandate and tenure of the working group, independent experts and special representatives of the Secretary-General depend on the decision of the Commission on Human Rights or the Economic and Social Council.

In general, their mandates are to examine, monitor and publicly report on either the human rights situation in a specific country or territory -known as country mandates. or on human rights violations worldwide—known as thematic mechanisms or mandates. A list of country and thematic mandates is at annexes V and VI.

The special procedure mechanisms are of paramount importance for monitoring universal human rights standards and address many of the most serious human rights violations in the world. The increase and the evolution of procedures and mechanisms in this area constitute a system of human rights protection.

– *Objectives*: All special procedures have the central objective of making international human rights more operative. Yet each special procedure has its own specific mandate which has, in certain cases, evolved in accordance with specific cir-cumstances and needs. While certain basic principles and criteria are common to all special procedures, the complexities and peculiarities of each individual mandate have at times required special arrangements.
– *Dialogue with Governments*: Each independent expert initiates constructive dialogue with States'

Representatives in order to obtain their cooperation as a means of redressing violations of human rights. Their examinations and investigations are carried out in an objective manner so as to identify solutions to States for securing respect for human rights.

– *Individual Complaints Mechanisms*: These mechanisms have no formal complaints procedures even though their activities are based on information received from various sources (the victims or their relatives, local or international NGOs, for example) containing allegations of human rights violations. Information of this kind may be submitted in various forms (*e.g.* letters, faxes, and cables) and may concern individual cases as well as details of situations of alleged violations of human rights.

  In order to pursue a complaint, a number of requirements must be fulfilled:

  a. Identification of the alleged victim(s);
  b. Identification of the Government agents responsible for the violation;
  c. Identification of the person(s) or organization(s) submitting the commun ication;
  d. A detailed description of the circumstances of the incident in which the alleged violation occurred.

     In order to be considered admissible, a communication must:

     i. Not be anonymous;
     ii. Not contain abusive language;
     iii. Not convey an overtly political motivation;
     iv. Describe the facts of the incident and the relevant details referred to above, clearly and concisely.

– *Urgent Action*: Where information attests to an imminence of a serious human rights violation (*e.g.* extra-judicial execution, fear that a detained person may be subjected to torture or may die as a result of an untreated disease, for example) the Spe- cial

Rapporteur, Representative, Expert or Working Group may address a message to the authorities of the State concerned by tele fax or telegramme, requesting clarifications on the case, appealing to the Government to take the necessary measures to guarantee the rights of the alleged victim. These appeals are meant to be preventive in character and do not prejudge a definitive conclusion.

Once an urgent action is transmitted to the Government in question, the Special.

Rapporteur, Representative, Expert or Working Group undertakes the following action:

a. Appeals to the Governments concerned to ensure effective protection of the alleged victims;
b. Urges the competent authorities to undertake full, independent and impartial investigation and to adopt all necessary measures to prevent further violations and requests to be informed of every step taken in this regard;
c. If no response is received and/or the competent authority takes no remedial measures, the Special Rapporteur, Representative, Expert or Working.

Group reminds the Government concerned of the cases periodically. Cases not clarified are made public through the report of the particular Special Procedures to the Commission on Human Rights or to the competent United Nations bodies.

Specific requests for such urgent intervention may be addressed to:

- *The 1503 Procedure*: Each year the United Nations receives thousands of communications alleging the existence of gross and systematic violations of human rights and fundamental freedoms. The Economic and Social Council consequently adopted a procedure for dealing with such communications. This is known as the 1503 procedure pursuant to the adoption of the resolution 1503 of 27 May 1970. It does not deal with individual cases but with situations affecting a large number of people over a protracted period of time.
  - *Procedure for Communications*: A five-member Working Group of the Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-Commission on Prevention of Discrimination and Protection of Minorities) receives a monthly list of complaints ("communications") in conjunction with a summary of the evidence. The five-member Working Group meets for two weeks each year immediately prior to the Sub-Commission.s annual session to consider all communications and replies from Governments. In instances where the Working Group identifies reasonable evidence of a consistent pattern of gross violations of human rights, the matter is referred for examination by the Sub-Commission. A majority decision of the Working Group's members is needed for referring a communication to the Sub-Commission. The Sub-Commission then decides whether the situations should be referred to the Commission on Human Rights, through the Commission's Working Group on Situations. Subsequently, the Commission assumes responsibility for making a decision concerning each particular situation brought to its attention. All the initial steps of the process are confidential, except the names of countries which have been under examination. This ensures that a pattern of abuses in a particular country, if not resolved in the early

stages of the process, can be brought to the attention of the world community. details referred to above, clearly and concisely.

– *Admissibility*: The Working Group's decision on the admissibility of a communication is guided by the following criteria.

The communication should:

a. Not reflect political motivation of any kind;
b. Have reasonable grounds for establishing that there is a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms;
c. Come from individuals or groups claiming to be victims of human rights violations or having direct, reliable knowledge of violations. Anonymous communications are inadmissible, as are those based only on reports in the mass media;
d. Describe the facts, the purpose and the rights that have been violated. As a rule, communications containing abusive language or insulting remarks about the State against which the complaint is directed will not be considered;
e. Have first exhausted all domestic remedies, unless it can be shown convincingly that solutions at national level would be ineffective or that they would extend over an unreasonable length of time.

Communications intended for handling under the "1503" procedure may be addressed to:

Support Services Branch
c/o Office of the High Commissioner for Human Rights,
United Nations Office at Geneva
8–14 Avenue de la Paix
1211 Geneva 10. Switzerland
E–mail: webadmin.hchr@unog.ch

4

United Nations Strategies and Action to Promote Human Rights

INTRODUCTION

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.

INTEGRATING HUMAN RIGHTS INTO THE WORK OF THE UNITED NATIONS

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.

HUMAN RIGHTS TECHNICAL COOPERATION PROGRAMME

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.

HOW TO ACCESS ASSISTANCE

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.

VARIOUS TECHNICAL COOPERATION ACTIVITIES

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.

Administration of Justice

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.

Non-Governmental Organizations and Civil Society

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.

Information and Documentation Projects

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:

1. Assessment of needs and formulation of effective strategies for the furtherance of human rights education;
2. Building and strengthening of programmes and capacities for human rights education at the international, regional, national and local levels;
3. Co-ordinated development of effective human rights education materials;
4. Trengthening the role and capacity of the mass media in the furtherance of human rights education;
5. 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.

Third Decade to Combat Racism and Racial Discrimination

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.

Working With Civil Society

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:

1. 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);
2. 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.

OHCHR ad hoc Publications

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.

Publications for the Fiftieth Anniversary of the Universal Declaration of Human Rights: Basic Information Kits

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.

Reference Material

OHCHR reference publications are directed to a more specialized audience and often consist of collections or compilations of international instruments. They are issued as United Nations sales publications.

5

International Criminal Courts

INTRODUCTION

The International Criminal Court (French: Cour Penale Internationale; commonly referred to as the ICC or ICCt) is a permanent tribunal Tribunal in the general sense is any person or institution with the authority to judge, adjudicate on, or determine claims or disputes—whether or not it is called a tribunal in its title.For example, an advocate appearing before a Court on which a single Judge was sitting could describe that judge as 'their tribunal'. Many governmental bodies that are titled 'tribunals' are so described to emphasize the fact that they are not courts of normal jurisdiction.

For example the International Criminal Tribunal for Rwanda is a body specially constituted under international law; in Great Britain, Employment Tribunals are bodies set up to hear specific employment disputes. Private judicial bodies are also often styled 'tribunals'. The word 'tribunal' is not conclusive of a body's function.

For example, in Great Britain, the Employment Appeal Tribunal is a superior court of record.) to prosecute individuals for genocide(Genocide is defined as "the deliberate and systematic destruction, in whole or in part, of an ethnic, racial, religious, or national group", though what constitutes enough of a "part" to qualify as genocide has been subject to much debate by legal scholars.While a precise definition varies among genocide scholars, a legal definition is found in the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG). Article 2 of this convention defines genocide

as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group.”

The preamble to the CPPCG states that instances of genocide have taken place throughout history,but it was not until Raphael Lemkin coined the term and the prosecution of perpetrators of the Holocaust at the Nuremberg trials that the United Nations agreed to the CPPCG which defined the crime of genocide under international law. During a video interview with Raphael Lemkin, the interviewer asked him about how he came to be interested in this genocide. He replied; “I became interested in genocide because it happened so many times. First to the Armenians, then after the Armenians, Hitler took action.”

There was a gap of more than forty years between the CPPCG coming into force and the first prosecution under the provisions of the treaty. To date all international prosecutions of genocide, the Rwandan Genocide and the Srebrenica Genocide, have been by ad hoc international tribunals. The International Criminal Court came into existence in 2002 and it has the authority to try people from the states that have signed the treaty, but to date it has not tried anyone.

Since the CPPCG came into effect in January 1951 about 80 member states of the United Nations have passed legislation that incorporates the provisions of the CPPCG into their domestic law, and some perpetrators of genocide have been found guilty under such municipal laws, such as Nikola Jorgic, who was found guilty of genocide in Bosnia by a German court (Jorgic v. Germany). Critics of the CPPCG point to the narrow definition of the groups that are protected under the treaty, particularly the lack of protection for political groups for what has been termed politicide (politicide is included as genocide under some municipal jurisdictions).One of the problems was that until there was a body of case law from prosecutions, the precise definition of what the

treaty meant had not been tested in court, for example, what precisely does the term "in part" mean? As more perpetrators are tried under international tribunals and municipal court cases, a body of legal arguments and legal interpretations are helping to address these issues.

The exclusion of political groups and politically motivated violence from the international definition of genocide is particularly controversial. The reason for this exclusion is because a number of UN member nations insisted on it when the Genocide Convention was being drafted in 1948. They argued that political groups are too vaguely defined, as well as temporary and unstable. They further held that international law should not seek to regulate or limit political conflicts, since that would give the UN too much power to interfere in the internal affairs of sovereign nations.In the years since then, critics have argued that the exclusion of political groups from the definition, as well as the lack of a specific reference to the destruction of a social group through the forcible removal of a population, was designed to protect the Soviet Union and the Western Allies from possible accusations of genocide in the wake of World War II.

Another criticism of the CPPCG is that when its provisions have been invoked by the United Nations Security Council, they have only been invoked to punish those who have already committed genocide and been foolish enough to leave a paper trail. It was this criticism that led to the adoption of UN Security Council Resolution 1674 by the United Nations Security Council on 28 April 2006 commits the Council to action to protect civilians in armed conflict and to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

Genocide scholars such as Gregory Stanton have postulated that conditions and acts that often occur before, during, and after genocide—such as dehumanization of victim groups, strong organization of genocidal groups, and denial of genocide by its perpetrators—can be identified and actions taken to stop genocides before they happen. Critics of this approach such as Dirk Moses assert that this is unrealistic and that, for example, "Darfur will end when it suits the great powers that have a stake in the region")., crimes against humanity Crimes against

humanity, as defined by the Rome Statute of the International Criminal Court Explanatory Memorandum, "are particularly odious offences in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings. They are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority.

Murder; extermination; torture; rape; political, racial, or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice. Isolated inhumane acts of this nature may constitute grave infringements of human rights, or depending on the circumstances, war crimes, but may fall short of falling into the category of crimes under discussion."), war crimes(War crimes are serious violations of the laws applicable in armed conflict (Also known as International humanitarian law) giving rise to individual criminal responsibility.

Examples of such conduct includes "murder, the ill-treatment or deportation of civilian residents of an occupied territory to slave labour camps", "the murder or ill-treatment of prisoners of war", the killing of prisoners, "the wanton destruction of cities, towns and villages, and any devastation not justified by military, or civilian necessity". Similar concepts, such as perfidy, have existed for many centuries as customs between civilized countries, but these customs were first codified as international law in the Hague Conventions of 1899 and 1907. The modern concept of a war crime was further developed under the auspices of the Nuremberg Trials based on the definition in the London Charter that was published on August 8, 1945. (Also see Nuremberg Principles.) Along with war crimes the charter also defined crimes against peace and crimes against humanity, which are often committed during wars and in concert with war crimes.

Article 22 of the Hague IV ("Laws of War: Laws and Customs of War on Land (Hague IV); October 18, 1907") states that "The right of belligerents to adopt means of injuring the enemy is not unlimited" and over the last century many other treaties have

introduced positive laws that place constraints on belligerents. Some of the provisions, such as those in the Hague, the Geneva, and Genocide Conventions, are considered to be part of customary international law, and are binding on all. Others are only binding on individuals if the belligerent power to which they belong is a party to the treaty which introduced the constraint.), and the crime of aggression A war of aggression, sometimes also war of conquest, is a military conflict waged without the justification of self-defence usually for territorial gain and subjugation. The phrase is distinctly modern and diametrically opposed to the prior legal international standard of "might makes right", under the medieval and pre-historic beliefs of right of conquest.

Since the Korean War of the early 1950s, waging such a war of aggression is a crime under the customary international law. It is generally agreed by scholars in international law that the military actions of the Nazi regime in World War II in its search for so-called "Lebensraum" are characteristic of a war of aggression, the waging of which was called the supreme crime by Justice Robert H. Jackson, chief prosecutor for the United States at the Nuremberg Trials.

Wars without international legality (*e.g.* not out of self-defence nor sanctioned by the United Nations Security Council) can be considered wars of aggression; however, this alone usually does not constitute the definition of a war of aggression; certain wars may be unlawful but not aggressive (a war to settle a boundary dispute where the initiator has a reasonable claim, and limited aims, is one example).

The International Military Tribunal at Nuremberg, which followed World War II, called the waging of aggressive war "essentially an evil thing to initiate a war of aggression is not only an international crime; it is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole." Article 39 of the United Nations Charter provides that the UN Security Council shall determine the existence of any act of aggression and "shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security".

The Rome Statute of the International Criminal Court refers to the crime of aggression as one of the "most serious crimes of concern to the international community", and provides that the crime falls within the jurisdiction of the International Criminal Court (ICC). However, the Rome Statute stipulates that the ICC may not exercise its jurisdiction over the crime of aggression until such time as the states parties agree on a definition of the crime and set out the conditions under which it may be prosecuted.) (although it cannot currently exercise jurisdiction over the crime of aggression). The Court, created with the philosophy of ending impunity, has specific relevance to issues of justice and accountability within India.

The court's creation perhaps constitutes the most significant reform of international law since 1945. It gives authority to the two bodies of international law that deal with treatment of individuals: human rights and humanitarian law. It came into being on 1 July 2002—the date its founding treaty, the Rome Statute of the International Criminal Court,(The Rome Statute of the International Criminal Court (often referred to as the International Criminal Court Statute or the Rome Statute) is the treaty that established the International Criminal Court (ICC). It was adopted at a diplomatic conference in Rome on 17 July 1998 and it entered into force on 1 July 2002.

As of March 2011, 114 states are party to the statute, and a further 34 states have signed but not ratified the treaty. Among other things, the statute establishes the court's functions, jurisdiction and structure.) entered into force—and it can only prosecute crimes committed on or after that date. The court's official seat is in The Hague, Netherlands, but its proceedings may take place anywhere.

As of April 2011, 114 states are members of the court The States Parties to the Rome Statute of the International Criminal Court are those countries that have ratified or acceded to the Rome Statute, the treaty that established the International Criminal Court. As of April 2011, 114 states are members of the court, including nearly all of Europe and Latin America and roughly half the countries in Africa. A further 34 countries, including Russia, have signed but not ratified the Rome Statute while one

of them, Côte d'Ivoire, has accepted the Court's jurisdiction. The law of treaties obliges these states to refrain from "acts which would defeat the object and purpose" of the treaty. Three of these states—Israel, Sudan and the United States—have "unsigned" the Rome Statute, indicating that they no longer intend to become states parties and, as such, they have no legal obligations arising from their former representatives' signature of the statute. 45 United Nations member states have neither signed nor ratified the Rome Statute; some of them, including China and India, are considered by some to be critical to the success of the court. The Court can automatically exercise jurisdiction over crimes committed on the territory of a State Party or by a national of a State Party. States Parties must co-operate with the Court, including surrendering suspects when requested to do so by the Court.

States Parties are entitled to participate and vote in proceedings of the Assembly of States Parties, which is the Court's governing body.), including nearly all of Europe and Latin America and roughly half the countries in Africa. A further 34 countries, including Russia, have signed but not ratified the Rome Statute while one of them, Côte d'Ivoire, has accepted the Court's jurisdiction. The law of treaties obliges these states to refrain from "acts which would defeat the object and purpose" of the treaty. Three of these states—Israel, Sudan and the United States—have "unsigned" the Rome Statute, indicating that they no longer intend to become states parties and, as such, they have no legal obligations arising from their former representatives' signature of the statute.45 United Nations member states have neither signed nor ratified the Rome Statute; some of them, including China and India, are considered by some to be critical to the success of the court.

The court can generally exercise jurisdiction only in cases where the accused is a national of a state party, the alleged crime took place on the territory of a state party, or a situation is referred to the court by the United Nations Security Council The United Nations Security Council (UNSC) is one of the principal organs of the United Nations and is charged with the maintenance of international peace and security. Its powers, outlined in the United

Nations Charter, include the establishment of peacekeeping operations, the establishment of international sanctions, and the authorization of military action. Its powers are exercised through United Nations Security Council resolutions.

The Security Council held its first session on 17 January 1946 at Church House, London. Since its first meeting, the Council, which exists in continuous session, has travelled widely, holding meetings in many cities, such as Paris and Addis Ababa, as well as at its current permanent home at the United Nations Headquarters in New York City. There are 15 members of the Security Council, consisting of five veto-wielding permanent members (China, France, Russia, the United Kingdom, and the United States) and 10 elected non-permanent members with two-year terms.

This basic structure is set out in Chapter V of the UN Charter. Security Council members must always be present at UN headquarters in New York so that the Security Council can meet at any time. This requirement of the United Nations Charter was adopted to address a weakness of the League of Nations since that organization was often unable to respond quickly to a crisis.

It is designed to complement existing national judicial systems: it can exercise its jurisdiction only when national courts are unwilling or unable to investigate or prosecute such crimes. Primary responsibility to investigate and punish crimes is therefore left to individual states.

To date, the Court has opened investigations into six situations. So far, the International Criminal Court the Court has opened investigations into six situations, all of them in Africa: Northern Uganda, the Democratic Republic of the Congo, the Central African Republic, Darfur (Sudan), the Republic of Kenya and Libya. Of these six, three were referred to the Court by the states parties (Uganda, Democratic Republic of the Congo and Central African Republic), two were referred by the United Nations Security Council (Darfur and Libya) and only one was begun proprio motu by the Prosecutor (Kenya).

The Court has publicly indicted twenty-three people; proceedings against twenty-one people are ongoing. Of those twenty-one, eight remain fugitives (one is presumed dead), five

are in custody and eight have appeared voluntarily before the court. Proceedings against two people are finished as one indicted is dead while the charges against another one were dismissed.

As of end September 2010, the Office of the Prosecutor had received 8,874 communications about alleged crimes. After initial review, 4,002 of these communications were dismissed as "manifestly outside the jurisdiction of the Court".), all of them in Africa: Northern Uganda(officially the Republic of Uganda, is a landlocked country in East Africa. Uganda is also known as the "Pearl of Africa". It is bordered on the east by Kenya, on the north by Sudan, on the west by the Democratic Republic of the Congo, on the southwest by Rwanda, and on the south by Tanzania. The southern part of the country includes a substantial portion of Lake Victoria, which is also bordered by Kenya and Tanzania. Uganda takes its name from the Buganda kingdom, which encompassed a portion of the south of the country including the capital Kampala. The people of Uganda were hunter-gatherers until 1,700 to 2,300 years ago, when Bantu-speaking populations migrated to the southern parts of the country. Uganda gained independence from Britain on 9 October 1962.

The official languages are English and Swahili, although multiple other languages are spoken in the country. It is a member of the African Union, the Commonwealth of Nations, Organisation of the Islamic Conference and East African Community), the Democratic Republic of the Congo(The Democratic Republic of the Congo (French: Republique democratique du Congo), formerly Zaire, is a state located in Central Africa, with a short Atlantic coastline (37 km). It is the third largest country in Africa by area after Sudan and Algeria and the twelfth largest in the world. With a population of nearly 71 million, the Democratic Republic of the Congo is the eighteenth most populous nation in the world, and the fourth most populous nation in Africa, as well as the most populous officially Francophone country.

In order to distinguish it from the neighbouring Republic of the Congo to the west, the Democratic Republic of the Congo is often referred to as DR Congo, DROC, DRC, or RDC (from its French abbreviation), or is called Congo-Kinshasa after the capital of Kinshasa (in contrast to Congo-Brazzaville for its neighbour).

It also borders the Central African Republic and Sudan to the north; Uganda, Rwanda, and Burundi in the east; Zambia and Angola to the south; the Atlantic Ocean to the west; and is separated from Tanzania by Lake Tanganyika in the east. The country has access to the ocean through a 40-kilometre (25 mi) stretch of Atlantic coastline at Muanda and the roughly 9 km wide mouth of the Congo River which opens into the Gulf of Guinea.

The Democratic Republic of the Congo was formerly, in chronological order, the Congo Free State, Belgian Congo, Congo-Leopoldville, Congo-Kinshasa, and Zaire (Zaïre in French). Though it is located in the Central African UN subregion, the nation is economically and regionally affiliated with Southern Africa as a member of the Southern African Development Community (SADC).

The Second Congo War, beginning in 1998, devastated the country, involved seven foreign armies and is sometimes referred to as the "African World War". Despite the signing of peace accords in 2003, fighting continues in the east of the country. In eastern Congo, the prevalence of rape and other sexual violence is described as the worst in the world. The war is the world's deadliest conflict since World War II, killing 5.4 million people.

Although citizens of the DRC are among the poorest in the world, having the second lowest nominal GDP per capita, the Democratic Republic of Congo is widely considered to be the richest country in the world regarding natural resources; its untapped deposits of raw minerals are estimated to be worth in excess of US$ 24 trillion. This is the equivalent of the gross domestic product of the United States of America and Europe combined.), the Central African Republic The Central African Republic (CAR) is a landlocked country in Central Africa. It borders Chad in the north, Sudan in the east, the Democratic Republic of the Congo and the Republic of the Congo in the south, and Cameroon in the west. The CAR covers a land area of about 240,000 square miles (623,000 km²), and has an estimated population of about 4.4 million as of 2008. Bangui is the capital city. Most of the CAR consists of Sudano-Guinean savannas but it also includes a Sahelo-Sudanian zone in the north and an equatorial forest zone in the south. Two thirds of the country lies

in the basins of the Ubangi River, which flows south into the Congo River, while the remaining third lies in the basin of the Chari River, which flows north into Lake Chad.

Since most of the territory is located in the Ubangi and Shari river basins, France called the colony it carved out in this region Ubangi-Chari, or Oubangui-Chari in French. It became a semi-autonomous territory of the French Community in 1958 and then an independent nation on 13 August 1960. For over three decades after independence, the CAR was ruled by presidents who were not chosen in multi-party democratic elections or took power by force. Local discontent with this system was eventually reinforced by international pressure, following the end of the Cold War.

The first multi-party democratic elections were held in 1993 with resources provided by the country's donors and help from the UN Office for Electoral Affairs, and brought Ange-Felix Patasse to power. He lost popular support during his presidency and was overthrown in 2003 by French-backed General François Bozize, who went on to win a democratic election in May 2005. Inability to pay workers in the public sector led to strikes in 2007, forcing the resignation of the government in early 2008. A new Prime Minister, Faustin-Archange Touadera, was named on 22 January 2008. The Central African Republic is one of the poorest countries in the world and among the ten poorest countries in Africa. The Human Development Index for the Central African Republic is 0.369, which gives the country a rank of 179 out of 182 countries with data.

Darfur (Sudan), the Republic of Kenya officially the Republic of Kenya, is a country in East Africa. Lying along the Indian Ocean to its southeast and at the equator, it is bordered by Somalia to the northeast, Ethiopia to the north, Sudan to the northwest, Uganda to the west and Tanzania to the south. Lake Victoria is situated to the southwest, and is shared with Uganda and Tanzania. With its capital city in Nairobi, Kenya has numerous wildlife reserves containing thousands of animal species. It has a land area of 580,000 km^2 and a population of nearly 39 million residents, representing many different peoples and cultures. The country is named after Mount Kenya, a significant landmark and second among Africa's highest mountain peaks.

Kenya is a country of 47 counties each with its own government semi-autonomous to the central government in the capital, Nairobi. The country's geography is as diverse as its people. It has a long coastline along the Indian Ocean and as you advance inland the landscape changes to savannah grasslands, arid and semi-arid bushes. The central regions and the western parts have forests and mountains while the northern regions are near desert landscapes.

Archaeological research indicates modern man first appeared in Kenya and as a result, the country with its East African neighbours is almost certainly considered the cradle of mankind. Due to the varied geography and weather, people performing varied economic activities and thus developing varied cultures have been living in Kenya since the dawn of mankind. The first and successful attempt to merge these diverse and rich cultures under a nation was done by the arrival of Europeans around 19th century. Initially, peoples of then Kenya interacted through trade, intermarriages and frequent wars though each remained politically independent of the other.

A major African nation, Kenya is classified as a developing and sometimes an emerging African nation. Its economy is the largest by GDP in East and Central Africa and Kenya's capital, Nairobi is a major commercial hub. The country traditionally produces world renowned tea and coffee. Recently, it has developed a formidable horticultural industry thereby becoming a major exporter of fresh flowers to Europe. The service industry is driven by the telecommunications sector which is one of the most successful and innovative in Africa.

Kenya is also a major and world-renowned athletics powerhouse producing such world champions as Paul Tergat and most recently David Rudisha.) and Libya. Of these six, three were referred to the Court by the states parties (Uganda, Democratic Republic of the Congo and Central African Republic), two were referred by the United Nations Security Council (Darfur and Libya) and only one was begun proprio motu by the Prosecutor (Kenya). It has publicly indicted twenty-three people. The list of people who have been indicted in the International Criminal Court includes all individuals who have been indicted on any counts of

genocide, crimes against humanity, war crimes, or crimes of aggression by the Prosecutor of the International Criminal Court (ICC) pursuant to the Rome Statute.

An individual is indicted when a Pre-Trial Chamber issues either an arrest warrant or a summons after it finds that "there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court". An arrest warrant is issued where it appears necessary "to ensure the person's appearance at trial, to ensure that the person does not obstruct or endanger the investigation or the court proceedings, or, where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances". The Pre-Trial Chamber issues a summons if it is satisfied that a summons is sufficient to ensure the person's appearance. Individuals can only be charged with genocide, crimes against humanity, or war crimes.

The Court cannot currently prosecute individuals for the "crime of aggression".); proceedings against twenty-one people are ongoing. Of those twenty-one, eight remain fugitives (one is presumed dead), five are in custody and eight have appeared voluntarily before the court. Proceedings against two people are finished as one indicted is dead while the charges against another one were dismissed.

As of April 2011, three trials against four people are underway: two trials regarding the situation in the Democratic Republic of the Congo (with one of them scheduled to be closed in August 2011) and one trial regarding the Central African Republic. Another two people have been committed to a fourth trial in the situation of Darfur, Sudan. One confirmation of charges hearing(against one person in the situation of the DR Congo) is to start in July 2011 while two others (against a total of six persons in the situation of Kenya) will begin in September 2011.

HISTORY

The establishment of an international tribunal to judge political leaders accused of war crimes was first made during the Paris Peace Conference in 1919 by the Commission of

Responsibilities. (A commission of experts at the Paris Peace Conference in 1919 that dealt with the issue of prosecution for war crimes committed during the First World War).

The issue was addressed again at conference held in Geneva under the auspices of the League of Nations. The League of Nations (LON) was an intergovernmental organization founded as a result of the Paris Peace Conference that ended World War I, and it was the precursor to the United Nations. The League was the first permanent international security organization whose principal mission was to maintain world peace. At its greatest extent from 28 September 1934 to 23 February 1935, it had 58 members. The League's primary goals, as stated in its Covenant, included preventing war through collective security, disarmament, and settling international disputes through negotiation and arbitration. Other issues in this and related treaties included labour conditions, just treatment of native inhabitants, trafficking in persons and drugs, arms trade, global health, prisoners of war, and protection of minorities in Europe.

The diplomatic philosophy behind the League represented a fundamental shift in thought from the preceding hundred years. The League lacked its own armed force and so depended on the Great Powers to enforce its resolutions, keep to economic sanctions which the League ordered, or provide an army, when needed, for the League to use. However, they were often reluctant to do so. Sanctions could also hurt the League members, so they were reluctant to comply with them. When, during the Second Italo-Abyssinian War, the League accused Italian soldiers of targeting Red Cross medical tents, Benito Mussolini responded that "the League is very well when sparrows shout, but no good at all when eagles fall out."

After a number of notable successes and some early failures in the 1920s, the League ultimately proved incapable of preventing aggression by the Axis powers in the 1930s. In May 1933, Franz Bernheim, a Jew, complained that his rights as a minority were being violated by the German administration of Upper Silesia, which induced the Germans to defer enforcement of the anti-Jewish laws in the region for several years until the relevant treaty expired in 1937, whereupon they simply refused to renew the

League's authority further and renewed anti-Jewish persecution. Hitler claimed these clauses violated Germany's sovereignty. Germany withdrew from the League, soon to be followed by many other aggressive powers. The onset of World War II showed that the League had failed its primary purpose, which was to avoid any future world war.

The United Nations replaced it after the end of the war and inherited a number of agencies and organizations founded by the League.) on 1–16 November 1937, but no practical results followed. The United Nations states that the 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.) first recognised the need for a permanent international court to deal with atrocities of the kind committed during World War II in 1948, following the Nuremberg and Tokyo Tribunals. At the request of the General Assembly, the International Law Commission drafted two statutes by the early 1950s but these were shelved as the Cold War made the establishment of an international criminal court politically unrealistic.

Benjamin B. Ferencz, an investigator of Nazi war crimes after World War II and the Chief Prosecutor for the United States Army at the Einsatzgruppen Trial, one of the twelve military trials held by the U.S. authorities at Nuremberg, later became a vocal advocate of the establishment of an international rule of law and of an International Criminal Court. In his first book published in 1975, entitled Defining International Aggression-The Search for World Peace, he argued for the establishment of such an international court.

The idea was revived in 1989 when A. N. R. Robinson, then Prime Minister of Trinidad and Tobago, proposed the creation of a permanent international court to deal with the illegal drug trade(The illegal drug trade is a global black market, dedicated to cultivation, manufacture, distribution and sale of those substances which are subject to drug prohibition laws. Most jurisdictions prohibit trade, except under license, of many types of drugs by

drug prohibition laws. A report said the global drug trade generated an estimated US$321.6 billion in 2005. With a world GDP of US$36 trillion in the same year, the illegal drug trade may be estimated as slightly less than 1% (0.893%) of total global commerce. Consumption of illegal drugs is widespread globally.) While work began on a draft statute, the international community established ad hoc tribunals to try war crimes in the former Yugoslavia and Rwanda, established in 1994, further highlighting the need for a permanent international criminal court.

Following years of negotiations, the General Assembly convened a conference in Rome in June 1998, with the aim of finalizing a treaty. On 17 July 1998, the Rome Statute of the International Criminal Court was adopted by a vote of 120 to 7, with 21 countries abstaining. The seveountries that voted against the treaty were China, Iraq, Israel, Libya, Qatar, United States, and Yemen.

The Rome Statute became a binding treaty on 11 April 2002, when the number of countries that had ratified it reached sixty.The Statute legally came into force on 1 July 2002,and the ICC can only prosecute crimes committed after that date.The first bench of 18 judges was elected by an Assembly of States Parties in February 2003. They were sworn in at the inaugural session of the court on 11 March 2003.The court issued its first arrest warrants on 8 July 2005,and the first pre-trial hearings were held in 2006.

During a Review Conference of the International Criminal Court Statute(A Review Conference of the Rome Statute took place from 31 May to 11 June 2010, in Kampala, Uganda to consider amendments to the treaty that founded the International Criminal Court. The International Criminal Court was established in 2002 by the Rome Statute as a permanent tribunal to prosecute individuals accused of the most serious crimes of international concern. The Rome Statute provided that a review conference be held seven years after the entry into force, which happened in July 2002) in Kampala, Uganda, two amendments to the Rome Statute of the International Criminal Court (Amendments to the Rome Statute of the International Criminal Court must be proposed, adopted, and ratified in accordance with articles 121 and 122 of the Statute.

Any States Parties to the Statute can propose an amendment. The prosed amendment can be adopted by a two-thirds majority vote in either a meeting of the Assembly of States Parties or a review conference called by the Assembly. An amendment comes into force for all States Parties one year after it is ratified by seven-eighths of the States Parties. However, any amendment to articles 5, 6, 7, or 8 of the Statute only enters into force for States Parties that have ratified the amendment. A State Party which ratifies an amendment to articles 5, 6, 7, or 8 is subject to that amendment one year after ratifying it, regardless of how many other States Parties have also ratified it. Amendments of a purely institutional nature enter into force six months after they are approved by a two-thirds majority vote in either a meeting of the Assembly of States Parties or a review conference. To date, two amendments have been proposed and adopted. They are currently pending ratification.) were adopted on June 10 and June 11, 2010. The second amendment concerns the definition of the crime of aggression.

MEMBERSHIP

As of April 2011, 114 states are members of the court, including nearly all of Europe and Latin America and roughly half the countries in Africa. A further 34 countries, including Russia, have signed but not ratified the Rome Statute while one of them, Côte d'Ivoire The Republic of Côte d'Ivoire is a country in West Africa. It is commonly known in English as Ivory Coast. It has an area of 322,462 square kilometres (124,503 sq mi), and borders the countries Liberia, Guinea, Mali, Burkina Faso and Ghana; its southern boundary is along the Gulf of Guinea. The country's population was 15,366,672 in 1998 and was estimated to be 20,617,068 in 2009.

Prior to its colonization by Europeans, Côte d'Ivoire was home to several states, including Gyaaman, the Kong Empire, and Baoule. There were two Anyi kingdoms, Indenie and Sanwi, which attempted to retain their separate identity through the French colonial period and after Côte d'Ivoire's independence. An 1843–1844 treaty made Côte d'Ivoire a "protectorate" of France and in 1893, it became a French colony as part of the European scramble

for Africa. Cote d'Ivoire became independent on 7 August 1960. From 1960 to 1993, the country was led by Felix Houphouët-Boigny. It maintained close political and economic association with its West African neighbours, while at the same time maintaining close ties to the West, especially to France. Since the end of Houphouet-Boigny's rule, Cote d'Ivoire has experienced one coup d'etat, in 1999, and a civil war, which broke out in 2002. A political agreement between the government and the rebels brought a return to peace. Côte d'Ivoire is a republic with a strong executive power invested in the President. Its de jure capital is Yamoussoukro and the biggest city is the port city of Abidjan. The country is divided into 19 regions and 81 departments. It is a member of the Organisation of the Islamic Conference, African Union, La Francophonie, Latin Union, Economic Community of West African States and South Atlantic Peace and Cooperation Zone.

The official language is French, although many of the local languages are widely used, including Baoule, Dioula, Dan, Anyin and Cebaara Senufo. The main religions are Islam, Christianity (primarily Roman Catholic) and various indigenous religions. Through production of coffee and cocoa, the country was an economic powerhouse during the 1960s and 1970s in West Africa. However, Côte d'Ivoire went through an economic crisis in the 1980s, leading to the country's period of political and social turmoil. The 21st century Ivoirian economy is largely market-based and relies heavily on agriculture, with smallholder cash crop production being dominant.), has accepted the Court's jurisdiction.

The law of treaties obliges these states to refrain from "acts which would defeat the object and purpose" of the treaty. Three of these states—Israel, Sudan and the United States—have "unsigned" the Rome Statute, indicating that they no longer intend to become states parties and, as such, they have no legal obligations arising from their former representatives' signature of the statute.45 United Nations member states have neither signed nor ratified the Rome Statute; some of them, including China and India, are considered by some to be critical to the success of the court.

JURISDICTION

CRIMES WITHIN THE JURISDICTION OF THE COURT

Article 5 of the Rome Statute grants the court jurisdiction over four groups of crimes, which it refers to as the "most serious crimes of concern to the international community as a whole": the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. The statute defines each of these crimes except for aggression: it provides that the court will not exercise its jurisdiction over the crime of aggression until such time as the states parties agree on a definition of the crime and set out the conditions under which it may be prosecuted. In June 2010, the ICC's first review conference in Kampala, Uganda adopted amendments defining "crimes of aggression" and expanding the ICC's jurisdiction over them. The ICC will not be allowed to prosecute for this crime until at least 2017. Furthermore, it expanded the term of war crimes for the use of certain weapons in an armed conflict not of an international character.

Many states wanted to add terrorism There is no universally agreed, legally binding, criminal law definition of terrorism.Common definitions of terrorism refer only to those violent acts which are intended to create fear (terror), are perpetrated for a religious, political or ideological goal, deliberately target or disregard the safety of non-combatants (civilians), and are committed by non-government agencies. Some definitions also include acts of unlawful violence and war. The use of similar tactics by criminal organizations for protection rackets or to enforce a code of silence is usually not labeled terrorism though these same actions may be labeled terrorism when done by a politically motivated group.

The word "terrorism" is politically and emotionally charged,and this greatly compounds the difficulty of providing a precise definition. Studies have found over 100 definitions of "terrorism". The concept of terrorism may itself be controversial as it is often used by state authorities to delegitimize political or other opponents, and potentially legitimize the state's own use of armed force against opponents (such use of force may itself be

described as "terror" by opponents of the state). Terrorism has been practiced by a broad array of political organizations for furthering their objectives. It has been practiced by both right-wing and left-wing political parties, nationalistic groups, religious groups, revolutionaries, and ruling governments.An abiding characteristic is the indiscriminate use of violence against noncombatants for the purpose of gaining publicity for a group, cause, or individual.) and drug trafficking to the list of crimes covered by the Rome Statute; however, the states were unable to agree on a definition for terrorism and it was decided not to include drug trafficking as this might overwhelm the court's limited resources.

India lobbied to have the use of nuclear weapons A nuclear weapon is an explosive device that derives its destructive force from nuclear reactions, either fission or a combination of fission and fusion. Both reactions release vast quantities of energy from relatively small amounts of matter. The first fission ("atomic") bomb test released the same amount of energy as approximately 20,000 tons of TNT. The first thermonuclear ("hydrogen") bomb test released the same amount of energy as approximately 10,000,000 tons of TNT.

A modern thermonuclear weapon weighing little more than 2,400 pounds (1,100 kg) can produce an explosive force comparable to the detonation of more than 1.2 million tons (1.1 million metric tons) of TNT. Thus, even a small nuclear device no larger than traditional bombs can devastate an entire city by blast, fire and radiation. Nuclear weapons are considered weapons of mass destruction, and their use and control has been a major focus of international relations policy since their debut.

Only two nuclear weapons have been used in the course of warfare, both by the United States near the end of World War II. On 6 August 1945, a uranium gun-type device code-named "Little Boy" was detonated over the Japanese city of Hiroshima. Three days later, on 9 August, a plutonium implosion-type device code-named "Fat Man" was exploded over Nagasaki, Japan. These two bombings resulted in the deaths of approximately 200,000 Japanese people—mostly civilians—from acute injuries sustained from the explosions. The role of the bombings in Japan's surrender,

and their ethical status, remain the subject of scholarly and popular debate. Since the bombings of Hiroshima and Nagasaki, nuclear weapons have been detonated on over two thousand occasions for testing purposes and demonstrations.

Only a few nations possess such weapons or are suspected of seeking them. The only countries known to have detonated nuclear weapons—and that acknowledge possessing such weapons—are (chronologically by date of first test) the United States, the Soviet Union (succeeded as a nuclear power by Russia), the United Kingdom, France, the People's Republic of China, India, Pakistan, and North Korea. In addition, Israel is also widely believed to possess nuclear weapons, though it does not acknowledge having them.

One state, South Africa, has admitted to having previous fabricated nuclear weapons in the past, but has since disassembled their arsenal and submitted to international safeguards.) and other weapons of mass destruction(A weapon of mass destruction (WMD) is a weapon that can kill and bring significant harm to a large number of humans (and other life forms) and/or cause great damage to man-made structures (*e.g.* buildings), natural structures (*e.g.* mountains), or the biosphere in general. The scope and application of the term has evolved and been disputed, often signifying more politically than technically.

Coined in reference to aerial bombing with chemical explosives, it has come to distinguish large-scale weaponry of other technologies, such as chemical, biological, radiological, or nuclear. This differentiates the term from more technical ones such as chemical, biological, radiological, and nuclear weapons (CBRN).) included as war crimes but this move was also defeated. India has expressed concern that "the Statute of the ICC lays down, by clear implication, that the use of weapons of mass destruction is not a war crime.

This is an extraordinary message to send to the international community." Some commentators have argued that the Rome Statute defines crimes too broadly or too vaguely. For example, China has argued that the definition of 'war crimes' goes beyond that accepted under customary international law. Customary international law are those aspects of international law that derive

from custom. Along with general principles of law and treaties, custom is considered by the International Court of Justice, jurists, the United Nations, and its member states to be among the primary sources of international law.

For example, laws of war were long a matter of customary law before they were codified in the Hague Conventions of 1899 and 1907, Geneva Conventions, and other treaties. The vast majority of the world's governments accept in principle the existence of customary international law, although there are many differing opinions as to what rules are contained in it.

The Statute of the International Court of Justice acknowledges the existence of customary international law in Article 38(1)(b), incorporated into the United Nations Charter by Article 92: "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply international custom, as evidence of a general practice accepted as law."

Customary international law "consists of rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way." It follows that customary international law can be discerned by a "widespread repetition by States of similar international acts over time (State practice); Acts must occur out of sense of obligation (opinio juris); Acts must be taken by a significant number of States and not be rejected by a significant number of States." A marker of customary international law is consensus among states exhibited both by widespread conduct and a discernible sense of obligation.

A peremptory norm (also called jus cogens, Latin for "compelling law") is a fundamental principle of international law which is accepted by the international community of states as a norm from which no derogation is ever permitted.

Examples include various international crimes; a state which carries out or permits slavery, torture, genocide, war of aggression, or crimes against humanity is always violating customary international law. Other examples accepted or claimed as customary international law include the principle of non-refoulement, immunity of visiting foreign heads of state, and the right to humanitarian intervention.

TERRITORIAL JURISDICTION

During the negotiations that led to the Rome Statute, a large number of states argued that the court should be allowed to exercise universal jurisdiction Universal jurisdiction or universality principle is a principle in public international law (as opposed to private international law) whereby states claim criminal jurisdiction over persons whose alleged crimes were committed outside the boundaries of the prosecuting state, regardless of nationality, country of residence, or any other relation with the prosecuting country. The state backs its claim on the grounds that the crime committed is considered a crime against all, which any state is authorized to punish, as it is too serious to tolerate jurisdictional arbitrage.

The concept of universal jurisdiction is therefore closely linked to the idea that certain international norms are erga omnes, or owed to the entire world community, as well as the concept of jus cogens–that certain international law obligations are binding on all states and cannot be modified by treaty.

According to critics, the principle justifies a unilateral act of wanton disregard of the sovereignty of a nation or the freedom of an individual concomitant to the pursuit of a vendetta or other ulterior motives, with the obvious assumption that the person or state thus disenfranchised is not in a position to bring retaliation to the state applying this principle.

The concept received a great deal of prominence with Belgium's 1993 "law of universal jurisdiction", which was amended in 2003 in order to reduce its scope following a case before the International Court of Justice regarding an arrest warrant issued under the law, entitled Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium). The creation of the International Criminal Court (ICC) in 2002 reduced the perceived need to create universal jurisdiction laws, although the ICC is not entitled to judge crimes committed before 2002. According to Amnesty International, a proponent of universal jurisdiction, certain crimes pose so serious a threat to the international community as a whole, that states have a logical and moral duty to prosecute an individual responsible for it; no place should be a safe haven for those who have committed

genocide, crimes against humanity, extrajudicial executions, war crimes, torture and forced disappearances. Opponents, such as Henry Kissinger, argue that universal jurisdiction is a breach on each state's sovereignty: all states being equal in sovereignty, as affirmed by the United Nations Charter, "Widespread agreement that human rights violations and crimes against humanity must be prosecuted has hindered active consideration of the proper role of international courts. Universal jurisdiction risks creating universal tyranny—that of judges." According to Kissinger, as a practical matter, since any number of states could set up such universal jurisdiction tribunals, the process could quickly degenerate into politically-driven show trials to attempt to place a quasi-judicial stamp on a state's enemies or opponents.

The United Nations Security Council Resolution 1674, adopted by the United Nations Security Council on April 28, 2006, "Reaffirmed the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" and commits the Security Council to action to protect civilians in armed conflict.) However, this proposal was defeated due in large part to opposition from the United States.

A compromise was reached, allowing the court to exercise jurisdiction only under the following limited circumstances:

- Where the person accused of committing a crime is a national of a state party (or where the person's state has accepted the jurisdiction of the court);
- Where the alleged crime was committed on the territory of a state party (or where the state on whose territory the crime was committed has accepted the jurisdiction of the court); or
- Where a situation is referred to the court by the UN Security Council.

TEMPORAL JURISDICTION

The court's jurisdiction does not apply retroactively: it can only prosecute crimes committed on or after 1 July 2002 (the date on which the Rome Statute entered into force). Where a state

becomes party to the Rome Statute after that date, the court can exercise jurisdiction automatically with respect to crimes committed after the statute enters into force for that state.

COMPLEMENTARITY

The ICC is intended as a court of last resort, investigating and prosecuting only where national courts have failed.

Article 17 of the Statute provides that a case is inadmissible if:

- The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
- The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
- The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
- The case is not of sufficient gravity to justify further action by the Court."

Article 20, paragraph 3, specifies that, if a person has already been tried by another court, the ICC cannot try them again for the same conduct unless the proceedings in the other court:

- Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
- Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice."

STRUCTURE

The ICC is governed by an Assembly of States Parties. The court consists of four organs: the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry.

ASSEMBLY OF STATES PARTIES

The court's management oversight and legislative body, the Assembly of States Parties, consists of one representative from each state party. Each state party has one vote and "every effort" has to be made to reach decisions by consensus. If consensus cannot be reached, decisions are made by vote. The Assembly is presided over by a president and two vice-presidents, who are elected by the members to three-year terms. The Assembly meets in full session once a year in New York or The Hague, and may also hold special sessions where circumstances require. Sessions are open to observer states and non-governmental organisations.

The Assembly elects the judges and prosecutors, decides the court's budget, adopts important texts (such as the Rules of Procedure and Evidence), and provides management oversight to the other organs of the court. Article 46 of the Rome Statute allows the Assembly to remove from office a judge or prosecutor who "is found to have committed serious misconduct or a serious breach of his or her duties" or "is unable to exercise the functions required by this Statute". The states parties cannot interfere with the judicial functions of the court. Disputes concerning individual cases are settled by the Judicial Divisions. At the seventh session of the Assembly of States Parties in November 2008, the Assembly decided that the Review Conference of the Rome Statute shall be held in Kampala, Uganda, during the first semester of 2010.

PRESIDENCY OF THE INTERNATIONAL CRIMINAL COURT

The Presidency is responsible for the proper administration of the court (apart from the Office of the Prosecutor).It comprises the President and the First and Second Vice-Presidents—three judges of the court who are elected to the Presidency by their fellow judges for a maximum of two three-year terms. The current President is Sang-Hyun Song, who was elected on 11 March 2009.

JUDICIAL DIVISIONS

The Judicial Divisions consist of the 18 judges of the court, organized into three divisions—the Pre-Trial Division, Trial Division and Appeals Division—which carry out the judicial

functions of the court. Judges are elected to the court by the Assembly of States Parties. They serve nine-year terms and are not generally eligible for re-election. All judges must be nationals of states parties to the Rome Statute, and no two judges may be nationals of the same state. They must be "persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices".

The Prosecutor or any person being investigated or prosecuted may request the disqualification of a judge from "any case in which his or her impartiality might reasonably be doubted on any ground". Any request for the disqualification of a judge from a particular case is decided by an absolute majority of the other judges. A judge may be removed from office if he or she "is found to have committed serious misconduct or a serious breach of his or her duties" or is unable to exercise his or her functions. The removal of a judge requires both a two-thirds majority of the other judges and a two-thirds majority of the states parties.

OFFICE OF THE PROSECUTOR

The Office of the Prosecutor is responsible for conducting investigations and prosecutions. It is headed by the Prosecutor, who is assisted by two Deputy Prosecutors. The Rome Statute provides that the Office of the Prosecutor shall act independently; as such, no member of the Office may seek or act on instructions from any external source, such as states, international organisations, An international organization (or organisation) is an organization with an international membership, scope, or presence.

There are two main types:

1. *International Nongovernmental Organizations (INGOs):* Non-governmental organizations (NGOs) that operate internationally. These may be either:
   – International non-profit organizations. Examples include the International Olympic Committee, World Organization of the Scout Movement, International Committee of the Red Cross and Medecins Sans Frontieres.

- International corporations, referred to as multinational corporations. Examples include The Coca-Cola Company, Sony, Nintendo, McDonalds, and Toyota.

2. *Intergovernmental Organizations, Also Known as international Governmental Organizations (IGOs):* The type of organization most closely associated with the term 'international organization', these are organizations that are made up primarily of sovereign states referred to as member states). Notable examples include the United Nations (UN), Organization for Security and Co-operation in Europe (OSCE), Council of Europe (CoE), European Union (EU; which is a prime example of a supranational organization), European Patent Organisation and World Trade Organization (WTO). The UN has used the term "intergovernmental organization" instead of "international organization" for clarity.

In addition, Global Public Policy Networks (GPPNs) may be considered a third category. These take various forms and may be made up of states and non-state actors. Non-state actors involved in GPPNs may include: intergovernmental organizations, states, state agencies, regional or municipal governments, in partnerships with non-governmental organizations, private companies, etc.) non-governmental organisations. A non-governmental organization (NGO) is a legally constituted organization created by natural or legal persons that operates independently from any government and a term usually used by governments to refer to entities that have no government status. In the cases in which NGOs are funded totally or partially by governments, the NGO maintains its non-governmental status by excluding government representatives from membership in the organization. The term is usually applied only to organizations that pursue some wider social aim that has political aspects, but that are not overtly political organizations such as political parties. Unlike the term "intergovernmental organization", the term "non-governmental organization" has no generally agreed legal definition. In many jurisdictions, these types of organization are called "civil society organizations" or referred to by other names.

The number of internationally operating NGOs is estimated at 40,000. National numbers are even higher: Russia has 277,000 NGOs; India is estimated to have around 3.3 million NGOs.) or individuals.

The Prosecutor may open an investigation under three circumstances:

- When a situation is referred to him by a state party;

When a situation is referred to him by the United Nations Security Council The United Nations Security Council (UNSC) is one of the principal organs of the United Nations and is charged with the maintenance of international peace and security. Its powers, outlined in the United Nations Charter, include the establishment of peacekeeping operations, the establishment of international sanctions, and the authorization of military action. Its powers are exercised through United Nations Security Council resolutions. The Security Council held its first session on 17 January 1946 at Church House, London. Since its first meeting, the Council, which exists in continuous session, has travelled widely, holding meetings in many cities, such as Paris and Addis Ababa, as well as at its current permanent home at the United Nations Headquarters in New York City.

There are 15 members of the Security Council, consisting of five veto-wielding permanent members (China, France, Russia, the United Kingdom, and the United States) and 10 elected non-permanent members with two-year terms. This basic structure is set out in Chapter V of the UN Charter. Security Council members must always be present at UN headquarters in New York so that the Security Council can meet at any time. This requirement of the United Nations Charter was adopted to address a weakness of the League of Nations since that organization was often unable to respond quickly to a crisis.) acting to address a threat to international peace and security; or

- When the Pre-Trial Chamber authorises him to open an investigation on the basis of information received from other sources, such as individuals or non-governmental organisations.

Any person being investigated or prosecuted may request the disqualification of a prosecutor from any case "in which their

impartiality might reasonably be doubted on any ground". Requests for the disqualification of prosecutors are decided by the Appeals Division. A prosecutor may be removed from office by an absolute majority of the states parties if he or she "is found to have committed serious misconduct or a serious breach of his or her duties" or is unable to exercise his or her functions.

However, critics of the court argue that there are "insufficient checks and balances on the authority of the ICC prosecutor and judges" and "insufficient protection against politicized prosecutions or other abuses". Henry Kissinger says the checks and balances are so weak that the prosecutor "has virtually unlimited discretion in practice". As of 16 June 2003, the Prosecutor has been Luis Moreno Ocampo of Argentina, who was elected by the Assembly of States Parties on 21 April 2003 for a term of nine years.

REGISTRY

The Registry is responsible for the non-judicial aspects of the administration and servicing of the court. This includes, among other things, "the administration of legal aid matters, court management, victims and witnesses matters, defence counsel, detention unit, and the traditional services provided by administrations in international organisations, such as finance, translation, building management, procurement and personnel". The Registry is headed by the Registrar, who is elected by the judges to a five-year term. The current Registrar is Silvana Arbia, who was elected on 28 February 2009.

HEADQUARTERS, OFFICES AND DETENTION UNIT

The official seat of the court is in The Hague, Netherlands, but its proceedings may take place anywhere. The court is currently housed in interim premises on the eastern edge of The Hague. The court intends to construct permanent premises in the Alexanderkazerne, to the north of The Hague. The ICC also maintains a liaison office in New York and field offices in places where it conducts its activities. As of 18 October 2007, the court had field offices in Kampala, Kinshasa, Bunia, Abeche and Bangui. The ICC's detention centre The ICC currently has twelve detention

cells in a Dutch prison in Scheveningen, The Hague.Suspects held by the International Criminal Tribunal for the former Yugoslavia are held in the same prison and share some facilities, like the fitness room, but have no contact with suspects held by the ICC.

The ICC registrar is responsible for managing the detention centre.The rules governing detainment are contained in Chapter 6 of the Regulations of the Court and Chapter 5 of the Regulations of the Registry.The International Committee of the Red Cross (ICRC) has unrestricted access to the detention centre.

Facilities

Each individual has his own toilet and washing area. They have access to a small gym and are offered training with a physical education instructor. Detainees are provided with meals, but they may also cook for themselves, purchase food from the prison shop, and have ingredients ordered in. However, Charles Taylor's lawyers have complained that "the food which is served is completely eurocentric and not palatable to the African palate".

Each detainee has a personal computer in his cell, on which he can view material related to their case. They are offered computer training, if required,and language courses.)comprises twelve cells on the premises of the Scheveningen branch of the Haaglanden Penal Institution, The Hague. Suspects held by the International Criminal Tribunal for the former Yugoslavia The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, more commonly referred to as the International Criminal Tribunal for the former Yugoslavia or ICTY, is a body of the United Nations established to prosecute serious crimes committed during the wars in the former Yugoslavia, and to try their perpetrators. The tribunal is an ad hoc court which is located in The Hague, the Netherlands.

The Court was established by Resolution 827 of the United Nations Security Council, which was passed on 25 May 1993. It has jurisdiction over four clusters of crime committed on the territory of the former Yugoslavia since 1991: grave breaches of the Geneva Conventions, violations of the laws or customs of war,

genocide, and crime against humanity. The maximum sentence it can impose is life imprisonment. Various countries have signed agreements with the UN to carry out custodial sentences. The last indictment was issued 15 March 2004. The Tribunal aims to complete all trials by the middle of 2011 and all appeals by 2013, with the exception of Radovan Karadžiæ whose trial is expected to end in 2012 and the appeal to be heard by February 2014. Ratko Mladiæ and Goran Hadaia have been charged, however are still at large and thus do not fall within the court's completion strategy.

The International Criminal Tribunal for the former Yugoslavia should not be confused with the International Criminal Court and the International Court of Justice; both courts are also based in The Hague, but have a permanent status and different jurisdictions) are held in the same prison and share some facilities, like the fitness room, but have no contact with suspects held by the ICC.The detention unit is close to the ICC's future headquarters in the Alexanderkazerne.

As of February 2011, the detention centre houses six suspects: Thomas Lubanga, Germain Katanga, Mathieu Ngudjolo Chui, Jean-Pierre Bemba, Callixte Mbarushimana and also former Liberian President Charles Taylor. Taylor is being tried under the mandate and auspices of the Special Court for Sierra Leone, but his trial is being held at the ICC's facilities in The Hague because of political and security concerns about holding the trial in Freetown. The ICC does not have its own witness protection programme, but rather must rely on national programmes to keep witnesses safe.

PROCEDURE

RIGHTS OF THE ACCUSED

The Rome Statute provides that all persons are presumed innocent until proven guilty beyond reasonable doubt The burden of proof (Latin: onus probandi) is the obligation to shift the accepted conclusion away from an oppositional opinion to one's own position. The burden of proof is often associated with the Latin maxim semper necessitas probandi incumbit ei qui agit, the best translation of which seems to be: "the necessity of proof

always lies with the person who lays charges." This is a statement of a version of the presumption of innocence that underpins the assessment of evidence in some legal systems, and is not a general statement of when one takes on the burden of proof.

The burden of proof tends to lie with anyone who is arguing against received wisdom, but does not always, as sometimes the consequences of accepting a statement or the ease of gathering evidence in its defence might alter the burden of proof its proponents shoulder. The burden may also be assigned institutionally. He who does not carry the burden of proof carries the benefit of assumption, meaning he needs no evidence to support his claim. Fulfilling the burden of proof effectively captures the benefit of assumption, passing the burden of proof off to another party. However the incidence of burden of proof is affected by common law, statute and procedure.

The burden of proof is an especially important issue in law and science.), and establishes certain rights of the accused and persons during investigations. These include the right to be fully informed of the charges against him or her; the right to have a lawyer appointed, free of charge; the right to a speedy trial; and the right to examine the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf. Some argue that the protections offered by the ICC are insufficient. According to one conservative think-tank, the Heritage Foundation, The Heritage Foundation is a conservative American think tank based in Washington, D.C. The foundation took a leading role in the conservative movement during the presidency of Ronald Reagan, whose policies drew significantly from Heritage's policy study Mandate for Leadership. Heritage has since continued to have a significant influence in U.S. public policy making, and is considered to be one of the most influential conservative research organizations in the United States.

Heritage's stated mission is to "formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defence.") "Americans who appear before the court would be denied such basic constitutional rights as trial by a jury of one's peers, protection

from double jeopardy, and the right to confront one's accusers." The Human Rights Watch Human Rights Watch is an international non-governmental organization that conducts research and advocacy on human rights. Its headquarters are in New York City and it has offices in Berlin, Beirut, Brussels, Chicago, Geneva, Johannesburg, London, Los Angeles, Moscow, Paris, San Francisco, Tokyo, Toronto, and Washington.

Human Rights Watch was founded in 1978, under the name of Helsinki Watch, to monitor the former Soviet Union's compliance with the Helsinki Accords. Helsinki Watch adopted a methodology of publicly "naming and shaming" abusive governments through media coverage and through direct exchanges with policymakers. By shining the international spotlight on human rights violations in the Soviet Union and its vassal states in Eastern Europe, Helsinki Watch contributed to the democratic transformations of the region in the late 1980s.

Americas Watch was founded in 1981 while bloody civil wars engulfed Central America. Relying on extensive on-the-ground fact-finding, Americas Watch not only addressed perceived abuses by government forces but also applied international humanitarian law to investigate and expose war crimes by rebel groups. In addition to raising its concerns in the affected countries, Americas Watch also examined the role played by foreign governments, particularly the United States government, in providing military and political support to abusive regimes. Asia Watch (1985), Africa Watch (1988), and Middle East Watch (1989) were added to what was then known as "The Watch Committees." In 1988, all of the committees were united under one umbrella to form Human Rights Watch.

Profile- Pursuant to the Universal Declaration of Human Rights, Human Rights Watch opposes violations of what it considers basic human rights, which include capital punishment and discrimination on the basis of sexual orientation. Human Rights Watch advocates freedoms in connection with fundamental human rights, such as freedom of religion and the press.

Human Rights Watch produces research reports on violations of international human rights norms as set out by the Universal Declaration of Human Rights and what it perceives to be other

internationally accepted human rights norms. These reports are used as the basis for drawing international attention to abuses and pressuring governments and international organizations to reform. Researchers conduct fact-finding missions to investigate suspect situations and generate coverage in local and international media. Issues raised by Human Rights Watch in its reports include social and gender discrimination, torture, military use of children, political corruption, abuses in criminal justice systems, and the legalization of abortion. Human Rights Watch documents and reports violations of the laws of war and international humanitarian law.

Human Rights Watch also supports writers worldwide who are being persecuted for their work and are in need of financial assistance. The Hellman/Hammett grants are financed by the estate of the playwright Lillian Hellman in funds set up in her name and that of her long-time companion, the novelist Dashiell Hammett. In addition to providing financial assistance, the Hellman/Hammett grants help raise international awareness of activists who are being silenced for speaking out in defence of human rights.

Each year, Human Rights Watch presents the Human Rights Defenders Award to activists around the world who demonstrate leadership and courage in defending human rights. The award winners work closely with Human Rights Watch in investigating and exposing human rights abuses. Human Rights Watch was one of six international NGOs that founded the Coalition to Stop the Use of Child Soldiers in 1998. It is also the co-chair of the International Campaign to Ban Landmines, a global coalition of civil society groups that successfully lobbied to introduce the Ottawa Treaty, a treaty that prohibits the use of anti-personnel landmines.

Human Rights Watch is a founding member of the International Freedom of Expression Exchange, a global network of non-governmental organizations that monitor censorship worldwide. It also co-founded the Cluster Munition Coalition, which brought about an international convention banning the weapons. Human Rights Watch employs more than 275 staff—country experts, lawyers, journalists, and academics–and operates in more than 90 countries around the world.

The current executive director of Human Rights Watch is Kenneth Roth, who has held the position since 1993. Roth conducted investigations on abuses in Poland after martial law was declared 1981. He later focused on Haiti, which had just emerged from the Duvalier dictatorship but continued to be plagued with problems. Roth's awareness of human rights began with stories that his father told about escaping Nazi Germany in 1938.

He graduated from Yale Law School and Brown University.) argues that the ICC standards are sufficient, saying, "the ICC has one of the most extensive lists of due process guarantees ever written", including "presumption of innocence; right to counsel; right to present evidence and to confront witnesses; right to remain silent; right to be present at trial; right to have charges proved beyond a reasonable doubt; and protection against double jeopardy".

According to David Scheffer, who led the US delegation to the Rome Conference (and who voted against adoption of the treaty), "when we were negotiating the Rome treaty, we always kept very close tabs on, 'Does this meet U.S. constitutional tests, the formation of this court and the due process rights that are accorded defendants?'

And we were very confident at the end of Rome that those due process rights, in fact, are protected, and that this treaty does meet a constitutional test." Mr. Scheffer's opinion on whether the treaty satisfies the requirements of the U.S. Constitution is simply the opinion of a diplomat; no U.S. court has opined on the issue leaving it open to dispute. To ensure "equality of arms" between defence and prosecution teams, the ICC has established an independent Office of Public Counsel for the Defence (OPCD) to provide logistical support, advice and information to defendants and their counsel. The OPCD also helps to safeguard the rights of the accused during the initial stages of an investigation. However, Thomas Lubanga's defence team say they have been given a smaller budget than the Prosecutor and that evidence and witness statements have been slow to arrive.

VICTIM PARTICIPATION AND REPARATIONS

One of the great innovations of the Statute of the International Criminal Court and its Rules of Procedure and Evidence is the series of rights granted to victims. For the first time in the history of international criminal justice, victims have the possibility under the Statute to present their views and observations before the Court. Participation before the Court may occur at various stages of proceedings and may take different forms. Although it will be up to the judges to give directions as to the timing and manner of participation.

Participation in the Court's proceedings will in most cases take place through a legal representative and will be conducted "in a manner which is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial".

The victim-based provisions within the Rome Statute provide victims with the opportunity to have their voices heard and to obtain, where appropriate, some form of reparation for their suffering. It is this balance between retributive and restorative justice that will enable the ICC, not only to bring criminals to justice but also to help the victims themselves obtain justice.

Article 43(6) establishes a Victims and Witnesses Unit to provide "protective measures and security arrangements, counseling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses." Article 68 sets out procedures for the "Protection of the victims and witnesses and their participation in the proceedings."

The court has also established an Office of Public Counsel for Victims, to provide support and assistance to victims and their legal representatives. Article 79 of the Rome Statute establishes a Trust Fund to make financial reparations In jurisprudence, reparation is replenishment of a previously inflicted loss by the criminal to the victim.

Monetary restitution is a common form of reparation. Reparation through community service is based on the collectivist notion of society as a singular entity that is capable of being victimized, or on the notion of the State as the victim of all crime to victims and their families.

PARTICIPATION OF VICTIMS IN PROCEEDINGS

The Rome Statute contains provisions which enable victims to participate in all stages of the proceedings before the Court.

Hence victims may file submissions before the Pre-Trial Chamber when the Prosecutor requests its authorisation to investigate. They may also file submissions on all matters relating to the competence of the Court or the admissibility of cases. More generally, victims are entitled to file submissions before the Court chambers at the pre-trial stage, during the proceedings or at the appeal stage.

The rules of procedure and evidence stipulate the time for victim participation in proceedings before the Court. They must send a written application to the Court Registrar and more precisely to the Victims' Participation and Reparation Section, which must submit the application to the competent Chamber which decides on the arrangements for the victims' participation in the proceedings. The Chamber may reject the application if it considers that the person is not a victim.

Individuals who wish to make applications to participate in proceedings before the Court must therefore provide evidence proving they are victims of crimes which come under the competence of the Court in the proceedings commenced before it. The Section prepared standard forms and a booklet to make it easier for victims to file their petition to participate in the proceedings. It should be stipulated that a petition may be made by a person acting with the consent of the victim, or in their name when the victim is a child or if any disability makes this necessary. Victims are free to choose their legal representative who must be equally as qualified as the counsel for the defence (this may be a lawyer or person with experience as a judge or prosecutor) and be fluent in one of the Court's two working languages (English or French).

To ensure efficient proceedings, particularly in cases with many victims, the competent Chamber may ask victims to choose a shared legal representative. If the victims are unable to appoint one, the Chamber may ask the Registrar to appoint one or more shared legal representatives. The Victims' Participation and Reparation Section is responsible for assisting victims with the

organisation of their legal representation before the Court. When a victim or a group of victims does not have the means to pay for a shared legal representative appointed by the Court, they may request financial aid from the Court to pay counsel. Counsel may participate in the proceedings before the Court by filing submissions and attending the hearings.

The Registry, and within it the Victims' Participation and Reparation Section, has many obligations with regard to notification of the proceedings to the victims to keep them fully informed of progress. Thus, it is stipulated that the Section must notify victims, who have communicated with the Court in a given case or situation, of any decisions by the Prosecutor not to open an investigation or not to commence a prosecution, so that these victims can file submissions before the Pre-Trial Chamber responsible for checking the decisions taken by the Prosecutor under the conditions laid down in the Statute.

The same notification is required before the confirmation hearing in the Pre-Trial Chamber to allow the victims to file all the submissions they require. All decisions taken by the Court are then notified to the victims who participated in the proceedings or to their counsel. The Victims' Participation and Reparation Section has wide discretion to use all possible means to give adequate publicity to the proceedings before the Court (local media, requests for co-operation sent to Governments, aid requested from NGOs or other means).

REPARATION FOR VICTIMS

For the first time in the history of humanity, an international court has the power to order an individual to pay reparation to another individual; it is also the first time that an international criminal court has had such power. Pursuant to article 75, the Court may lay down the principles for reparation for victims, which may include restitution, indemnification and rehabilitation. On this point, the Rome Statute of the International Criminal Court has benefited from all the work carried out with regard to victims, in particular within the United Nations. The Court must also enter an order against a convicted person stating the appropriate reparation for the victims or their beneficiaries. This reparation

may also take the form of restitution, indemnification or rehabilitation. The Court may order this reparation to be paid through the Trust Fund for Victims, which was set up by the Assembly of States Parties in September 2002. To be able to apply for reparation, victims have to file a written application with the Registry, which must contain the evidence laid down in Rule 94 of the Rules of Procedure and Evidence. The Victims' Participation and Reparation Section prepared standard forms to make this easier for victims. They may also apply for protective measures for the purposes of confiscating property from the persons prosecuted.

The Victims' Participation and Reparation Section is responsible for giving all appropriate publicity to these reparation proceedings to enable victims to make their applications. These proceedings take place after the person prosecuted has been declared guilty of the alleged facts. The Court has the option of granting individual or collective reparation, concerning a whole group of victims or a community, or both. If the Court decides to order collective reparation, it may order that reparation to be made through the Victims' Fund and the reparation may then also be paid to an inter-governmental, international or national organisation.

Co-Operation by States not Party to Rome Statute

One of the principles of international law is that a treaty does not create either obligations or rights for third states (pacta tertiis nec nocent nec prosunt) without their consent, and this is also enshrined in the 1969 Vienna Convention on the Law of Treaties. The co-operation of the non-party states with the ICC is envisioned by the Rome Statute of the International Criminal Court to be of voluntary nature. However, even states that have not acceded to the Rome Statute might still be subjects to an obligation to co-operate with ICC in certain cases. When a case is referred to the ICC by the UN Security Council all UN member states are obliged to co-operate, since its decisions are binding for all of them.

Also, there is an obligation to respect and ensure respect for international humanitarian law, which stems from the Geneva Conventions The Geneva Conventions comprise four treaties and

three additional protocols that set the standards in international law for humanitarian treatment of the victims of war. The singular term Geneva Convention refers to the agreements of 1949, negotiated in the aftermath of World War II, updating the terms of the first three treaties and adding a fourth treaty. The language is extensive, with articles defining the basic rights of those captured during a military conflict, establishing protections for the wounded, and addressing protections for civilians in and around a war zone. The treaties of 1949 have been ratified, in whole or with reservations, by 194 countries.

"Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall, at all times, be humanely treated, and shall be protected, especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war."

" The Geneva Conventions do not address the use of weapons of war, as this is covered by the Hague Conventions of 1899 and 1907 and the Geneva Protocol.) and Additional Protocol I, Protocol I is a 1977 amendment protocol to the Geneva Conventions relating to the protection of victims of international armed conflicts. It reaffirms the international laws of the original Geneva Conventions of 1949, but adds clarifications and new provisions to accommodate developments in modern international warfare that have taken place since the Second World War. As of 8 June 2007, it had been ratified by 168 countries, with the United States, Israel, Iran, Pakistan, Turkey, and Iraq being notable exceptions. However, the United States, Iran, and Pakistan signed it on 12 December 1977 with the intention of ratifying it. According to an appeal by the International Committee of the Red Cross in 1997,

a number of the articles contained in both protocols are recognized as rules of customary international law valid for all states, whether or not they have ratified them which reflects the absolute nature of IHL.

Although the wording of the Conventions might not be precise as to what steps have to be taken, it has been argued that it at least requires non-party states to make an effort not to block actions of ICC in response to serious violations of those Conventions. In relation to co-operation in investigation and evidence gathering, it is implied from the Rome Statute that the consent of a non-party state is a prerequisite for ICC Prosecutor to conduct an investigation within its territory, and it seems that it is even more necessary for him to observe any reasonable conditions raised by that state, since such restrictions exist for states party to the Statute.

Taking into account the experience of the ICTY (which worked with the principle of the primacy, instead of complementarity) in relation to co-operation, some scholars have expressed their pessimism as to the possibility of ICC to obtain co-operation of non-party states.

As for the actions that ICC can take towards non-party states that do not co-operate, the Rome Statute stipulates that the court may inform the Assembly of States Parties or Security Council, when the matter was referred by it, when non-party state refuses to co-operate after it has entered into an ad hoc arrangement or an agreement with the court.

Amnesties and National Reconciliation Processes

It is unclear to what extent the ICC is compatible with reconciliation processes that grant amnesty is a legislative or executive act by which a state restor those who may have been guilty of an offense against it to the positions of innocent people. It includes more than pardon, in as much as it obliterates all legal remembrance of the offense. The word has the same root as amnesia. Amnesty is more and more used to express 'freedom' and the time when prisoners can go free.

Amnesties, which in the United Kingdom, may be granted by the crown alone, or by an act of Parliament, were formerly usual

on coronations and similar occasions, but are chiefly exercised towards associations of political criminals, and are sometimes granted absolutely, though more frequently there are certain specified exceptions. Thus, in the case of the earliest recorded amnesty, that of Thrasybulus at Athens, the thirty tyrants and a few others were expressly excluded from its operation; and the amnesty proclaimed on the restoration of Charles II of England did not extend to those who had taken part in the execution of his father.

Other famous amnesties include: Napoleon's amnesty of March 13, 1815 from which thirteen eminent persons, including Talleyrand, were exempt; the Prussian amnesty of August 10, 1840; the general amnesty proclaimed by the emperor Franz Josef I of Austria in 1857; the general amnesty granted by President of the United States, Andrew Johnson, after the American Civil War (1861-April 9, 1865), in 1868, and the French amnesty of 1905. Amnesty in U.S. politics in 1872 meant restoring the right to vote and hold office to ex-Confederates, which was achieved by act of Congress.

The last act of amnesty passed in Great Britain was that of 1747, which pardoned those who had taken part in the 1745 Jacobite Rising) to human rights abusers as part of agreements to end conflict. Article 16 of the Rome Statute allows the Security Council to prevent the court from investigating or prosecuting a case, and Article 53 allows the Prosecutor the discretion not to initiate an investigation if he or she believes that "an investigation would not serve the interests of justice". Former ICC President Philippe Kirsch has said that "some limited amnesties may be compatible" with a country's obligations genuinely to investigate or prosecute under the statute.

It is sometimes argued that amnesties are necessary to allow the peaceful transfer of power from abusive regimes. By denying states the right to offer amnesty to human rights abusers, the International Criminal Court may make it more difficult to negotiate an end to conflict and a transition to democracy. For example, the outstanding arrest warrants for four leaders of the Lord's Resistance Army (The Lord's Resistance Army (also Lord's Resistance Movement or Lakwena Part Two) is a sectarian

religious and military group based in northern Uganda. The group was formed in 1987 and is engaged in an armed rebellion against the Ugandan government in what is now one of Africa's longest-running conflicts.

It is led by Joseph Kony, who proclaims himself the "spokesperson" of God and a spirit medium, primarily of the Holy Spirit, which the Acholi believe can represent itself in many manifestations. The group is based on apocalyptic Christianity, but also is influenced by a blend of Mysticism and traditional religion, and claims to be establishing a theocratic state based on the Ten Commandments and Acholi tradition.

The LRA is accused of widespread human rights violations, including murder, abduction, mutilation, sexual enslavement of women and children and forcing children to participate in hostilities. The LRA operates mainly in northern Uganda and also in parts of Sudan, Central African Republic and DR Congo.The LRA is currently proscribed as a terrorist organization by the United States.)are regarded by some as an obstacle to ending the insurgency in Uganda. Czech politician Marek Benda argues that "the ICC as a deterrent will in our view only mean the worst dictators will try to retain power at all costs".

However, the United Nations and the International Committee of the Red Cross The International Committee of the Red Cross (ICRC) is a private humanitarian institution based in Geneva, Switzerland. States parties (signatories) to the four Geneva Conventions of 1949 and their Additional Protocols of 1977 and 2005, have given the ICRC a mandate to protect the victims of international and internal armed conflicts. Such victims include war wounded, prisoners, refugees, civilians, and other non-combatants.

The ICRC is part of the International Red Cross and Red Crescent Movement along with the International Federation and 186 National Societies. It is the oldest and most honoured organization within the Movement and one of the most widely recognized organizations in the world, having won three Nobel Peace Prizes in 1917, 1944, and 1963. maintain that granting amnesty to those accused of war crimes and other serious crimes is a violation of international law.

RELATIONSHIP WITH THE UNITED NATIONS

Unlike the International Court of Justice,(The International Court of Justice (French: Cour internationale de justice; commonly referred to as the World Court or ICJ) is the primary judicial organ of the United Nations. It is based in the Peace Palace in The Hague, Netherlands. Its main functions are to settle legal disputes submitted to it by states and to provide advisory opinions on legal questions submitted to it by duly authorized international organs, agencies, and the UN General Assembly. The ICJ should not be confused with the International Criminal Court, which potentially also has global jurisdiction.)the ICC is legally and functionally independent from the United Nations.

However, the Rome Statute grants certain powers to the United Nations Security Council. Article 13 allows the Security Council to refer to the court situations that would not otherwise fall under the court's jurisdiction as it did in relation to the situation in Darfur, The Darfur Conflict is an ongoing guerrilla conflict or civil war centered on the Darfur region of Sudan. It began in February 2003 when the Sudan Liberation Movement/ Army (SLM/A) and Justice and Equality Movement (JEM) groups in Darfur took up arms, accusing the Sudanese government of oppressing non-Arab Sudanese in favour of Sudanese Arabs.

One side of the conflict is composed mainly of the official Sudanese military and police, and the Janjaweed, a Sudanese militia group recruited mostly from the Arab Abbala tribes of the northern Rizeigat region in Sudan; these tribes are mainly camel-herding nomads. The other combatants are made up of rebel groups, notably the SLM/A and the JEM, recruited primarily from the non-Arab Muslim Fur, Zaghawa, and Masalit ethnic groups. Although the Sudanese government publicly denies that it supports the Janjaweed, it has been providing financial assistance and weapons to the militia and has been organizing joint attacks targeting civilians. The Sudanese government uses oil revenues to fund a military capacity that is in turn, used to conduct war in Darfur. Oil revenues collected from companies around the world fund the civil war as well as violations of international human rights and humanitarian law. Sudan's oil wealth has played a major part in enabling an otherwise poor government to fund the

expensive bombers, helicopters and arms supplies which have allowed the Sudanese government to launch aerial attacks on towns and villages and fund militias to fight its proxy war in Darfur.

There are various estimates on the number of human casualties, ranging from under twenty thousand to several hundred thousand dead, from either direct combat or starvation and disease inflicted by the conflict. There have also been mass displacements and coercive migrations, forcing millions into refugee camps or over the border and creating a large humanitarian crisis. The Sudanese government and the JEM signed a ceasefire agreement in February, 2010, with a tentative agreement to pursue further peace. The JEM has the most to gain from the talks, and could see semi-autonomy much like South Sudan. However, talks have been disrupted by accusations that the Sudanese army launched raids and air strikes against a village, violating the February agreement. The JEM, the largest rebel group in Darfur, has said they will boycott further negotiations.

In Darfur, over 5 million people have been affected by the conflict.) which the court could not otherwise have prosecuted as Sudan is not a state party). Article 16 allows the Security Council to require the court to defer from investigating a case for a period of 12 months. Such a deferral may be renewed indefinitely by the Security Council. The court cooperates with the UN in many different areas, including the exchange of information and logistical support. The court reports to the UN each year on its activities, and some meetings of the Assembly of States Parties are held at UN facilities. The relationship between the court and the UN is governed by a "Relationship Agreement between the International Criminal Court and the United Nations".

FINANCE

The ICC is financed by contributions from the states parties. The amount payable by each state party is determined using the same method as the United Nations: each state's contribution is based on the country's capacity to pay, which reflects factors such as a national income and population. The maximum amount a single country can pay in any year is limited to 22% of the court's budget; Japan paid this amount in 2008. The court spent €80.5 million in 2007,and the Assembly of States Parties has approved a budget of €90,382,100 for 2008 and €101,229,900 for 2009.As of September 2008, the ICC's staff consisted of 571 persons from 83 states.

INVESTIGATIONS

The court has received complaints about alleged crimes in at least 139 countries, but, as of March 2011, the Prosecutor of the Court has opened investigations into six situations, all of them in Africa: Northern Uganda, the Democratic Republic of the Congo The Democratic Republic of the Congo (French: Republique democratique du Congo), formerly Zaire, is a state located in Central Africa, with a short Atlantic coastline (37 km). It is the third largest country in Africa by area after Sudan and Algeria and the twelfth largest in the world. With a population of nearly 71 million, the Democratic Republic of the Congo is the eighteenth most populous nation in the world, and the fourth most populous nation in Africa, as well as the most populous officially Francophone country.

In order to distinguish it from the neighbouring Republic of the Congo to the west, the Democratic Republic of the Congo is often referred to as DR Congo, DROC, DRC, or RDC (from its French abbreviation), or is called Congo-Kinshasa after the capital of Kinshasa (in contrast to Congo-Brazzaville for its neighbour). It also borders the Central African Republic and Sudan to the north; Uganda, Rwanda, and Burundi in the east; Zambia and Angola to the south; the Atlantic Ocean to the west; and is separated from Tanzania by Lake Tanganyika in the east. The country has access to the ocean through a 40-kilometre (25 mi) stretch of Atlantic coastline at Muanda and the roughly 9 km wide

mouth of the Congo River which opens into the Gulf of Guinea. The Democratic Republic of the Congo was formerly, in chronological order, the Congo Free State, Belgian Congo, Congo-Leopoldville, Congo-Kinshasa, and Zaire (Zaïre in French). Though it is located in the Central African UN subregion, the nation is economically and regionally affiliated with Southern Africa as a member of the Southern African Development Community (SADC).

The Second Congo War, beginning in 1998, devastated the country, involved seven foreign armies and is sometimes referred to as the "African World War". Despite the signing of peace accords in 2003, fighting continues in the east of the country. In eastern Congo, the prevalence of rape and other sexual violence is described as the worst in the world. The war is the world's deadliest conflict since World War II, killing 5.4 million people.

Although citizens of the DRC are among the poorest in the world, having the second lowest nominal GDP per capita, the Democratic Republic of Congo is widely considered to be the richest country in the world regarding natural resources; its untapped deposits of raw minerals are estimated to be worth in excess of US$ 24 trillion. This is the equivalent of the gross domestic product of the United States of America and Europe combined.) the Central African Republic The Central African Republic (CAR) is a landlocked country in Central Africa. It borders Chad in the north, Sudan in the east, the Democratic Republic of the Congo and the Republic of the Congo in the south, and Cameroon in the west. The CAR covers a land area of about 240,000 square miles (623,000 km²), and has an estimated population of about 4.4 million as of 2008. Bangui is the capital city. Most of the CAR consists of Sudano-Guinean savannas but it also includes a Sahelo-Sudanian zone in the north and an equatorial forest zone in the south. Two thirds of the country lies in the basins of the Ubangi River, which flows south into the Congo River, while the remaining third lies in the basin of the Chari River, which flows north into Lake Chad.

Since most of the territory is located in the Ubangi and Shari river basins, France called the colony it carved out in this region Ubangi-Chari, or Oubangui-Chari in French. It became a semi-

autonomous territory of the French Community in 1958 and then an independent nation on 13 August 1960. For over three decades after independence, the CAR was ruled by presidents who were not chosen in multi-party democratic elections or took power by force. Local discontent with this system was eventually reinforced by international pressure, following the end of the Cold War.

The first multi-party democratic elections were held in 1993 with resources provided by the country's donors and help from the UN Office for Electoral Affairs, and brought Ange-Felix Patasse to power. He lost popular support during his presidency and was overthrown in 2003 by French-backed General François Bozize, who went on to win a democratic election in May 2005. Inability to pay workers in the public sector led to strikes in 2007, forcing the resignation of the government in early 2008. A new Prime Minister, Faustin-Archange Touadera, was named on 22 January 2008.

The Central African Republic is one of the poorest countries in the world and among the ten poorest countries in Africa. The Human Development Index for the Central African Republic is 0.369, which gives the country a rank of 179 out of 182 countries with data..) Darfur (Sudan), the Republic of Kenya and Libya.Of these six, three were referred to the Court by the states parties (Uganda, Democratic Republic of the Congo and Central African Republic), two were referred by the United Nations Security Council (Darfur and Libya) and only one was begun proprio motu by the Prosecutor (Kenya).

Table. Key: Official Investigation Preliminary Examination

Situation	Referred by	Referred on announced	Investigation	Status
Uganda	Ugandan government	16 December 2003	29 July 2004	Cases begun
Democratic Republic of the Congo	Congolese government	16 April 2004	23 June 2004	Cases begun
Central African Republic	Central African government	7 January 2005	22 May 2007	Case begun

Darfur, Sudan	UN Security Council	31 March 2005	6 June 2005	Case begun
Republic of Kenya	Pre-Trial Chamber II	31 March 2010	31 March 2010	Cases begun
Libyan Arab Jamahiriya	UN Security Council	26 February 2011	3 March 2011	Preliminary
Côte d'Ivoire	—	—	1 October 2003	Ongoing
Colombia	—	—	2006	Ongoing
Iraq	—	—	2006	Concluded
Venezuela	—	—	2006	Concluded
Afghanistan	—	—	2007	Ongoing
Georgia	—	—	14 August 2008	Ongoing
Palestine	—	—	22 January 2009	Ongoing
Guinea	—	—	14 October 2009	Ongoing
Honduras	—	—	18 November 2009	Ongoing
Nigeria	—	—	18 November 2009	Ongoing
Republic of Korea	—	—	6 December 2010	Ongoing

Table. Summary of Investigations and Prosecutions by the International Criminal Court (as of March 2011)

		Ongoing procedures			Procedures finished, due to			
Situation	**Publicly indicted**	**Not before court**	**Pre-Trial**	**Trial**	**Appeal**	**Death**	**Acquittal**	**Conviction**
Democratic Republic of the Congo	5	1	1	3	0	0	0	0
Uganda	5	4	0	0	0	1	0	0
Central African Republic	1	0	0	1	0	0	0	0
Darfur, Sudan	6	3	2	0	0	0	1	0
Kenya	6	0	6	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0
Total	**23**	**8**	**9**	**4**	**0**	**1**	**1**	**0**

Notes:

1. A situation is listed here if it was referred to the ICC by the government of a state or by the United Nations Security Council or if an investigation was authorized by a Pre-Trial Chamber.
2. Indicted but has not yet appeared before the court.
3. Indicted and has had at least first appearance; trial has not yet begun.
4. Trial has begun but has not yet been completed.
5. Trial has been completed and verdict delivered but appeal is pending.
6. Indicted but has died before the trial and/or appeal (where applicable) was concluded.
7. Indicted but either charges declined or acquitted in trial or on appeal.
8. Found guilty without further possibility of appeal.

Palestinian Authority

On 22 January 2009, the Office of the Prosecutor of the International Criminal Court received an official communication from the Minister of Justice of the Palestinian Authority (PA)(The Palestinian Authority (PA is the administrative organization established to govern parts of the West Bank and Gaza Strip. However, since then it has named itself Palestinian National Authority. The Palestinian Authority was formed in 1994, pursuant to the Oslo Accords between the Palestinian Liberation Organization (PLO) and the government of Israel, as a five-year interim body, during which final status negotiations between the two parties were to take place.

As of 2011, more than sixteen years following the formulation of the PNA, a final status has yet to be reached. According to the Oslo Accords, the Palestinian Authority was designated to have control over both security-related and civilian issues in Palestinian urban areas (referred to as "Area A"), and only civilian control over Palestinian rural areas ("Area B").

The remainder of the territories, including Israeli settlements, the Jordan Valley region, and bypass roads between Palestinian communities, were to remain under exclusive Israeli control

("Area C"). East Jerusalem was excluded from the Accords.) Ali Kashan, which expressed the PA's readiness to recognize the jurisdiction of the ICC over "the territory of Palestine."The PA's declaration purported to invoke Article 12 (3) of the Rome Statute, which specifically enables "a state which is not a party to this Statute" to request that the ICC exercise its jurisdiction on an ad hoc basis with respect to an alleged crime on that state's territory or involving its nationals. In other words, the PA's declaration to the Office of the Prosecutor amounted to an official request to confirm that the PA can be considered a state for purposes of ICC jurisdiction.

Resentment in Africa About "Double Standard

The fact that so far the International Criminal Court has only investigated African countries and only indicted Africans is creating resentment in some African countries, even in countries which are state parties to the Court. At a meeting of 30 African ICC member states in June 2009, several African countries, including Senegal, Djibouti and the Comoros, called on African ICC members to withdraw from the Court in protest of the fact that the Court allegedly targets Africa only, and especially of the indictment against Sudan's President Omar al-Bashir. The Peace and Security Commissioner of the African Union(The African Union (abbreviated AU in English, and UA in its other official languages) is a union consisting of 53 African states.

The only all-African state not in the AU is Morocco. Established on 9 July 2002, the AU was formed as a successor to the Organisation of African Unity (OAU). The most important decisions of the AU are made by the Assembly of the African Union, a semi-annual meeting of the heads of state and government of its member states. The AU's secretariat, the African Union Commission, is based in Addis Ababa, Ethiopia.)Ramtane Lamamra, said that the Prosecutor of the ICC was applying "a double standard in pursuing cases against some leaders while ignoring others".

6

Regional Application of HR Norms

INTRODUCTION

Human rights violations occur within states rather on the high seas or in outer space outside the jurisdiction of any one state. Thus, it follows that effective protection and enjoyment of human rights has to come from within the state.

True, the international human rights system does not place human rights abusers in political bankruptcy, nor does it take over the administration of recalcitrant states in order to assure the enjoyment of rights and/or compensate the victims of human rights violations.

On the contrary, the international human rights system seeks to persuade or put pressure on member states to meet their international obligations under human rights instruments that they have ratified or to which they have acceded.

There are only two ways through which states can comply with their legal international obligations as contained in treaties: firstly, by observing or respecting their national laws (constitution or statute law) which are consistent with international norms; and secondly, by making those international norms or obligations part of the national legal or political order, that is, they become domesticated (internalised or incorporated).

The domestication of these international norms or obligations is the main focus of the current research, with an emphasis on Namibian legal system.

Thus, here we address the following issues:

- How does Namibia meet its obligations under ratified treaties?

- What are the measures or policies taken by the Namibian state to implement or comply with its international obligations as contained in ratified human rights instruments?
- What is the role of domestic courts in this regard?

One thing needs to be kept in mind from the outset: this research is not concerned with human rights violations within Namibia; rather, the thrust is on the domestication and implementation of some major human rights instruments, as ratified or acceded to by Namibia.

Before entering the hot waters of the debate, it is worth examining, albeit very briefly, the concept of domestication of international human rights law, *i.e.* its incorporation into national law.

DOMESTICATION OF INTERNATIONAL HUMAN RIGHTS LAW

As stated earlier, the onus is upon a national legal system to determine the status and force of law which will be accorded to treaty provisions within such legal system.

Indeed, it is only when a human rights instrument and its provisions have become part and parcel of domestic law that national courts and quasi judicial bodies will be able to apply them to cases brought before them by private individuals or organizations. Traditionally, scholars posit two approaches in respect of the reception of international law into the national legal system, characterising countries as either monist or dualist.

Monists view international and national law as part of a single legal order. Under this approach, international law is directly applicable in the national legal order. There is no need for any domestic implementing legislation: international law is immediately applicable within national legal systems. Indeed, to monists, international law is superior to national law.

This approach is common in France, Holland, Switzerland, the USA, many Latin American countries, and some francophone African countries.

It is worth noting that Namibia, through Article 144 of its Constitution, has adopted the monist approach. Dualists, on the

other hand, view international and national law as distinct legal orders. For international law to be applicable in the national legal order, it must be received through domestic legislative measures, the effect of which is to transform the international rule into a national one. It is only after such a transformation that individuals within the state may benefit from or rely on the international–now national–law.

To the dualist, international law cannot claim supremacy within the domestic legal system, although it is supreme in the international law legal system. This method of incorporation is commonly applied in the United Kingdom, Commonwealth countries, and most Scandinavian jurisdictions.

While the monist/dualist debate continues to shape academic discourse and judicial decisions, it is unsatisfactory in many respects. The debate focuses on the source or pedigree of norms, and ignores the substance of the norms at issue. By creating a dichotomy between norms on the basis of their sources, we risk being blinded from assessing the merits of the contents of the norms at issue.

International and national law have traditionally addressed relatively different issues: the former concentrating on the relationships among states, and the latter on relationships among persons within national jurisdictions. In recent times, however, there is a gradual convergence of interest, and the ultimate goal of both systems is to secure the well-being of individuals.

This common goal manifests itself in human rights law, environmental law, and commercial law, *i.e.* areas where there is increasing interaction between national and international law. Thus, international and national law have a lot in common, and an attempt to compartmentalize or isolate them will be analytically flawed and practically inapposite at present.

The theoretical problems with the monist/dualist paradigm aside, the relationship between international law and national law has important practical implications for both systems and their subjects.

The relationship determines the extent to which individuals can rely on international law for the vindication of their rights within the national legal system, and has implications for the

effectiveness of international law, which generally lacks effective enforcement mechanisms. In a nutshell, it is worth remarking that international law does not dictate that one or the other of the aforesaid methods should be used.

Thus, what matters most is the internalisation of international legal obligations within national laws, and their subsequent implementation by domestic courts and quasi-judicial bodies. It follows, therefore, that the method by which treaties become national law is a matter in principle to be determined by the constitutional law of a ratifying state, rather than a matter ordained by international legal order. The benefits of incorporation are self-evident.

The fact that international human rights instruments are internalised into domestic law gives national authorities the opportunity to afford redress in cases of human rights violations before such cases are taken to regional or international judicial or quasi-judicial fora. This way, protracted proceedings in a forum that is both remote from and unfamiliar to the claimant can be spared.

The settlement of litigations on the national level, saving both time and money, always remains the preferable option.

NAMIBIA

The Rome Statute of the International Criminal Court

The Rome Statute of the International Criminal Court (herein referred to as the Rome Statute) was adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (ICC) on 17 July 1998.

The Rome Statute entered into force on 1 July 2002 after the 'magic number' of 60 ratifications was reached on 11 April 2002. Following this entry into force, the first Session of the Assembly of State Parties was held from 3 to 10 September 2002. On this occasion, both the Elements of Crimes over which the court has jurisdiction and the Rules of Procedure and Evidence were formally adopted.

Table. Major International Human Rights Instruments Ratified or Acceded to by Namibia and Other Countries in the Southern African Region

Country	CAR* Rat/Ac.*	CEDAW* Rat/Ac.*	CERD* Rat/Ac.*	CRC* Rat/Ac.*	ICCPR* Rat/Ac.*	ICESCR* Rat/Ac.*	OPAC* Rat/Ac.*	OPSC* Rat/Ac.*	RSICC* Rat/Ac.*
Angola	12/09/89	17/10/86	—	04/10/91	10/04/92	10/04/92	—	—	07/10/98
Botswana	08/09/00	19/08/96	20/02/74	13/04/95	08/12/00	—	24/09/03	24/09/03	08/09/00
Dem. Rep of Congo	18/03/96	16/11/86	21/04/76	27/10/90	01/07/77	01/07/77	11/11/01	11/11/01	11/04/02
Lesotho	—	22/08/95	04/11/71	09/04/92	09/12/92	09/12/92	24/09/03	21/09/03	06/09/00
Madagascar	—	17/03/89	07/02/69	18/04/91	23/03/76	03/01/76	—	—	18/07/98
Malawi	11/06/96	12/03/87	11/06/96	01/02/91	22/03/94	22/03/94	—	07/09/00	19/09/02
Mauritius	09/12/96	09/07/87	30/05/72	02/09/90	23/03/76	03/01/76	—	11/11/01	05/03/02
Mozambique	14/09/99	16/04/97	18/04/83	28/05/94	21/10/93	—	06/03/03	06/03/03	28/12/00
Namibia	28/11/97	23/11/92	11/11/92	30/10/90	28/02/95	28/02/95	16/04/02	16/04/02	25/06/02
South Africa	10/12/98	15/12/95	10/12/98	16/07/95	10/03/99	3/10/94	30/06/03	30/06/03	27/11/00
Swaziland	—	26/03/04	07/04/69	0610/95	26/06/04	26/06/04	—	—	—
Tanzania	—	20/08/85	27/10/72	10/07/91	11/09/76	11/09/76	24/04/03	24/04/03	20/08/02
Zambia	07/10/98	21/06/85	04/02/72	05/01/92	10/07/84	10/07/84	—	—	13/11/02
Zimbabwe	—	13/05/91	13/05/91	11/10/90	13/08/91	13/08/91	—	—	17/07/98

The abbreviations represent the following:

- Ac acceded to.
- Rat ratified.
- CAT Convention against Torture and other Acts of Cruel, Degrading and Inhumane Treatment or Punishment.
- CEDAW Convention for the Elimination of Discrimination against Women.
- CERD Convention for the Elimination of all Forms of Racial Discrimination.
- CRC Convention on the Rights of the Child.
- ICCPR International Covenant on Civil and Political Rights.
- ICESCR International Covenant on Economic, Social and Cultural Rights.
- OPAC Optional Protocol to the Convention on the Rights of the Child: Armed Conflict.
- OPSC Optional Protocol to the Convention on the Rights of the Child: Sale of Children.
- RSICC Rome Statute of the International Criminal Court.

It is worth noting that the ICC is already operational and there are three situations (cases) referred to it for prosecution. However, considering its tender age, we are yet to benefit from its jurisprudence.

As indicated in the above table, Namibia became a state party to the Rome Statute on 25 June 2002. Needless to say, the Rome Statute is part of Namibian law and, therefore, binding on the state in accordance with Article 144 of the Namibian Constitution. Undoubtedly, the Rome Statute imposes legal obligations and expectations on member states.

These are, inter alia:

- To ensure effective prosecution of most serious crimes of concern to the international community as a whole.
- To put an end to impunity for the perpetrators of these crimes.
- To contribute to the prevention of such crimes.
- To exercise national criminal jurisdiction over those responsible for international crimes.

At this stage, it is important to remark that the subject-matter jurisdiction (jurisdiction ratione materiae) of the ICC extends to four crimes, namely:

- The crime of genocide.
- Crimes against humanity.
- War crimes.
- The crime of aggression.

In addition to the legal obligations emanating from the Rome Statute, state parties are also encouraged and expected to incorporate the crimes as defined in the Rome Statute within their national legislations. Although the domestication seems an absolutely essential condition for the enforcement of international law within national jurisdictions, very few countries are prepared to incorporate serious international crimes into their own municipal penal codes.

Thus, through ratification of the Rome Statute, Namibia has undertaken the following legal obligations:

- To incorporate the four crimes and their elements as defined and provided for in the ICC Statute into its domestic laws.
- To exercise its criminal jurisdiction over those responsible for international crimes.
- To contribute to the prevention of such crimes both within its territory and elsewhere.

These three legal obligations are interlinked; indeed, the first and second obligations listed overlap, in that no criminal prosecution of serious international crimes will be possible unless the domestic laws are amended to include and reflect these crimes and their respective elements. This is the duty of the Namibian legislature. Equally relevant to the above legal obligations is the concept of complementarity. Paragraph 10 of the preamble to the Rome Statute states that the International Criminal Court shall be complementary to national criminal jurisdictions.

In addition, Article 17(1) provides that–a case will not be admissible by the ICC when it is being investigated and/or prosecuted by a state that has jurisdiction over it. It follows, therefore, that only when states are unwilling or unable to investigate and/or prosecute are cases before the ICC deemed to

be admissible. The terms unwilling and unable are fully explained in Article 17(2) and (3). All in all, the principle of complementarity reaffirms the argument that the implementation of international human rights instruments squarely depends on the domestic legal framework.

This principle also reflects the widely shared view that systems of national justice should remain the front-line defence against serious human rights abuse, with the ICC only serving as a backstop. Therefore, state parties to human rights instruments are called upon to play their vital role and comply with their legal obligations, failing which the enjoyment and benefits of human rights will remain a pie in the sky.

The NSHR Petition and the Rome Statute

A discussion on the implementation and domestication of the Rome Statute within the Namibian legal framework cannot be complete without looking at the recent highly publicised saga involving the petition by the National Society for Human Rights (NSHR) to the ICC. In terms of this petition, the local human rights NGO wants the ICC to investigate and/or prosecute the Founding President and Father of the Nation, Dr Sam Nujoma, and other Namibians for crimes allegedly committed during the liberation struggle against the then apartheid regime.

The NSHR petition raises two important legal issues with regard to the jurisdictional powers of the ICC:

- Firstly, is the permanent criminal court legally empowered to hear cases involving crimes committed before the entry into force of the Rome Statute? In other words, does the ICC have retrospective jurisdiction,
- Secondly, is the so-called continuous crimes doctrine part of the Rome Statute?

To adequately address these two issues, one has to look at the provisions of the Rome Statute creating the ICC. Article 11(1) of the Statute states that–the court has jurisdiction only with respect to crimes committed after the entry into force of this Statute. The above provision is buttressed by Article 24 of the same Statute, which deals with non-retroactivity ratione personae. Under the latter Article, it is clearly spelt out that no person can

be held criminally responsible for conduct prior to the entry into force of the Rome Statute. Articles 11 and 24 are in fact quite closely related, and there were some proposals to merge them during the drafting of the Statute. The reading and construction of these two Articles, therefore, evidence that the ICC is a prospective institution in that it cannot exercise jurisdiction over crimes committed prior to the entry into force of its Statute.

According to Prof. William A Schabas, a pre-eminent jurist in the field of international criminal law, the idea of retrospective jurisdiction was unmarketable and was never seriously entertained at the Rome Conference at which the Statute was discussed. This was mainly because very few states were prepared to recognise an international court with such ambit. The second issue is the so-called continuous crimes doctrine upon which the NSHR bases the admissibility of its case. For instance, the continuous crimes concept may present itself in the case of 'enforced disappearance', which is a crime against humanity punishable under the Rome Statute.

Someone might have disappeared prior to the entry into force of the Statute, but the crime would continue after entry into force to the extent that the disappearance persisted. In determining whether or not continuous crimes are prosecutable by the ICC, one again needs to find an answer from the piece of legislation which creates the court.

True, the issue of continuous crimes was discussed and deliberated upon at length at the Rome Conference. However, at the end of the Conference, nothing concrete on the topic was agreed upon; in fact the final document does not contain any provision with regard to continuous crimes.

Coming back to the NSHR petition and taking into consideration the aforegoing discussion, it is very difficult to understand how the ICC would entertain the petition. Will the court's prosecutor and judges amend and/or bend the legislation so as to accommodate this scenario? It is common cause that prosecutors and judges, be they international or national, do not make laws. Rather, their primary role is to interpret existing laws. As regards the domestication and implementation of the Rome Statute by the Namibian government, the author of this research

is not aware of any legal or administrative measures put in place by Namibia to comply with its obligations as spelt out in the said Statute.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS UNDER NAMIBIAN LAW

INTRODUCTION

This part of the research focuses on domestic laws and policies put in place by the Namibian government with a view to implementing and complying with its legal obligations under the International Covenant on Civil and Political Rights (ICCPR). Both the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are often referred to as the International Bill of Rights. This is because they contain all fundamental human rights and freedoms which are included, almost verbatim, in all major international and regional human rights instruments as well as the constitutions of all modern states.

The ICCPR was adopted by the UN General Assembly in 1966 and entered into force in 1976. Namibia became a state party to the ICCPR on 28 February 1995, and by virtue of Article 144 of the Namibian Constitution, the Covenant is part of Namibian municipal laws. The effect of Article 144 of the Namibian Constitution vis-avis the ICCPR is that the rights and freedoms provided therein are enforceable within Namibia by either its judicial or quasi-judicial bodies.

Civil and Political Rights as Domesticated and Implemented by Namibia

Article 2(2) of the ICCPR provides that–state parties to the ICCPR are duty bound to take the necessary steps, in accordance with their constitutional processes, to adopt such legislative or other measures as may be necessary to give effect to the rights contained in that Covenant. To see whether the Namibian government complies with the above provision, one has to look at the Constitution of the Republic of Namibia, the supreme law of the land. Indeed, Namibia has a justiciable Bill of Rights, which is incorporated into the country's Constitution. A reading of

Chapter 3 of Namibia's Constitution reveals that all fundamental human rights and freedoms contained in the ICCPR are also provided for and protected by the Namibian Bill of Rights.

Briefly, the following fundamental rights are enshrined in the Namibian Constitution:

- The right to life.
- The right to personal liberty.
- The guarantee against torture or cruel, inhuman or degrading treatment or punishment.
- The guarantee against slavery and forced labour.
- The right to the protection of the law and the guarantee against discrimination on the grounds of sex, race, colour, ethnic organic, religion, creed or social or economic status.
- The guarantee against arbitrary and unlawful arrest and detention.
- The right to a fair trial.
- The right to privacy.
- The right to private property.
- The right to marriage and to found a family.
- The right to participate in peaceful political activity. In addition, all fundamental freedoms are enshrined in Article 21 of the Constitution. These are–
- Freedom of speech and expression.
- Freedom of thought, conscience and belief, which includes academic freedom in higher institutions of learning.
- Freedom to practise any religion.
- Freedom to peaceful assembly.
- Freedom of association, which includes freedom to form and join associations or trade unions and political parties.
- Freedom of movement within the country.
- Freedom to reside and settle in any part of Namibia.
- Freedom to practise any profession, or carry on any occupation, trade or business.

The above freedoms may, however, be restricted by a law as long as such restriction is reasonable in a democratic society, and

is required in the interests of public policy or the sovereignty and integrity of Namibia. Besides the aforementioned fundamental rights and freedoms, the Namibian Bill of Rights also addresses the issue of administrative justice. Thus, Article 18 of the Constitution reads as follows: Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal. Thus, private individuals are entitled to approach courts of law in order to challenge decisions made by administrative bodies or authorities if they believe that those decisions are unfair and/or unreasonable.

In addition to the above civil and political rights, the Constitution enshrines the right to enjoy, practise and profess one's culture. The right to education is also provided for in the Namibian Bill of Rights. Nevertheless, other economic, social and cultural rights, as embodied in the ICESCR, are not justiciable in that they are not enshrined in the Namibian Bill of Rights. Having said that, it is worth remarking that the Constitution provides that the Namibian government is obliged to promote and maintain the welfare and good standard of living of its people through the adoption of appropriate policies.

The major problem with regard to the implementation and enforcement of economic and social rights as enshrined in the ICESCR is that such implementation is dependent upon the resources available in a state party; thus, these rights themselves are limited by a lack of resources. This scenario is in fact acknowledged by the Covenant itself if one reads Article 2 of the ICESCR. Coming back to the civil and political rights recognised and protected by the Namibian Bill of Rights, Article 24(3) of the Constitution spells out a number of rights which cannot be derogated from or suspended even if a state of emergency has been declared.

These are, inter alia:

- The right to life,
- The right to legal representation,

- The guarantee against torture and other cruel or inhuman treatments or punishments,
- The protection against discrimination on any ground as stipulated in Article 10, and
- The right to a fair trial by a competent and impartial tribunal.

It is also important to note that the fundamental rights and freedoms enshrine in the Namibian Bill of Rights are not absolute, in that such rights and freedom may be limited by an Act of Parliament in as much as the requirements for such limitation are met. Article 22(a) states that–ny law providing such limitation shall be of general application and shall not negate the essential content of such right. Additionally, the law which limits the right or freedom in question is obliged to specify clearly the extent of such limitation and to identify the affected right and/or freedom. If one looks at the rules and principles of international human rights law vis-a-vis derogation and limitations of rights, one would come to the conclusion that Articles 22 and 24 of the Namibian Bill of Rights fully comply with such rules. The protection and enforcement of civil and political rights within.

Namibia

Article 5 of the Namibian Constitution Reads as *Follows:* The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government a its agencies, and by all natural and legal persons in Namibia, and shall be enforceable by the Courts The above constitutional provision is buttressed by Article 25(2), which entitles aggrieved persons who claim their fundamental rights or freedoms guaranteed by the Constitution have been infringed or threatened to approach a competent court for a remedy. In addition, paragraph 4 of Article 25 empowers the court dealing with cases of human rights violations to award monetary compensation to the victims.

Besides the courts of law, the Office of the Ombudsman also plays a significant role with respect to the protection of human rights. Although this Office does not have the power or mandate to hear cases involving human rights violations with a view to

awarding monetary compensation or any other remedy, alleged victims of human rights violations may approach the Ombudsman for legal assistance and advice. The Ombudsman is empowered to investigate allegations of human rights violations meru motu or after receiving a complaint from an individual. The independence and impartiality of the Office of Ombudsman are protected in terms of Article 89(2) of the Constitution. Undoubtedly, the Namibian Bill of Rights is justiciable and in fact it fully complies with the legal obligations as spelt out in Article 2(3) of the ICCPR which provides that victims of human rights violations should be awarded remedies.

It is worth noting that the whole purpose and raison d'être of international human rights law is founded on compensation of victims of human rights abuse and violations. In the absence of such remedies and redress, human rights law becomes fictional and abstract. The creation of the Office of the Ombudsman is also in accordance with the Paris Principles on National Human Rights Institutions. However, it is submitted that the Ombudsman's Office should be strengthened in terms of its mandate and resources, so as to effectively and efficiently fulfill its noble objectives.

Unlike some countries, Namibia does not have a Human Rights Commission. The mandate of such a Commission is mainly to monitor the protection and promotion of human rights on behalf of the government. Thus, in Namibia's jurisdiction, it is the Ministry of Justice that has the final responsibility for the promotion and protection of human rights on behalf of the government. To this end, the Ministry ensures that existing laws and Bills are in accordance with the rights and freedoms recognised and enshrined in the Constitution. When it comes to implementing and realising specific human rights contained in various human rights instruments ratified or acceded to by Namibia, the Ministry and/or the government agency responsible for the specific items under the instrument are responsible for the implementation of the recognised rights.

In realising human rights recognised by the Constitution and other human rights instruments, the various Ministries and governmental agencies are assisted by both governmental

organisations and NGOs engaged in various socio-economic activities and in the field of human rights promotion, protection and education. Finally, Namibians who claim that their rights or freedoms have been violated and who fail to obtain redress from domestic courts may submit individual complaints to the Human Rights Committee in New York.

This option is provided for in the First Optional Protocol to the ICCPR, to which Namibia is a state party. For an individual to file a complaint with the Committee, s/he first needs to have exhausted all the local remedies available in the jurisdiction concerned. In assessing whether or not local remedies have been exhausted, the Committee considers factors in the complainant's country such as the availability of remedies, the independence and impartiality of the judiciary, and respect for the rule of law.

Upon receiving an individual complaint, the Committee adjudicates on the merits of the alleged violations. In the event that the Committee believes that human rights abuses have occurred, then it transmits its views and recommendations to the concerned state party. More often than not, the Committee may recommend that the complainant (or the victim of human rights abuse) be awarded remedies.388 Article 4(2) of the Protocol provides that, within six months of receiving the Committee's views, the receiving state is obliged to revert to the Committee, clarifying the matter and informing it whether or not action had been taken to remedy the complainant's situation.

However, it is worth remarking that the decisions of the Human Rights Committee are not binding on state parties; rather, they are merely recommendations on how to improve the implementation and realisation of rights and freedoms recognised under the ICCPR.

Namibia and the Legal Obligation Under Article 40 of the ICCPR

Under Article 40 of the Covenant, state parties are legally obliged to submit reports on measures they have adopted to give effect to and realise the rights recognised in the ICCPR. The reports have to indicate factors and difficulties, if any, in implementing the Covenant. The Human Rights Committee, established in terms

of Article 28 of the Covenant, is responsible for studying these reports, and may generally comment on or add their recommendations to them. The reports need to be submitted within one year of the entry into force of the ICCPR for the state party concerned. In cases where the initial report has been submitted, the Human Rights Committee may request the submission of subsequent reports any time it deems necessary and appropriate. In order to comply with the obligations associated with Article 40, Namibia submitted its initial report to the Human Rights Committee in 2004–after a delay of over eight years. After studying and deliberating upon the Namibian initial report, the Committee came up with concluding observations and recommendations. In the ensuing paragraphs, the discussion centres on positive aspects as well as grey areas of these observations and recommendations.

Among the positive aspects, the Committee noted:

- The speedy establishment of democratic institutions in Namibia since independence.
- The abolition of the death penalty for all crimes.
- The constitutional provision which incorporates rules of international law and international agreements into Namibian municipal laws.
- The creation of the Office of Ombudsman, and the enactment of a legislation which eliminates discrimination between female and male spouses, *i.e.* the Married Persons Equality Act (in fact, this piece of legislation is in line with Article 3 of the Covenant, which prohibits discrimination and inequality between men and women).
- The right to legal representation in regard to indigent litigants.
- The drafting of the Children's Status Bill, whose main purpose is to eliminate all inequalities between children born within and out of wedlock (the Bill has been assented to by the President and has since become law).

As regards recommendations, the Committee urged the Namibian government to urgently take the necessary steps to make torture a specific statutory offence. The onus is, therefore, on the

legislature to comply with this obligation: in Namibia, as in many common law jurisdictions, torture is still considered a common law offence to be charged as either assault or crimen injuria. Article 26 of the ICCPR prohibits any discrimination on any of the following grounds: race, sex, religion, colour, and language. The above provision is echoed by Article 10 of the Namibian Constitution. Whether the prohibition of discrimination on the ground of sexual orientation is protected by the Constitution is an issue which was addressed in The Chairperson of the Immigration Selection Board v Frank and Another. In this case, the High Court of Namibia found that The drafting of the Children's Status Bill, whose main purpose is to eliminate all inequalities between children Article 10 of the Namibian Constitution provided for equality before the law and prohibition of discrimination on any ground, including sex. The learned court, using Article 21(1)(e) of the Constitution, further held that same-sex relationships were recognised by the Constitution.

At this point it is important to remark that the High Court finding was overturned by the Supreme Court, which held that the Constitution did not recognise same-sex relationships. Thus, in paragraph 22 of its Concluding Observations, the Committee notes the absence of anti-discrimination measures or legislation for sexual minorities such as homosexuals. Since Namibian society is very conservative, it is uncertain whether or when a law on anti-discrimination on the ground of sexual orientation will be considered. In fact, like in many other African countries, sodomy remains a prosecutable crime in Namibia.

THE OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICTS

The Optional Protocol on the Involvement of Children in Armed Conflicts (OPAC) is the first Protocol to the Convention on the Rights of the Child. It was adopted by the UN General Assembly on 25 May 2000,403 and came into force on 12 February 2002. Namibia ratified the Protocol on 16 April 2002, only two months after its entry into force. As its title indicates, Its core

purpose is to prevent the involvement of children in armed conflicts. State parties to the Protocol are expected to ensure that children are not engaged in armed conflict and that places that are significant to children's welfare, such as schools and hospitals, are not targeted in armed conflicts.

The OPAC and Namibian Domestic Laws

Article 1 of the Protocol deals with state parties' obligation towards members of their armed forces who are younger than 18. This Article requires state parties to ensure that members of their armed forces who have not attained 18 years of age do not engage in direct hostilities. In this regard, Namibia enacted the Defence Act, which regulates, inter alia, the actions and conduct of members of armed forces during hostilities.

For instance, section 28 of the Act provides that any member of the forces may be called for mobilisation. Section 30(2) of the Act further provides that failure to report for such mobilisation may lead to the recalcitrant member being charged with and prosecuted for desertion under the Military Code. On the other hand, section 7 of the Act lays down the requirements and conditions to be met for one to join the forces. However, the latter section does not lay down the minimum age for recruitment into the armed forces.

The Namibian Constitution protects children from economic exploitation and from performing work that may be hazardous to or interfere with their education, or likely to be harmful to their health or physical, mental, spiritual, moral or social development. For the purpose of this constitutional provision, child is defined as a person younger than 16, whereas the Protocol defines child as a person younger than 18. Since the Defence Act does not stipulate the minimum age for recruitment into the armed forces, and since the same legislation fails to distinguish between members who may be called for mobilisation, it remains ambiguous whether the Namibian statute law complies with the legal expectations required by Article 1 of OPAC.

In addition, the Namibian statute does not prevent members of the armed forces who are below the age of 18 from engaging in armed conflict. Equally relevant is the minimum age in respect of

voluntary recruitment. Article 3 of OPAC provides that, within two months of ratification, state parties to the Protocol are expected to deposit a declaration stipulating the minimum age of voluntary recruitment as well as the safeguards adopted to ensure that such recruitment is not coerced. In addition, each recruit's parents or guardians need to be informed of their child or charge's intentions. Article 4 of OPAC deals with the recruitment of child soldiers in countries ravaged by conflicts of a non-international character, such as civil and ethnic wars. Under this Article, OPAC prohibits armed groups or rebel movements from enlisting children under the age of 18 for purposes of engagement in hostilities.

As discussed earlier herein, Namibia is a state party to the Rome Statute establishing the ICC. The Rome Statute criminalises the enlisting and conscription of child soldiers in international as well as non-international armed conflicts. One notable ongoing prosecution before the ICC involves a certain Lubange, the leader of a Congolese rebel movement titling itself Forces Patriotiques pour la Liberation du Congo. Lubange was arrested by the Democratic Republic of Congo (DRC) government, which then referred the case to the ICC for prosecution under Article 12(2)(a) and (b) of the Rome Statute. Lubange is being charged with and prosecuted for enlisting and conscripting children under the age of 15 years into his forces.

The warrant against Lubange further indicated that there were reasonable grounds to believe that such child soldiers indeed participated in hostilities. Although there is no armed conflict in Namibia, one can convincingly argue that the above provisions equally apply to Namibia, considering the effect and relevance of Article 144 of the Namibian Constitution vis-a-vis ratified international agreements. In regard to the implementation and enforcement of the provisions of OPAC, state parties are expected to take all necessary legal, administrative and other measures with a view to incorporating such provisions into their respective national jurisdictions.

In addition, Article 6 of the Protocol calls upon state parties to, inter alia, make the principles and provisions contained in the Protocol widely known to adults and children alike. Furthermore,

state parties should ensure that all persons used or recruited in armed conflict contrary to the provisions of OPAC are demobilized. Such persons should also be assisted physically as well as psychologically in their reintegration into normal civilian life. The number of former child soldiers within the borders of Namibia is not easy to ascertain.

However, their presence is likely because Namibia shares a border with Angola–a country with a high number of former child soldiers who may have crossed over into Namibia. Moreover, Namibia has refugee camps which accommodate asylum seekers and refugees from war-torn-countries such as Burundi, the DRC, Rwanda, and Somalia. The conscription of child soldiers in these countries is no secret, so the presence of former child soldiers in these refugee camps is a high possibility.

In complying with and implementing Article 6(3) of OPAC, therefore, Namibia is expected to ascertain the presence, if any, of former child soldiers within its territory with a view to assisting them physically as well as psychologically. In this regard, the efforts of the Namibian government, in collaboration with the UN High Commission for Refugees, to accommodate and assist asylum seekers and refugees are commendable. Nevertheless, due to some grey areas in domestic legislation on the topic, implementation of and compliance with the provisions of the present Protocol are not easy to assess. Conclusion In this research, the author has attempted to assess the domestication and implementation of human rights instruments by the Namibian government.

The focus, therefore, was on policies, legal and administrative measures adopted by Namibia with a view to complying with and implementing its legal obligations, as spelt out in ratified human rights instruments. The first section gives an overview of the rules and principles of international law with regard to the domestication of international law within municipal law. There are two methods used to incorporate international law into national legal systems, namely the monist and dualist approaches. Namibia, through Article 144 of its Constitution, adopted the monist approach. As discussed earlier, in terms of this approach, international law is immediately applicable within national legal

frameworks. All in all, one could argue that Namibia's constitutional and legal framework is conducive to the process of domestication of the rules of international law and international agreements.

The benefits of the domestication of human rights instruments within the Namibian legal system are self-evident. Undoubtedly, this gives both national authorities and private individuals the opportunity to afford and obtain redress in cases of human rights abuses and violations, before complaints are taken to regional and international judicial or quasi-judicial fora. This way, protracted proceedings in a forum that is both remote from and unfamiliar to the individual complainant can be spared. In the second section, the author looked at some of the human rights instruments ratified by Namibia as well as other countries in the region.

Three instruments were chosen and analysed in extenso with a view to ascertaining their domestication and implementation by Namibia, namely the Rome Statute of the International Criminal Court, the International Covenant on Civil and Political Rights, and the Optional Protocol on the Involvement of Children in Armed Conflicts. In regard to the Rome Statute, the author is not aware of any legal or administrative measures adopted by the Namibian government to comply with and implement its obligations under the Statute. Perhaps one can argue that it is too early to assess the realisation and implementation of this Statute, considering that the ICC is still in its infancy.

Concerning the ICCPR, with the exception of few problematic areas discussed in this paper, one should commend the efforts being made by the Namibian government in realising and implementing the rights recognised by the Covenant. Finally, the paper deals with the domestication and implementation of OPAC. After an overview of the provisions of the Protocol and the Namibian statute on the topic, it is not clear whether or not Namibia complies with its legal expectations under this Protocol. Therefore, legislative and administrative measures need to be adopted that will internalise and implement these legal obligations.

As stated earlier, the onus is now on the legislature, with the assistance of relevant ministries and other government agencies,

to see to it that the legal framework is reformed in such a way that all relevant obligations as outlined are fulfilled.

OTHER COUNTRIES OVERVIEW

EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights (ECHR) (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international treaty to protect human rights and fundamental freedoms(Political freedom, or political agency, is a central concept in Western history and political thought, and one of the most important (real or ideal) features of democratic societies. It has been described as a relationship free of oppression or coercion; the absence of disabling conditions for a particular group or individual and the fulfillment of enabling conditions; or the absence of economic compulsion.

Although political freedom is often interpreted negatively as the freedom from unreasonable external constraints on action, it can also refer to the positive exercise of rights, capacities and possibilities for action, and the exercise of social or group rights (*e.g.* collective bargaining).The concept can also include freedom from "internal" constraints on political action or speech, such as social conformity, consistency, and "inauthentic" behaviour. The concept of political freedom is closely connected with the concepts of equality, civil liberties and human rights, which in democratic societies are usually afforded legal protection from the state.

Some notable philosophers, such as Alasdair MacIntyre, have theorized freedom in terms of our social interdependence with other people. According to political philosopher Nikolas Kompridis, the pursuit of freedom in the modern era can be broadly divided into two motivating ideals: freedom as autonomy, or independence; and freedom as the ability to cooperatively initiate a new beginning.

Political freedom has also been theorized in opposition to power, or in terms of "power relations", by Michel Foucault. It has also been closely identified with certain kinds of artistic and cultural practice by Cornelius Castoriadis, Antonio Gramsci, Herbert Marcuse, Jacques Ranciere, and Theodor Adorno.) in

Europe. Drafted in 1950 by the then newly formed Council of Europe(The Council of Europe (French: Conseil de l'Europe) is an international organisation promoting co-operation between all countries of Europe in the areas of legal standards, human rights, democratic development, the rule of law and cultural co-operation. It was founded in 1949, has 47 member states with some 800 million citizens, and is is an entirely separate body from the European Union (EU), which has only 27 member states.

Unlike the EU, the Council of Europe cannot make binding laws. The two do however share certain symbols such as the flag of Europe. The Council of Europe is nothing to do with either the Council of the European Union or the European Council, which are both EU bodies. The best known bodies of the Council of Europe are the European Court of Human Rights, which enforces the European Convention on Human Rights, and the European Pharmacopoeia Commission, which sets the quality standards for pharmaceutical products in Europe. The Council of Europe's work has resulted in standards, charters and conventions to facilitate cooperation between European countries.

Its statutory institutions are the Committee of Ministers comprising the foreign ministers of each member state, the Parliamentary Assembly composed of MPs from the Parliament of each member state, and the Secretary General heading the secretariat of the Council of Europe. The Commissioner for Human Rights is an independent institution within the Council of Europe, mandated to promote awareness of and respect for human rights in the member states.

The headquarters of the Council of Europe are in Strasbourg, France, with English and French as its two official languages. The Committee of Ministers, the Parliamentary Assembly and the Congress also use German, Italian, and Russian for some of their work.)the convention entered into force on 3 September 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity.

The Convention established the European Court of Human Rights(The European Court of Human Rights (French: Cour europeenne des droits de l'homme) in Strasbourg is a supra-

national court, established by the European Convention on Human Rights, which provides legal recourse of last resort for individuals who feel that their human rights have been violated by a contracting party to the Convention. Application before the court can also be brought by other contracting parties.

Fig. European Court of Human Rights.

The Convention was adopted under the auspices of the Council of Europe, all 47 of whose member states are parties to the Convention.) Any person who feels his or her rights have been violated under the Convention by a state party can take a case to the Court.

Judgements finding violations are binding on the States concerned and they are obliged to execute them. The Committee of Ministers of the Council of Europe monitors the execution of judgements, particularly to ensure payment of the amounts awarded by the Court to the applicants in compensation for the damage they have sustained.

The establishment of a Court to protect individuals from human rights violations is an innovative feature for an international convention on human rights, as it gives the individual an active role on the international arena (traditionally, only states are considered actors in international law). The European Convention is still the only international human rights agreement providing such a high degree of individual protection. State parties can also take cases against other state parties to the Court, although this power is rarely used.

The Convention has several protocols. For example, Protocol 13 prohibits the death penalty. The protocols accepted vary from

State Party to State Party, though it is understood that state parties should be party to as many protocols as possible.

HISTORY

The development of a regional system of Human Rights protection operating across Europe can be seen as a direct response to twin concerns. First, in the aftermath of the Second World War, the convention, drawing on the inspiration of the Universal Declaration of Human Rights(The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly (10 December 1948 at Palais de Chaillot, Paris). 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.) can be seen as part of a wider response of the Allied Powers in delivering a human rights agenda through which it was believed that the most serious human rights violations which had occurred during the Second World War (most notably, the Holocaust) could be avoided in the future. Second, the Convention was a response to the growth of Communism in Eastern Europe and designed to protect the member states of the Council of Europe from communist subversion.

This, in part, explains the constant references to values and principles that are “necessary in a democratic society” throughout the Convention, despite the fact that such principles are not in any way defined within the convention itself. The Convention

was drafted by the Council of Europe after World War II in response to a call issued by Europeans from all walks of life who had gathered at the Hague Congress (1948). When over 100 parliamentarians from the twelve member nations of the Council of Europe came together in Strasbourg in the summer of 1949 for the first ever meeting of the Council's Consultative Assembly, drafting a "charter of human rights" and creating a Court to enforce it was high on their agenda.

British MP and lawyer Sir David Maxwell-Fyfe, the Chair of the Assembly's Committee on Legal and Administrative Questions, guided the drafting of the Convention. As a prosecutor at the Nuremberg Trials, he had seen at first hand how international justice could be effectively applied. With his help, French former minister and Resistance fighter Pierre-Henri Teitgen submitted a report to the Assembly proposing a list of rights to be protected, selecting a number from the Universal Declaration of Human Rights just agreed in New York, and defining how the enforcing judicial mechanism might operate. After extensive debates, the Assembly sent its final proposal of the Council's Committee of Ministers, which convened a group of experts to draft the Convention itself.

The Convention was designed to incorporate a traditional civil liberties Civil liberties are rights and freedoms that provide an individual specific rights such as the right to life, freedom from torture, freedom from slavery and forced labour, the right to liberty and security, right to a fair trial, the right to defend one's self, the right to privacy, freedom of conscience, freedom of expression, freedom of assembly and association, and the right to marry and have a family. Within the distinctions between civil liberties and other types of liberty, it is important to note the distinctions between positive rights and negative rights.

Common civil liberties include the rights of people, freedom of religion, and freedom of speech, and additionally, the right to due process, to a trial, to own property, and to privacy. The formal concept of civil liberties dates back to the English legal charter the Magna Carta 1215, which in turn was based on pre-existing documents namely the English Charter of Liberties, a landmark document in English legal history.

Many contemporary states have a constitution, a bill of rights, or similar constitutional documents that enumerate and seek to guarantee civil liberties. Other states have enacted similar laws through a variety of legal means, including signing and ratifying or otherwise giving effect to key conventions such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights. It might be said that the protection of civil liberties is a key responsibility of all citizens of free states, as distinct from authoritarian states. The existence of some claimed civil liberties is a matter of dispute, as are the extent of most civil rights. Controversial examples include property rights, reproductive rights, civil marriage, and the right to keep and bear arms. Whether the existence of victimless crimes infringes upon civil liberties is a matter of dispute. Another matter of debate is the suspension or alteration of certain civil liberties in times of war or state of emergency, including whether and to what extent this should occur.

An individual who "actively supports or works for the protection or expansion of civil liberties" is called a civil libertarian.) approach to securing "effective political democracy", from the strongest traditions in the United Kingdom, France and other member states of the fledgling Council of Europe. The Convention was opened for signature on 4 November 1950 in Rome. It was ratified and entered into force on 3 September 1953. It is overseen by the European Court of Human Rights in Strasbourg, and the Council of Europe. Until recently, the Convention was also overseen by a European Commission on Human Rights.

DRAFTING

The Convention is drafted in broad terms, in a similar (albeit more modern) manner to the English Bill of Rights (The Bill of Rights a short title) is an act of the Parliament of England, whose title is An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown. It is often called the English Bill of Rights. The Bill of Rights was passed by Parliament on 16 December 1689. It was a re-statement in statutory form of the Declaration of Right presented by the Convention Parliament

to William and Mary in March 1689 (=1688 by Old Style dating), inviting them to become joint sovereigns of England. It lays down limits on the powers of sovereign and sets out the rights of Parliament and rules for freedom of speech in Parliament, the requirement to regular elections to Parliament and the right to petition the monarch without fear of retribution.

It reestablished the liberty of Protestants to have arms for their defence within the rule of law, and condemned James II of England for "causing several good subjects being Protestants to be disarmed at the same time when papists were both armed and employed contrary to law". These ideas about rights reflected those of the political thinker John Locke and they quickly became popular in England. It also sets out—or, in the view of its drafters, restates—certain constitutional requirements of the Crown to seek the consent of the people, as represented in parliament.

Along with the 1701 Act of Settlement the Bill of Rights is still in effect. It is one of the main constitutional laws governing the succession to the throne of the United Kingdom and—following British colonialism, the resultant doctrine of reception, and independence—to the thrones of those other Commonwealth realms, by willing deference to the act as a British statute or as a patriated part of the particular realm's constitution. Since the implementation of the Statute of Westminster in each of the Commonwealth realms (on successive dates from 1931 onwards) the Bill of Rights cannot be altered in any realm except by that realm's own parliament, and then, by convention, and as it touches on the succession to the shared throne, only with the consent of all the other realms.

In the United Kingdom, the Bill of Rights is further accompanied by the Magna Carta, Habeas Corpus Act 1679 and Parliament Acts 1911 and 1949 as some of the basic documents of the un codified British constitution. A separate but similar document, the Claim of Right Act, applies in Scotland. The English Bill of Rights 1689 inspired in large part the United States Bill of Rights.) the American Bill of Rights The Bill of Rights is the collective name for the first ten amendments to the United States Constitution. They were introduced by James Madison to the First United States Congress in 1789 as a series of legislative articles

and came into effect as Constitutional Amendments on December 15, 1791, through the process of ratification by three-fourths of the States.

The Bill of Rights is a series of limitations on the power of the United States federal government, protecting the natural rights of liberty and property including freedom of religion, freedom of speech, a free press, free assembly, and free association, as well as the right to keep and bear arms. In federal criminal cases, it requires indictment by a grand jury for any capital or "infamous crime", guarantees a speedy, public trial with an impartial jury composed of members of the state or judicial district in which the crime occurred, and prohibits double jeopardy. In addition, the Bill of Rights reserves for the people any rights not specifically mentioned in the Constitution and reserves all powers not specifically granted to the federal government to the people or the States. Most of these restrictions on the federal government were later applied to the states by a series of legal decisions applying the due process clause of the Fourteenth Amendment, which was ratified in 1868. The Bill was influenced by George Mason's 1776 Virginia Declaration of Rights, the 1689 English Bill of Rights, works of the Age of Enlightenment pertaining to natural rights, and earlier English political documents such as Magna Carta (1215).

Delegates to the Philadelphia Convention on September 12, 1787 debated whether to include a Bill of Rights in the body of the U.S. Constitution, and an agreement to create the Bill of Rights helped to secure ratification of the Constitution itself. Ideological conflict between Federalists and anti-Federalists threatened the final ratification of the new national Constitution. Thus, the Bill addressed the concerns of some of the Constitution's influential opponents, including prominent Founding Fathers, who argued that the Constitution should not be ratified because it failed to protect the fundamental principles of human liberty.

Twelve articles were proposed to the States, but only the last ten articles were ratified in the 18th Century, corresponding to the First through Tenth Amendments. The proposed first Article, dealing with the number and apportionment of U.S. Representatives, never became part of the Constitution. The

second Article, limiting the power of Congress to increase the salaries of its members, was ratified two centuries later as the 27th Amendment.

The Bill of Rights plays a key role in American law and government, and remains a vital symbol of the freedoms and culture of the nation. One of the first fourteen copies of the Bill of Rights is on public display at the National Archives in Washington, D.C.)the French Declaration of the Rights of Man (The Declaration of the Rights of Man and of the Citizen (French: Declaration des droits de l'Homme et du Citoyen) is a fundamental document of the French Revolution, defining the individual and collective rights of all the estates of the realm as universal. Influenced by the doctrine of natural right, the rights of man are universal: valid at all times and in every place, pertaining to human nature itself. Although it establishes fundamental rights for French citizens and "all the members of the social Body", it addresses neither the status of women nor slavery; despite that, it is a precursor document to international human rights instruments.)or the first part of the German Basic law(The Basic Law for the Federal Republic of Germany (German: Grundgesetz für die Bundesrepublik Deutschland) is the constitutional law of Germany. It was formally approved on 8 May 1949, and, with the signature of the Allies, came into effect on 23 May 1949, as the constitution of those states of West Germany that were initially included within the Federal Republic. Within a few years, the Federal Republic included all of West Germany, *i.e.* those parts of Germany under American, British, or French occupation.

The German word Grundgesetz may be translated as either Basic Law or Fundamental Law (Grund is cognate with the English word ground). The term Verfassung (constitution) was not used, as the drafters regarded the Grundgesetz as a provisional constitution for the provisional West German state and would not prejudice the decisions of a future reunified Germany to adopt a constitution. Shortly after its adoption, the East German Soviet occupation zone was transformed into the communist German Democratic Republic (GDR) with its own constitution.

Germany was reunified in 1990 after the Communist regime in East Germany was toppled and the GDR peacefully joined the

Federal Republic of Germany. Article 23 of the Basic Law was used in reunification when East Germany, which had been unitary since 1949, re-divided into its original länder, with Berlin as a new city-state (like Bremen and Hamburg).

After reunification, the Basic Law remained in force, having proved itself as a stable foundation for the thriving democracy in West Germany that had emerged from the ruins of World War II. Some changes were made to the law in 1990, mostly pertaining to reunification, such as to the preamble. Additional major modifications of the Basic Law were made in 1994, 2002 and 2006.) Statements of principle are, from a legal point of view, not determinative and require extensive interpretation by courts to bring out meaning in particular factual situations.

CONVENTION ARTICLES

As amended by Protocol 11, the Convention consists of three parts. The main rights and freedoms are contained in Section I, which consists of Articles 2 to 18. Section II (Articles 19 to 51) sets up the Court and its rules of operation. Section III contains various concluding provisions. Before the entry into force of Protocol 11, Section II (Article 19) set up the Commission and the Court, Sections III (Articles 20 to 37) and IV (Articles 38 to 59) included the high-level machinery for the operation of, respectively, the Commission and the Court, and Section V contained various concluding provisions. Many of the Articles in Section I are structured in two paragraphs: the first sets out a basic right or freedom (such as Article 2(1)–the right to life) but the second contains various exclusions, exceptions or limitations on the basic right (such as Article 2(2)–which excepts certain uses of force leading to death).

Article 1—Respecting Rights

Article 1 simply binds the signatory parties to secure the rights under the other Articles of the Convention "within their jurisdiction". In exceptional cases, "jurisdiction" may not be confined to a Contracting State's own national territory; the obligation to secure Convention rights then also extends to foreign territory, such as occupied land in which the State exercises effective control.

Article 2–Life

Article 2 protects the right of every person to their life. The first paragraph of the article contains an exception for the lawful executions Capital punishment, the death penalty, or execution is the sentence of death upon a person by judicial process as a punishment for an offence. Crimes that can result in a death penalty are known as capital crimes or capital offences. The term capital originates from Latin capitalis, literally "regarding the head" (Latin caput).

Hence, a capital crime was originally one punished by the severing of the head from the body. Capital punishment has in the past been practiced in virtually every society, although currently only 58 nations actively practice it, with 95 countries having abolished it (the remainder having not used it for 10 years or allowing it only in exceptional circumstances such as wartime). It is a matter of active controversy in various countries and states, and positions can vary within a single political ideology or cultural region. In the European Union member states, Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment.

As of 2010 Amnesty International considered most countries abolitionist. The UN General Assembly has adopted, in 2007 and 2008, non-binding resolutions calling for a global moratorium on executions, with a view to eventual abolition. Although many nations have abolished capital punishment, over 60% of the world's population live in countries where executions take place, inasmuch as the People's Republic of China, India, United States and Indonesia, the four most populous countries in the world, continue to apply the death penalty (in India it is used only rarely). Each of these four nations voted against the General Assembly resolutions)while the second paragraph provides that death resulting from defending oneself or others, arresting a suspect or fugitive, or suppressing riots or insurrections, will not contravene the Article when the use of force involved is "no more than absolutely necessary".

This right does also not derogate under article 15 of the convention during peacetime. The exemption for the case of lawful executions is further restricted by Protocols 6 and 13, for those

parties who are also parties to those protocols. The European Court of Human Rights did not rule upon the right to life until 1995, when in McCann v. United Kingdom it ruled that the exception contained in the second paragraph do not constitute situations when it is permitted to kill, but situations where it is permitted to use force which might result in the deprivation of life.

The Court has ruled that states have three main duties under Article 2:

1. A duty to refrain from unlawful killing,
2. A duty to investigate suspicious deaths,
3. In certain circumstances, a positive duty to prevent foreseeable loss of life.

Article 3–Torture

Article 3 prohibits torture,(Torture, according to the United Nations Convention Against Torture an advisory measure of the UN General Assembly) is: 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. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.—UN Convention Against Torture.

Throughout history, torture has often been used as a method of political re-education, interrogation, punishment, and coercion. In addition to state-sponsored torture, individuals or groups may be motivated to inflict torture on others for similar reasons to those of a state; however, the motive for torture can also be for the sadistic gratification of the torturer, as in the Moors murders. Torture is prohibited under international law and the domestic laws of most countries in the 21st century.

It is considered to be a violation of human rights, and is declared to be unacceptable by Article 5 of the UN Universal

Declaration of Human Rights. Signatories of the Third Geneva Convention and Fourth Geneva Convention officially agree not to torture prisoners in armed conflicts. Torture is also prohibited by the United Nations Convention Against Torture, which has been ratified by 147 states.

National and international legal prohibitions on torture derive from a consensus that torture and similar ill-treatment are immoral, as well as impractical. Despite these international conventions, organizations that monitor abuses of human rights (*e.g.* Amnesty International, the International Rehabilitation Council for Torture Victims) report widespread use condoned by states in many regions of the world. Amnesty International estimates that at least 81 world governments currently practice torture, some of them openly) and "inhuman or degrading treatment or punishment".

There are no exceptions or limitations on this right. This provision usually applies, apart from torture, to cases of severe police violence and poor conditions in detention. The Court have emphasised the fundamental nature of Article 3 in holding that the prohibition is made in "absolute terms irrespective of a victim's conduct." The Court has also held that states cannot deport or extradite individuals who might be subjected to torture, inhuman or degrading treatment or punishment, in the recipient state.

Initially the Court took a restrictive view on what consisted of torture, preferring to find that states had inflicted inhuman and degrading treatment. Thus the court held that practices such as sleep deprivation, subjecting individual to intense noise and requiring them to stand against a wall with their limbs outstretched for extended periods of time, did not constitute torture. In fact the Court only found a state guilty of torture in 1996 in the case of a detainee who was suspended by his arms whilst his hands were tied behind his back. Since then the Court has appeared to be more open to finding states guilty of torture and has even ruled that since the Convention is a "living instrument", treatment which it had previously characterised as inhuman or degrading treatment might in future be regarded as torture.

Article 4–Servitude

Article 4 prohibits slavery, servitude and forced labour but exempts labour:

1. Done as a normal part of imprisonment,
2. In the form of compulsory military service or work done as an alternative by conscientious objectors,
3. Required to be done during a state of emergency, and
4. Considered to be a part of a person's normal "civic obligations."

Article 5—Liberty and Security

Article 5 provides that everyone has the right to liberty and security of person. Liberty. Liberty is a concept in political philosophy that identifies the condition in which human beings are able to govern themselves, to behave according to their own free will, and take responsibility for their actions. There are different conceptions of liberty, which articulate the relationship of individuals to society in different ways, including some which relate to life under a "social contract" or to existence in a "state of nature", and some which see the active exercise of freedom and rights as essential to liberty.

Individualist and classical liberal conceptions of liberty typically consist of the freedom of individuals from outside compulsion or coercion, also known as negative liberty, while Social liberal conceptions of liberty emphasize social structure and agency, or positive liberty.

In feudal societies, a "liberty" was an area of allodial land in which the rights of the ruler, or monarch, had been waived.)and security of the person are taken as a "compound" concept—security of the person has not been subject to separate interpretation by the Court.

Article 5 provides the right to liberty, subject only to lawful arrest or detention under certain other circumstances, such as arrest on suspicion of a crime or imprisonment in fulfillment of a sentence. The article also provides the right to be informed in a language one understands of the reasons for the arrest and any charge against them, the right of prompt access to judicial

proceedings to determine the legality of one's arrest or detention and to trial within a reasonable time or release pending trial, and the right to compensation in the case of arrest or detention in violation of this article.

Article 6—Fair Trial

Article 6 provides a detailed right to a fair trial(The right to fair trial is seen as an essential right in all countries respecting the rule of law. A trial in these countries that is deemed unfair will typically be restarted, or its verdict quashed. Various rights associated with a fair trial are explicitly proclaimed in Article 10 of the Universal Declaration of Human Rights, the Sixth Amendment to the United States Constitution, and Article 6 of the European Convention of Human Rights, as well as numerous other constitutions and declarations throughout the world.)including the right to a public hearing before an independent and impartial tribunal within reasonable time, the presumption of innocence. The presumption of innocence, sometimes referred by the Latin Ei incumbit probatio qui dicit, non qui negat (the principle that one is considered innocent until proven guilty) is a legal right of the accused in a criminal trial, recognised in many nations.

The burden of proof is thus on the prosecution, which has to collect and present enough compelling evidence to convince the trier of fact, who is restrained and ordered by law to consider only actual evidence and testimony that is legally admissible, and in most cases lawfully obtained, that the accused is guilty beyond a reasonable doubt. In case of remaining doubts, the accused is to be acquitted. This presumption is seen to stem from the Latin legal principle that ei incumbit probatio qui dicit, non qui negat (the burden of proof rests on who asserts, not on who denies) and other minimum rights for those charged with a criminal offence (adequate time and facilities to prepare their defence, access to legal representation, right to examine witnesses against them or have them examined, right to the free assistance of an interpreter).

The majority of Convention violations that the Court finds today are excessive delays, in violation of the "reasonable time" requirement, in civil and criminal proceedings before national

courts, mostly in Italy and France. Under the "independent tribunal" requirement, the Court has ruled that military judges in Turkish state security courts are incompatible with Article 6. In compliance with this Article, Turkey has now adopted a law abolishing these courts. Another significant set of violations concerns the "confrontation clause" of Article 6 (*i.e.* the right to examine witnesses or have them examined). In this respect, problems of compliance with Article 6 may arise when national laws allow the use in evidence of the testimonies of absent, anonymous and vulnerable witnesses.

Article 7–Retrospectivity

Prohibits the retrospective criminalisation of acts and omissions. No person may be punished for an act that was not a criminal offence at the time of its commission. The article states that a criminal offence is one under either national or international law, which would permit a party to prosecute someone for a crime which was not illegal under their domestic law at the time, so long as it was prohibited by international law. The Article also prohibits a heavier penalty being imposed than was applicable at the time when the criminal act was committed. Article 7 incorporates the legal principle nullum crimen, nulla poena sine lege into the convention.

Article 8–Privacy

Article 8 provides a right to respect for one's "private and family life, his home and his correspondence"(The secrecy of correspondence (German: Briefgeheimnis, Swedish: brevhemlighet, Finnish: kirjesalaisuus), or literally translated as secrecy of letters, is a fundamental legal principle enshrined in the constitutions of several European countries. It guarantees that the content of sealed letters is never revealed and letters in transit are not opened by government officials or any other third party. It is thus the main legal basis for the assumption of privacy of correspondence.

The principle has been naturally extended to other forms of communication, including telephony and electronic communications on the Internet as the constitutional guarantees

are generally thought to cover also these forms of communication. However, national telecommunications privacy laws may allow lawful interception, *i.e.* wiretapping and monitoring of electronic communications in cases of suspicion of crime. Paper letters have in most jurisdictions remained outside the legal scope of law enforcement surveillance, even in cases of "reasonable searches and seizures".

When applied to electronic communication, the principle protects not only the content of the communication, but also the information on when and to whom any messages (if any) have been sent, and in the case of mobile communication, the location information of the mobile units. As a consequence in jurisdictions with a safeguard on secrecy of letters location data collected from mobile phone networks has a higher level of protection than data collected by vehicle telematics or transport tickets.)subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This article clearly provides a right to be free of unlawful searches, but the Court has given the protection for "private and family life" that this article provides a broad interpretation, taking for instance that prohibition of private consensual homosexual acts violates this article.

This may be compared to the jurisprudence of the United States Supreme Court, which has also adopted a somewhat broad interpretation of the right to privacy. Furthermore, Article 8 sometimes comprises positive obligations Positive obligations in human rights law denote a State's obligation to engage in an activity to secure the effective enjoyment of a fundamental right, as opposed to the classical negative obligation to merely abstain from human rights violations. Classical human rights, such as the right to life or freedom of expression, are formulated or understood as prohibitions for the State to act in a way that would violate these rights.

Thus, they would imply an obligation for the State not to kill, or an obligation for the State not to impose press censorship. Modern or social rights, on the other hand, imply an obligation for the State to become active, such as to secure individuals' rights to education or employment by building schools and maintaining

a healthy economy. Such social rights are generally more difficult to enforce. Positive obligations transpose the concept of State obligations to become active into the field of classical human rights.

Thus, in order to secure an individual's right to family life, the State may not only be obliged to refrain from intererence therein, but positively to facilitate for example family reunions or parents' access to their children. The most prominent field of application of positive obligations is Article 8 of the European Convention on Human Rights.): whereas classical human rights are formulated as prohibiting a State from interfering with rights, and thus not to do something (*e.g.* not to separate a family under family life protection), the effective enjoyment of such rights may also include an obligation for the State to become active, and to do something (*e.g.* to enforce access for a divorced father to his child).

Article 9—Conscience and Religion

Article 9 provides a right to freedom of thought Freedom of thought (also called the freedom of conscience or ideas) is the freedom of an individual to hold or consider a fact, viewpoint, or thought, independent of others' viewpoints. It is different from and not to be confused with the concept of freedom of speech or expression.)conscience and religion Freedom of religion is a principle that supports the freedom of an individual or community, in public or private, to manifest religion or belief in teaching, practice, worship, and observance; the concept is generally recognized also to include the freedom to change religion or not to follow any religion. The freedom to leave or discontinue membership in a religion or religious group—in religious terms called "apostasy"—is also a fundamental part of religious freedom.

Freedom of religion is considered by many people and nations to be a fundamental human right. It is enshrined in Article 18 of the Universal Declaration of Human Rights. Thomas Jefferson said (1807) "among the inestimable of our blessings, also, is that of liberty to worship our Creator in the way we think most agreeable to His will."

In a country with a state religion, freedom of religion is generally considered to mean that the government permits religious practices of other sects besides the state religion, and does not persecute believers in other faiths. For a current overview, see section Contemporary situation of religious freedom in the world.) This includes the freedom to change a religion or belief, and to manifest a religion or belief in worship, teaching, practice and observance, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

Article 10–Expression

Article 10 provides the right to freedom of expression, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas.

Article 11–Association

Article 11 protects the right to freedom of assembly and association, including the right to form trade unions(A trade union (British English) or labour union (American English) is an organization of workers that have banded together to achieve common goals such as better working conditions. The trade union, through its leadership, bargains with the employer on behalf of union members (rank and file members) and negotiates labour contracts (collective bargaining) with employers. This may include the negotiation of wages, work rules, complaint procedures, rules governing hiring, firing and promotion of workers, benefits, workplace safety and policies. The agreements negotiated by the union leaders are binding on the rank and file members and the employer and in some cases on other non-member workers.

Originating in Europe, trade unions became popular in many countries during the Industrial Revolution, when the lack of skill necessary to perform most jobs shifted employment bargaining power almost completely to the employers' side, causing many workers to be mistreated and underpaid. Trade union organizations may be composed of individual workers, professionals, past workers, or the unemployed. The most

common, but by no means only, purpose of these organizations is "maintaining or improving the conditions of their employment". Over the last three hundred years, many trade unions have developed into a number of forms, influenced by differing political objectives.

Activities of trade unions vary, but may include:

- *Provision of Benefits to Members:* Early trade unions, like Friendly Societies, often provided a range of benefits to insure members against unemployment, ill health, old age and funeral expenses. In many developed countries, these functions have been assumed by the state; however, the provision of professional training, legal advice and representation for members is still an important benefit of trade union membership.
- *Collective Bargaining:* Where trade unions are able to operate openly and are recognized by employers, they may negotiate with employers over wages and working conditions.
- *Industrial Action:* Trade unions may enforce strikes or resistance to lockouts in furtherance of particular goals.
- *Political Activity:* Trade unions may promote legislation favourable to the interests of their members or workers as a whole. To this end they may pursue campaigns, undertake lobbying, or financially support individual candidates or parties (such as the Labour Party in Britain for public office.)subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

Article 12–Marriage

Article 12 provides a right for women and men of marriageable age Marriageable age (or marriage age) is the age at which a person is allowed to marry, either as of right or subject to parental or other forms of consent. The age and other requirements vary between countries. The marriage age should not be confused with the age of majority or the age of consent. The marriage age in a country may be below the age of majority and the age of consent that applies in that country. Additionally, the age at which

a person is legally permitted to engage in sexual activity may be below the marriage age.) to marry and establish a family.

Despite a number of invitations, the Court has so far refused to apply the protections of this article to same-sex marriage(Same-sex marriage (also called gay marriage) is a legally or socially recognized marriage between two persons of the same biological sex or social gender. Since 2001, ten countries and various other jurisdictions have begun legally formalizing same-sex marriages, and the recognition of such marriages is a civil rights, political, social, moral, and religious issue in many nations. The conflicts arise over whether same-sex couples should be allowed to enter into marriage, be required to use a different status (such as a civil union, which either grant equal rights as marriage or limited rights in comparison to marriage), or not have any such rights. A related issue is whether the term marriage should be applied.

One argument in support of same-sex marriage is that denying same-sex couples legal access to marriage and all of its attendant benefits represents discrimination based on sexual orientation; several American scientific bodies agree with this assertion. Another argument in support of same-sex marriage is the assertion that financial, psychological and physical well-being are enhanced by marriage, and that children of same-sex couples benefit from being raised by two parents within a legally recognized union supported by society's institutions.

Court documents filed by American scientific associations also state that singling out gay men and women as ineligible for marriage both stigmatizes and invites public discrimination against them. The American Anthropological Association avers that social science research does not support the view that either civilization or viable social orders depend upon not recognizing same-sex marriage. Other arguments for same-sex marriage are based upon what is regarded as a universal human rights issue, mental and physical health concerns, equality before the law, and the goal of normalizing LGBT relationships. Al Sharpton and several other authors attribute opposition to same-sex marriage as coming from homophobia or heterosexism and liken prohibitions on same-sex marriage to past prohibitions on interracial marriage.

One argument against same-sex marriage arises from a rejection of the use of the word "marriage" as applied to same-sex couples, as well as objections about the legal and social status of marriage itself being applied to same-sex partners under any terminology. Other stated arguments include direct and indirect social consequences of same-sex marriages, parenting concerns, religious grounds, and tradition.)The Court has defended this on the grounds that the article was intended to apply only to different-sex marriage, and that a wide margin of appreciation must be granted to parties in this area. In Goodwin v United Kingdom the Court ruled that a law which still classified post-operative transsexual persons under their pre-operative sex, violated article 12 as it meant that transsexual persons were unable to marry individuals of their post-operative opposite sex. This reversed an earlier ruling in Rees v United Kingdom. This did not, however, alter the Court's understanding that Article 12 protects only different-sex couples.

Article 13—Effective Remedy

Article 13 provides for the right for an effective remedy before national authorities for violations of rights under the Convention. The inability to obtain a remedy before a national court for an infringement of a Convention right is thus a free-standing and separately actionable infringement of the Convention.

Article 14–Discrimination

Article 14 contains a prohibition of discrimination Discrimination is the cognitive and sensory capacity or ability to see fine distinctions and perceive differences between objects, subjects, concepts and patterns, or possess exceptional development of the senses. Used in this way to identify exceptional discernment since the 17th century, the term began to be used as an expression of derogatory racial prejudice in the 1830s from Thomas D. Rice's performances as "Jim Crow".

Since the American Civil War the term 'discrimination' generally evolved in American English usage as an understanding of prejudicial treatment of an individual based solely on their race, later generalized as membership in a certain socially undesirable

group or social category. Discernment has remained in British English as a term denoting elite status in perception and insight, often attributed to success in investment finance, or anyone with admirable choice in style, often high society leaders.

Discriminatory laws such as redlining exist in many countries. In some places, controversial attempts such as racial quotas have been used to redress negative effects of discrimination.)This prohibition is broad in some ways, and narrow in others. It is broad in that it prohibits discrimination under a potentially unlimited number of grounds. While the article specifically prohibits discrimination based on "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status", the last of these allows the court to extend to Article 14 protection to other grounds not specifically mentioned such as has been done regarding discrimination based on a person's sexual orientation.

At the same time the article's protection is limited in that it only prohibits discrimination with respect to rights under the Convention. Thus, an applicant must prove discrimination in the enjoyment of a specific right that is guaranteed elsewhere in the Convention (*e.g.* discrimination based on sex—Article 14—in the enjoyment of the right to freedom of expression—Article 10).

Protocol 12 extends this prohibition to cover discrimination in any legal right, even when that legal right is not protected under the Convention, so long as it is provided for in national law. Article 15—derogations.

Article 15 allows contracting states to derogate Derogation is the partial revocation of a law, as opposed to abrogation or the total abolition of a law. The term is used in both civil law and canon law. It is sometimes used, loosely, to mean abrogation, as in the legal maxim: Lex posterior derogat priori, *i.e.* a subsequent law imports the abolition of a previous one. Derogation differs from dispensation in that it applies to the law, where dispensations applies to specific people affected by the law.

In terms of European Union legislation, a derogation can also imply that a member state delays the implementation of an element of an EU Regulation (etc) into their legal system over a

given timescale, such as five years; or that a member state has opted not to enforce a specific provision in a treaty due to internal circumstances (typically a state of emergency.)from certain rights guaranteed by the Convention in time of "war or other public emergency threatening the life of the nation".

Permissible derogations under article 15 must meet three substantive conditions:

1. There must be a public emergency threatening the life of the nation;
2. Any measures taken in response must be "strictly required by the exigencies of the situation";
3. The measures taken in response to it, must be in compliance with a states other obligations under international law.

In addition to these substantive requirements the derogation must be procedurally sound. There must be some formal announcement of the derogation and notice of the derogation, any measures adopted under it, and the ending of the derogation must be communicated to the Secretary-General of the Council of Europe The Court is quite permissive in accepting a state's derogations from the Convention but applies a higher degree of scrutiny in deciding whether measures taken by states under a derogation are, in the words of Article 15, "strictly required by the exigencies of the situation".

Thus in A v United Kingdom, the Court dismissed a claim that a derogation lodged by the British government in response to the September 11 attacks was invalid, but went on to find that measures taken by the United Kingdom under that derogation were disproportionate.

In order for a derogation itself to be valid, the emergency giving rise to it must be:

- Actual or imminent, although states do not have to wait for disasters to strike before taking preventive measures,
- Involve the whole nation, although this does exclude emergencies which are confined to regions;
- Threaten the continuance of the organized life of the community;
- Exceptional such that measures and restriction permitted

by the Convention would be "plainly inadequate" to deal with the emergency.

Article 16–Aliens

Article 16 allows states to restrict the political activity of foreigners. The Court has ruled that European Union member states cannot consider the nationals of other member states to be aliens.

Article 17—Abuse of Rights

Article 17 provides that no one may use the rights guaranteed by the Convention to seek the abolition or limitation of rights guaranteed in the Convention. This addresses instances where states seek to restrict a human right in the name of another human right, or where individuals rely on a human right to undermine other human rights (for example where an individual issues a death threat).

Article 18—Permitted Restrictions

Article 18 provides that any limitations on the rights provided for in the Convention may be used only for the purpose for which they are provided. For example, Article 5, which guarantees the right to personal freedom, may be explicitly limited in order to bring a suspect before a judge. To use pre-trial detention as a means of intimidation of a person under a false pretext is therefore a limitation of right (to freedom) which does not serve an explicitly provided purpose (to be brought before a judge), and is therefore contrary to Article 18.

CONVENTION PROTOCOLS

As of January 2010, fifteen protocols to the Convention have been opened for signature. These can be divided into two main groups: those changing the machinery of the convention, and those adding additional rights to those protected by the convention. The former require unanimous ratification before coming into force, while the latter are optional protocols which only come into force between ratifying member states (normally after a small threshold of states has been reached).

PROTOCOL 1

This Protocol contains three different rights with the original signature states could not agree to place in the Convention itself. Monaco and Switzerland have signed but never ratified Protocol 1.

Article 1–Property

Article 1 provides for the right to the peaceful enjoyment of one's possessions. The right to property, also known as the right to protection of property, purports to be a human right and makes claim for the entitlement of private property. The right to property is not absolute and states have a wide degree of discretion to limit the rights.

The right to property is enshrined in Article 17 of the Universal Declaration of Human Rights but is not recognised in the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights. The right to protection of property is enshrined in the regional human rights instruments of Europe, Africa and the Americas.

Article 2–Education

Article 2 provides for the right not to be denied an education and the right for parents to have their children educated in accordance with their religious and other views. It does not however guarantee any particular level of education of any particular quality.

Although phrased in the Protocol as a negative right, in Sahin v. Turkey the Court ruled that:

- "It would be hard to imagine that institutions of higher education existing at a given time do not come within the scope of the first sentence of Article 2 of Protocol No 1. Although that Article does not impose a duty on the Contracting States to set up institutions of higher education, any State doing so will be under an obligation to afford an effective right of access to them. In a democratic society, the right to education, which is indispensable to the furtherance of human rights, plays such a fundamental role that a restrictive interpretation of the first sentence of Article 2 of Protocol No. 1 would

not be consistent with the aim or purpose of that provision."

Article 3–Elections

Article 3 provides for the right to regular, free and fair elections.

Protocol 4—Civil Imprisonment, Free Movement, Expulsion

Article 1 prohibits the imprisonment of people for breach of a contract. Article 2 provides for a right to freely move within a country once lawfully there and for a right to leave any country. Article 3 prohibits the expulsion of nationals and provides for the right of an individual to enter a country of his or her nationality. Article 4 prohibits the collective expulsion of foreigners. Spain, Turkey and the United Kingdom have signed but never ratified Protocol 4. Andorra, Greece and Switzerland have neither signed nor ratified this protocol.

Protocol 6—Restriction of Death Penalty

Requires parties to restrict the application of the death penalty Capital punishment, the death penalty, or execution is the sentence of death upon a person by judicial process as a punishment for an offence. Crimes that can result in a death penalty are known as capital crimes or capital offences. The term capital originates from Latin capitalis, literally "regarding the head" (Latin caput). Hence, a capital crime was originally one punished by the severing of the head from the body.

Capital punishment has in the past been practiced in virtually every society, although currently only 58 nations actively practice it, with 95 countries having abolished it (the remainder having not used it for 10 years or allowing it only in exceptional circumstances such as wartime). It is a matter of active controversy in various countries and states, and positions can vary within a single political ideology or cultural region.

In the European Union member states, Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment. As of 2010 Amnesty International

considered most countries abolitionist. The UN General Assembly has adopted, in 2007 and 2008, non-binding resolutions calling for a global moratorium on executions, with a view to eventual abolition.

Although many nations have abolished capital punishment, over 60% of the world's population live in countries where executions take place, inasmuch as the People's Republic of China, India, United States and Indonesia, the four most populous countries in the world, continue to apply the death penalty (in India it is used only rarely).

Each of these four nations voted against the General Assembly resolutions) to times of war or "imminent threat of war". Every Council of Europe member state has signed and ratified Protocol 6, except Russia who has signed but not ratified.

Protocol 7—Crime and Family

- Article 1 provides for a right to fair procedures for lawfully resident foreigners facing expulsion. Article 2 provides for the right to appeal In law, an appeal is a process for requesting a formal change to an official decision.

The specific procedures for appealing, including even whether there is a right of appeal from a particular type of decision, can vary greatly from country to country. Even within a jurisdiction, the nature of an appeal can vary greatly depending on the type of case. An appellate court is a court that hears cases on appeal from another court.

Depending on the particular legal rules that apply to each circumstance, a party to a court case who is unhappy with the result might be able to challenge that result in an appellate court on specific grounds.

These grounds typically could include errors of law, fact, or procedure (in the United States, due process). In different jurisdictions, appellate courts are also called appeals courts, courts of appeals, superior courts, or supreme courts.

In criminal Matters:

- Article 3 provides for compensation for the victims of miscarriages of justice.

- Article 4 prohibits the re-trial of anyone who has already been finally acquitted or convicted of a particular offence (Double jeopardy).
- Article 5 provides for equality between spouses.

Despite having signed the protocol more than twenty years ago, Belgium, Germany, the Netherlands, Spain and Turkey have never ratified it. The United Kingdom has neither signed nor ratified the protocol.

Protocol 12–Discrimination

Applies the current expansive and indefinite grounds of prohibited discrimination in Article 14 to the exercise of any legal right and to the actions (including the obligations) of public authorities.

The Protocol entered into force on 1 April 2005 and has (As of July 2009) been ratified by 17 member states. Several member states—namely Bulgaria, Denmark, France, Lithuania, Malta, Monaco, Poland, Sweden, Switzerland and the United Kingdom—have not signed the protocol.

The United Kingdom Government has declined to sign Protocol 12 on the basis that they believe the wording of protocol is too wide and would result in a flood of new cases testing the extent of the new provision. They believe that the phrase "rights set forth by law" might include international conventions to which the UK is not a party, and would result in incorporation of these instruments by stealth.

It has been suggested that the protocol is therefore in a kind of catch-22, since the UK will decline to either sign or ratify the protocol until the European Court of Human Rights has addressed the meaning of the provision, while the court is hindered in doing so by the lack of applications to the court concerning the protocol caused by the decisions of Europe's most populous states—including the UK—not to ratify the protocol.

The UK Government, nevertheless, "agrees in principle that the ECHR should contain a provision against discrimination that is free-standing and not parasitic on the other Convention rights". The first judgment finding a violation of Protocol No. 12 was delivered in 2009—Sejdiæ and Finci v. Bosnia and Herzegovina.

Protocol 13—Complete Abolition of Death Penalty

Provides for the total abolition of the death penalty.

PROCEDURAL AND INSTITUTIONAL PROTOCOLS

The Convention's provisions affecting institutional and procedural matters has been altered several times by mean of protocols. These amendments have, with of the exception of Protocol 2, amended the text of the convention. Protocol 2 did not amend the text of the convention as such, but stipulated that it was to be treated as an integral part of the text. All of these protocols have required the unanimous ratification of all the member states of the Council of Europe to enter into force.

Protocol 11

Protocols 2, 3, 5, 8, 9 and 10 have now been superseded by Protocol 11 which entered into force on 1 November 1998.
It established a fundamental change in the machinery of the convention. It abolished the Commission, allowing individuals to apply directly to the Court, which was given compulsory jurisdiction and altered the latter's structure. Previously states could ratify the Convention without accepting the jurisdiction of the Court of Human Rights. The protocol also abolished the judicial functions of the Committee of Ministers.

Protocol 14

Protocol 14 follows on from Protocol 11 in proposing to further improving the efficiency of the Court. It seeks to "filter" out cases that have less chance of succeeding along with those that are broadly similar to cases brought previously against the same member state. Furthermore a case will not be considered admissible where an applicant has not suffered a "significant disadvantage". This latter ground can only be used when an examination of the application on the merits is not considered necessary and where the subject-matter of the application had already been considered by a national court.

A new mechanism was introduced by Protocol 14 to assist enforcement of judgments by the Committee of Ministers. The Committee can ask the Court for an interpretation of a judgment

and can even bring a member state before the Court for non-compliance of a previous judgment against that state. Protocol 14 also allows for European Union accession to the Convention. The protocol has been ratified by every Council of Europe member state, Russia being last in February 2010. It entered into force on 1 June 2010.

A provisional Protocol 14bis had been opened for signature in 2009.Pending the ratification of Protocol 14 itself, 14bis was devised to allow the Court to implement revised procedures in respect of the states which have ratified it. It allowed single judges to reject manifestly inadmissible applications made against the states who have ratified the protocol. It also extended the competence of three-judge chambers to declare applications made against those states admissible and to decide on their merits where there already is a well-established case law of the Court. Now that all Council of Europe member states have ratified Protocol 14, Protocol 14bis has lost it raison d'être and according to its own terms ceased to have any effect when Protocol 14 entered into force on 1 June 2010.

7

The Office of the High Commissioner for Human Rights (OHCHR) and Partners

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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:

1. To enhance the effectiveness of the United Nations human rights machinery;
2. To increase United Nations system-wide implementation and coordination of human rights;
3. To build national, regional and international capacity to promote and protect human rights;
4. 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.

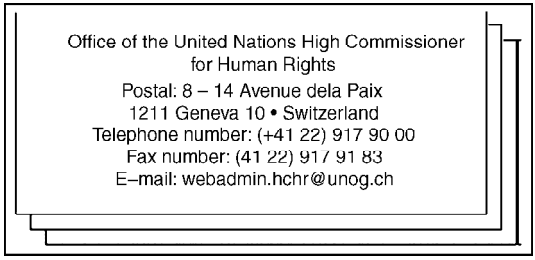
THE HIGH COMMISSIONER

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.

The High Commissioner's Functions

- 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 IN GENEVA

OHCHR has its headquarters in Geneva. The Front Office and three major divisions or branches are responsible for the functioning of the Office.

Front 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.

Field Presence

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.

8

Non-Governmental Organizations and HR

INTRODUCTION

A non-governmental organization (NGO) is a legally constituted organization created by natural Variously, in jurisprudence, a natural person is a human being, as opposed to an artificial, legal or juristic person, *i.e.*, an organization that the law treats for some purposes as if it were a person distinct from its members or owner. Sometimes the legal situation limits the term by limits on age, psychiatric, medical, national, sex, sexual orientation, criminal record, official paperwork, and computer records (which may or may not be accurate).

For example, such legal provisions as Amendment XIX to the United States Constitution, which states a person can not be denied the right to vote based on gender, or Section 15 of the Canadian Charter of Rights and Freedoms, which guarantees equality rights, apply to natural persons only. In many cases fundamental human rights are implicitly granted only to natural persons; for example a corporation cannot hold public office, but it can file a lawsuit.) or legal persons(Legal personality (also artificial personality, juridical personalty, and juristic personality) is the characteristic of a non-human entity regarded by law to have the status of a person.

A legal person (Latin: persona ficta), (also artificial person, juridical person, juristic person, and body corporate, also commonly called a vehicle) has a legal name and has rights, protections, privileges, responsibilities, and liabilities under law,

just as natural persons (humans) do. The concept of a legal person is a fundamental legal fiction. It is pertinent to the philosophy of law, as is essential to laws affecting a corporation (corporations law) (the law of business associations).

Legal personality allows one or more natural persons to act as a single entity (a composite person) for legal purposes. In many jurisdictions, legal personality allows such composite to be considered under law separately from its individual members or shareholders. They may sue and be sued, enter into contracts, incur debt, and have ownership over property. Entities with legal personality may also be subject to certain legal obligations, such as the payment of tax. An entity with legal personality may shield its shareholders from personal liability.

The concept of legal personality is not absolute. "Piercing the corporate veil" refers to looking at individual human agents involved in a corporate action or decision; this may result in a legal decision in which the rights or duties of a corporation are treated as the rights or liabilities of that corporation's shareholders or directors. Generally, legal persons do not have all the same rights as natural persons—for example, human rights or civil rights (including the right to freedom of speech, although the United States has become an exception in this regard).

The concept of a legal person is now central to Western law in both common law and civil law countries, but it is also found in virtually every legal system) that operates independently from any government. The term is usually used by governments to refer to entities that have no government status. In the cases in which NGOs are funded totally or partially by governments, the NGO maintains its non-governmental status by excluding government representatives from membership in the organization.

The term is usually applied only to organizations that pursue some wider social A society or a human society is:

- A group of people related to each other through persistent relations such as social status, roles and social networks.
- A large social grouping that shares the same geographical territory, subject to the same political authority and dominant cultural expectations.

The term society came from the Latin word societas, which in turn was derived from the noun socius ("comrade, friend, ally"; adjectival form socialis) thus used to describe a bond or interaction among parties that are friendly, or at least civil. Human societies are characterized by patterns of relationships (social relations) between individuals sharing a distinctive culture and institutions; a given society may be described as the sum total of such relationships among its constituent members. Without an article, the term refers either to the entirety of humanity or a contextually specific subset of people. In social sciences, a society invariably entails social stratification and/or dominance hierarchy. Used in the sense of an association, a society is a body of individuals outlined by the bounds of functional interdependence, possibly comprising characteristics such as national or cultural identity, social solidarity, language or hierarchical organization.

Like other groupings, a society allows its members to achieve needs or wishes they could not fulfill alone; the social fact can be identified, understood or specified within a circumstance that certain resources, objectives, requirements or results, are needed and utilized in an individual manner and for individual ends, although they can't be achieved, gotten or fulfilled in an individual manner as well, but, on the contrary, they can be gotten only in a collective, collaborative manner; namely, team work becomes the valid functional means, to individual ends which an individual would need to have but isn't able to get.

More broadly, a society is an economic, social or industrial infrastructure, made up of a varied collection of individuals.

Members of a society may be from different ethnic groups. A society may be a particular ethnic group, such as the Saxons; a nation state, such as Bhutan; a broader cultural group, such as a Western society.

The word society may also refer to an organized voluntary association of people for religious, benevolent, cultural, scientific, political, patriotic, or other purposes. A "society" may even, though more by means of metaphor, refer to a social organism such as an ant colony or any cooperative aggregate such as for example in some formulations of artificial intelligence.) aim that has political (Politics is a process by which groups of people make collective decisions. The term is generally applied to the art or science of running governmental or state affairs. It also refers to behaviour within civil governments. However, politics have been observed in other group interactions, including corporate, academic, and religious institutions. It consists of "social relations involving authority or power" and refers to the regulation of public affairs within a political unit, and to the methods and tactics used to formulate and apply policy) aspects, but that are not overtly political organizations such as political parties.

Unlike the term "intergovernmental organization"An intergovernmental organization, sometimes rendered as an international governmental organization and both abbreviated as IGO, is an organization composed primarily of sovereign states (referred to as member states), or of other intergovernmental organizations.

Intergovernmental organizations are often called international organizations, although that term may also include international nongovernmental organization such as international non-profit organizations (NGOs) or multinational corporations.

Intergovernmental organizations are an important aspect of public international law. IGOs are established by treaty that acts as a charter creating the group. Treaties are formed when lawful representatives (governments) of several states go through a ratification process, providing the IGO with an international legal personality. Intergovernmental organizations in a legal sense should be distinguished from simple groupings or coalitions of states, such as the G8 or the Quartet. Such groups or associations

have not been founded by a constituent document and exist only as task groups. Intergovernmental organizations must also be distinguished from treaties.

Many treaties (such as the North American Free Trade Agreement, or the General Agreement on Tariffs and Trade before the establishment of the World Trade Organization) do not establish an organization and instead rely purely on the parties for their administration becoming legally recognized as an ad hoc commission. Other treaties have established an administrative apparatus which was not deemed to have be granted international legal personality.), the term "non-governmental organization" has no generally agreed legal definition. In many jurisdictions, these types of organization are called "civil society organizations" or referred to by other names.

The number of internationally operating NGOs(The World Bank defines a non-governmental organization (NGO) as "private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development" An international non-governmental organization (INGO) has the same mission as a non-governmental organization (NGO), but it is international in scope and has outposts around the world to deal with specific issues in many countries.

Both terms, NGO and INGO, should be differentiated from intergovernmental organizations (IGOs), which describes groups such as the United Nations or the International Labour Organization. An INGO may be founded by private philanthropy, such as the Carnegie, Rockefeller, Gates and Ford Foundations, or as an adjunct to existing international organizations, such as the Catholic or Lutheran churches. A surge in the founding of development INGOs occurred during World War II, some of which would later become the large development INGOs like Oxfam, Catholic Relief Services, CARE International, and Lutheran World Relief.

International Non-governmental Organizations can further be defined by their primary purpose. Some INGOs are operational, meaning that their primary purpose is to foster the community based organizations within each country via different projects and

operations. Some INGOs are advocacy-based, meaning that their primary purpose is to influence the policy-making of different countries' governments regarding certain issues or promote the awareness of a certain issue.

Many of the large INGOs have components of both operational projects and advocacy initiatives working together within individual countries is estimated at 40,000. National numbers are even higher: Russia has 277,000 NGOs; India is estimated to have around 3.3 million NGOs in year 2009 that is one NGO for less than 400 Indians, and many times the number of primary schools and primary health centres in India.

TERMINOLOGY

NGOs are defined by the World Bank The World Bank is an international financial institution that provides loans to developing countries for capital programmes. The World Bank proclaims a goal of reducing poverty. By law, all of its decisions must be guided by a commitment to promote foreign investment, international trade and facilitate capital investment.

The World Bank differs from the World Bank Group, in that the World Bank comprises only two institutions: the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA), whereas the latter incorporates these two in addition to three more: International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA), and International Centre for Settlement of Investment Disputes (ICSID).) as "private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development".

NPOS AND NGOS

Common usage varies between countries—for example NGO is commonly used for domestic organizations in Australia that would be referred to as non-profit organizations in the United States. Such organizations that operate on the international level are fairly consistently referred to as "non-governmental organizations", in the United States and elsewhere. There is a

growing movement within the non-profit organization/non-government sector to define itself in a more constructive, accurate way.

The "non-profit" designation is seen to be particularly dysfunctional for at least three reasons:

1. It says nothing about the purpose of the organization, only what it is not;
2. It focuses the mind on "profit" as being the opposite of the organization's purpose;
3. It implies that the organization has few financial resources and may run out of money before completing its mission.

Instead of being defined by "non-" words, organizations are suggesting new terminology to describe the sector. The term "social benefit organization" (SBO) is being adopted by some organizations. This defines them in terms of their positive mission. The term "civil society organization"(Civil society is composed of the totality of voluntary social relationships, civic and social organizations, and institutions that form the basis of a functioning society, as distinct from the force-backed structures of a state (regardless of that state's political system) and the commercial institutions of the market. Together, state, market and civil society constitute the entirety of a society, and the relations between these three components determine the character of a society and its structure.) (CSO) has also been used by a growing number of organizations, such as the Center for the Study of Global Governance.

The term "citizen sector organization" (CSO) has also been advocated to describe the sector—as one of citizens, for citizens. These labels, SBO and CSO, position the sector as its own entity, without relying on language used for the government or business sectors. However, some have argued that CSO is not particularly helpful, given that most NGOs are in fact funded by governments and/or profit-driven businesses and that some NGOs are clearly hostile to independently organized people's organizations. The term "social benefit organization" seems to avoid that problem, since it does not assume any particular structure, but rather focuses on the organization's mission.

HISTORY

International non-governmental organizations have a history dating back to at least 1839. It has been estimated that by 1914 there were 1083 NGOs. International NGOs were important in the anti-slavery movement(Abolitionism is a movement to end slavery. In western Europe and the Americas abolitionism was a movement to end the slave trade and set slaves free. At the behest of Dominican priest Bartolome de las Casas who was shocked at the treatment of natives in the New World, Spain enacted the first European law abolishing colonial slavery in 1542, although it was not to last (to 1545). In the 17th century, Quaker and evangelical religious groups condemned it as un-Christian; in the 18th century, rationalist thinkers of the Enlightenment criticized it for violating the rights of man.

Though anti-slavery sentiments were widespread by the late 18th century, they had little immediate effect on the centers of slavery: the West Indies, South America, and the Southern United States. The Somersett's case in 1772 that emancipated slaves in England, helped launch the movement to abolish slavery. Pennsylvania passed An Act for the Gradual Abolition of Slavery in 1780. Britain banned the importation of African slaves in its colonies in 1807, and the United States followed in 1808. Britain abolished slavery throughout the British Empire with the Slavery Abolition Act 1833, the French colonies abolished it 15 years later, while slavery in the United States was abolished in 1865 with the 13th Amendment to the U.S. Constitution.

Abolitionism in the West was preceded by the New Laws of the Indies in 1542, in which Emperor Charles V declared free all Native American slaves, abolishing slavery of these races, and declaring them citizens of the Empire with full rights. The move was inspired by writings of the Spanish monk Bartolome de las Casas and the School of Salamanca. Spanish settlers replaced the Native American slaves with enslaved laborers brought from Africa and thus did not abolish slavery altogether. In Eastern Europe, abolitionism has played out in movements to end the enslavement of the Roma in Wallachia and Moldavia and to emancipate the serfs in Russia (Emancipation reform of 1861). In East Asia, abolitionism was evidenced in, for instance, the writings

of Yu Hyongwon, a 17th-century Korean Confucian scholar who wrote extensively against slave-holding in 17th-century Korea.

Today, child and adult slavery and forced labour are illegal in most countries, as well as being against international law.) and the movement for women's suffrage Women's suffrage or woman suffrage is the right of women to vote and to run for office. The expression is also used for the economic and political reform movement aimed at extending these rights to women and without any restrictions or qualifications such as property ownership, payment of tax, or marital status.

The movement's modern origins are attributed to 18th century France. In 1893, the British colony of New Zealand became the first self-governing nation to extend the right to vote to all adult women, and the women of the nearby colony of South Australia achieved the same right in 1895 but became the first to obtain also the right to stand (run) for Parliament (women did not win the right to run for the New Zealand legislature until 1919). The first European country to introduce women's suffrage was the Grand Principality of Finland and that country, then a part of the Russian Empire with autonomous powers, produced the world's first female members of parliament as a result of the 1907 parliamentary elections. Women's suffrage has generally been recognized after political campaigns to obtain it were waged. In many countries it was granted before universal suffrage.

Women's suffrage is explicitly stated as a right under the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations in 1979.), and reached a peak at the time of the World Disarmament Conference The Conference for the Reduction and Limitation of Armaments of 1932-34 (sometimes World Disarmament Conference or Geneva Disarmament Conference) was an effort by member states of the League of Nations, together with the U.S. and the Soviet Union, to actualize the ideology of disarmament. It took place in the Swiss city of Geneva, ostensibly between 1932 and 1934, but more correctly until May 1937.

The first effort at international arms limitation was made at the Hague Conferences of 1899 and 1907, which had failed in their primary objective. Although many contemporary commentators

(and Article 231 of the Treaty of Versailles) had blamed the outbreak of the First World War on the "war guilt" of Germany, historians writing in the 1930s began to emphasize the fast-paced arms race preceding 1914. Further, all the major powers except the U.S. had committed themselves to disarmament in both the Treaty of Versailles and the Covenant of the League of Nations. A substantial international non-governmental campaign to promote disarmament also developed in the 1920s and early 1930s.

A preparatory commission was initiated by the League in 1925; by 1931, there was sufficient support to hold a conference, which duly began under the chairmanship of former British Foreign Secretary Arthur Henderson. The motivation behind the talks can be summed up by an extract from the message President Franklin D. Roosevelt sent to the conference: "If all nations will agree wholly to eliminate from possession and use the weapons which make possible a successful attack, defences automatically will become impregnable and the frontiers and independence of every nation will become secure." The talks were beset by a number of difficulties from the outset. Among these were disagreements over what constituted "offensive" and "defensive" weapons, and the polarization of France and Germany. The increasingly military-minded German governments could see no reason why their country could not enjoy the same level of armaments as other powers, especially France. The French, for their part, were equally insistent that German military subjugation was their only insurance from future conflict as serious as they had endured in the First World War. As for the British and US governments, they were unprepared to offer the additional security commitments that France requested in exchange for limitation of French armaments.

The talks broke down when Hitler withdrew Germany from both the Conference and the League of Nations in October 1933. The 1930s had proved far too self-interested an international period to accommodate multilateral action in favour of pacifism.). However, the phrase "non-governmental organization" only came into popular use with the establishment of the United Nations Organization in 1945 with provisions in Article 71 of Chapter 10 of the United Nations Charter for a consultative role for

organizations which are neither governments nor member states—Consultative Status Consultative Status is a phrase whose use can be traced to the founding of the United Nations and is used within the UN community to refer to "Non-governmental organizations (NGOs) in Consultative Status with the United Nations Economic and Social Council."

Also some international organizations could grant Consultative Status to NGOs (for example—Council of Europe; the rules for Consultative Status for INGOs are appended to the resolution (93)38 "On relations between the Council of Europe and international non-governmental organisations", adopted by the Committee of Ministers of the Council of Europe on 18 October 1993 at the 500th meeting of the Ministers' Deputies). Organization for Security and Co-operation in Europe (OSCE) could grand Consultative Status in the form of "Researcher-in-residence programme" (run by the Prague Office of the OSCE Secretariat): accredited representatives of national and international NGOs are granted access to all records and to numerous topical compilations related to OSCE field activities.) The definition of "international NGO" (INGO) is first given in resolution 288 (X) of ECOSOC on February 27, 1950: it is defined as "any international organization that is not founded by an international treaty".

The vital role of NGOs and other "major groups" in sustainable development Sustainable development (SD) is a pattern of resource use, that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come (sometimes taught as ELF-Environment, Local people, Future). The term was used by the Brundtland Commission which coined what has become the most often-quoted definition of sustainable development as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs."

Sustainable development ties together concern for the carrying capacity of natural systems with the social challenges facing humanity. As early as the 1970s "sustainability" was employed to describe an economy "in equilibrium with basic ecological support systems." Ecologists have pointed to The Limits

to Growth, and presented the alternative of a "steady state economy" in order to address environmental concerns. The field of sustainable development can be conceptually broken into three constituent parts: environmental sustainability, economic sustainability and sociopolitical sustainability.) was recognized in Agenda 21, leading to intense arrangements for a consultative relationship between the United Nations and non-governmental organizations.

Rapid development of the non-governmental sector occurred in western countries as a result of the processes of restructuring of the welfare state. A welfare state is a concept of government where the state plays the primary role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. The general term may cover a variety of forms of economic and social organization. Modern welfare states include countries such as Norway and Denmark which employ a system known as the Nordic model. The welfare state involves a direct transfer of funds from the state, to the services provided (*i.e.* healthcare, education) as well as directly to individuals ("benefits"). The welfare state is funded thru redistributionist taxation and has been referred to as a type of "mixed economy".). Further globalization of that process occurred after the fall of the communist system and was an important part of the Washington consensus. The term Washington Consensus most commonly refers to an orientation towards neoliberal policies that from about 1980—2008 was influential among mainstream economists, politicians, journalists and global institutions like the International Monetary Fund and World Bank.

The term can refer to market-friendly policies that were generally advised and implemented both for advanced and emerging economies. It is sometimes used in a narrower sense to refer to economic reforms that were prescribed just for developing countries, which included advice to reduce government deficits, to deregulate international trade and cross-border investment, and to pursue export-led growth. The term Washington Consensus is

also sometimes used by economic historians to label an era, which depending on the author can range from at most 1979—2009 to at least 1989—2000.

The term was initially coined in 1989 by John Williamson to describe a set of ten specific economic policy prescriptions that he considered should constitute the "standard" reform package promoted for crisis-wracked developing countries by Washington, D.C.-based institutions such as the IMF, World Bank, and the US Treasury Department. The Washington Consensus was most influential during the 1990s. In the first decade of the 21st century it became increasingly controversial. In 2008 and 2009, following the outbreak of the financial crisis, a chorus of voices began to proclaim the Washington Consensus had ended. In November 2010 the G20 group of governments agreed on a new Seoul Development Consensus. Globalization during the 20th century gave rise to the importance of NGOs.

Many problems could not be solved within a nation. International treaties and international organizations such as the World Trade Organization The World Trade Organization (WTO) is an organization that intends to supervise and liberalize international trade. The organization officially commenced on January 1, 1995 under the Marrakech Agreement, replacing the General Agreement on Tariffs and Trade (GATT), which commenced in 1948. The organization deals with regulation of trade between participating countries; it provides a framework for negotiating and formalizing trade agreements, and a dispute resolution process aimed at enforcing participants' adherence to WTO agreements which are signed by representatives of member governments and ratified by their parliaments. Most of the issues that the WTO focuses on derive from previous trade negotiations, especially from the Uruguay Round (1986–1994).

The organization is currently endeavoring to persist with a trade negotiation called the Doha Development Agenda (or Doha Round), which was launched in 2001 to enhance equitable participation of poorer countries which represent a majority of the world's population. However, the negotiation has been dogged by "disagreement between exporters of agricultural bulk commodities and countries with large numbers of subsistence

farmers on the precise terms of a 'special safeguard measure' to protect farmers from surges in imports. At this time, the future of the Doha Round is uncertain."

The WTO has 153 members, representing more than 97% of total world trade and 30 observers, most seeking membership. The WTO is governed by a ministerial conference, meeting every two years; a general council, which implements the conference's policy decisions and is responsible for day-to-day administration; and a director-general, who is appointed by the ministerial conference. The WTO's headquarters is at the Centre William Rappard, Geneva, Switzerland were perceived as being too centred on the interests of capitalist enterprises.

Some argued that in an attempt to counterbalance this trend, NGOs have developed to emphasize humanitarian issues, developmental aid Development aid or development cooperation (also development assistance, technical assistance, international aid, overseas aid, Official Development Assistance (ODA) or foreign aid) is aid given by governments and other agencies to support the economic, environmental, social and political development of developing countries. It is distinguished from humanitarian aid by focusing on alleviating poverty in the long term, rather than a short term response.

The term development cooperation, which is used, for example, by the World Health Organisation (WHO) is used to express the idea that a partnership should exist between donor and recipient, rather than the traditional situation in which the relationship was dominated by the wealth and specialised knowledge of one side. Most development aid comes from the Western industrialised countries but some poorer countries also contribute aid. Aid may be bilateral: given from one country directly to another; or it may be multilateral: given by the donor country to an international organisation such as the World Bank or the United Nations Agencies (UNDP, UNICEF, UNAIDS, etc.) which then distributes it among the developing countries. The proportion is currently about 70% bilateral 30% multilateral.

About 80-85% of developmental aid comes from government sources as official development assistance (ODA). The remaining 15-20% comes from private organisations such as "Non-

governmental organisations" (NGOs), foundations and other development charities (*e.g.* Oxfam). In addition, remittances received from migrants working or living in diaspora form a significant amount of international transfer.

Some governments also include military assistance in the notion "foreign aid", although many NGOs tend to disapprove of this. Private consulting firms, such as PricewaterhouseCoopers and Deloitte, are increasingly being contracted by donor agencies to manage and implement elements of their aid programme, due to their perceived ability to perform higher quality programme management and delivery.

Official Development Assistance is a measure of government-contributed aid, compiled by the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD) since 1969. The DAC consists of 22 of the largest aid-donating countries and sustainable development. A prominent example of this is the World Social Forum, which is a rival convention to the World Economic Forum The World Economic Forum (WEF) is a Swiss non-profit foundation, based in Cologny, Geneva, best known for its annual meeting in Davos, a mountain resort in Graubünden, in the eastern Alps region of Switzerland.

The meeting brings together top business leaders, international political leaders, selected intellectuals and journalists to discuss the most pressing issues facing the world, including health and the environment. Beside meetings, the foundation produces a series of research reports and engages its members in sector specific initiatives.

It also organizes the "Annual Meeting of the New Champions" in China and a series of regional meetings throughout the year. In 2008, those regional meetings included meetings on Europe and Central Asia, East Asia, the Russia CEO Roundtable, Africa, the Middle East, and the World Economic Forum on Latin America. In 2008, the foundation also launched the "Summit on the Global Agenda" in Dubai.

The 2011 annual meeting in Davos has been held from 26 January to 30 January held annually in January in Davos, Switzerland. The fifth World Social Forum The World Social

Forum (WSF) is an annual meeting of civil society organizations, first held in Brazil, which offers a self-conscious effort to develop an alternative future through the championing of counter-hegemonic globalization. Some consider the World Social Forum to be a physical manifestation of global civil society, as it brings together non governmental organizations, advocacy campaigns as well as formal and informal social movements seeking international solidarity.

The World Social Forum prefers to define itself as "an opened space–plural, diverse, non-governmental and non-partisan–that stimulates the decentralized debate, reflection, proposals building, experiences exchange and alliances among movements and organizations engaged in concrete actions towards a more solidarity, democratic and fair world a permanent space and process to build alternatives to neoliberalism." It is held by members of the alter-globalization movement also referred to as the global justice movement) who come together to coordinate global campaigns, share and refine organizing strategies, and inform each other about movements from around the world and their particular issues.

The World Social Forum is explicit about not being a representative of all of those who attend and thus does not publish any formal statements on behalf of participants. It tends to meet in January at the same time as its "great capitalist rival", the World Economic Forum's Annual Meeting in Davos, Switzerland. This date is consciously picked to promote their alternative answers to world economic problems in opposition to the World Economic Forum in Porto Alegre, Brazil, in January 2005 was attended by representatives from more than 1,000 NGOs.

Some have argued that in forums like these, NGOs take the place of what should belong to popular movements of the poor. Others argue that NGOs are often imperialist in nature, that they sometimes operate in a racialized manner in third world The term "Third World" arose during the Cold War to define countries that remained non-aligned with either capitalism and NATO (which along with its allies represented the First World), or communism and the Soviet Union (which along with its allies represented the Second World). This definition provided a way of broadly

categorizing the nations of the Earth into three groups based on social, political, and economic divisions countries, and that they fulfill a similar function to that of the clergy during the high colonial era. The philosopher Peter Hallward argues that they are an aristocratic form of politics. Whatever the case, NGO transnational networking is now extensive.

TYPES OF NGOS

NGO type can be understood by orientation and level of co-operation.

NGO type by orientation:

- Charitable orientation;
- Service orientation;
- Participatory orientation;
- Empowering orientation;

NGO type by level of co-operation:

- Community- Based Organization;
- City Wide Organization;
- National NGOs;
- International NGOs;

Apart from "NGO", often alternative terms are used as for example: Independent sector, volunteer sector, civil society, grassroots organizations, transnational social movement organizations, private voluntary organizations, self-help organizations and non-state actors (NSA's). Non-governmental organizations are a heterogeneous group. A long list of acronyms has developed around the term "NGO".

These include:

- BINGO, short for Business-friendly International NGO or Big International NGO;
- CSO, short for civil society organization;
- *DONGO:* Donor Organized NGO;
- *ENGO:*(An ENGO is an Environmental Non-governmental organization, such as WWF, Greenpeace, Conservation International or the Environmental Investigation Agency.) short for environmental NGO, such as Greenpeace and WWF;
- GONGOs are government-operated NGOs, which may

have been set up by governments to look like NGOs in order to qualify for outside aid or promote the interests of the government in question;
- INGO stands for international NGO; Oxfam, INSPAD is an international NGO;
- QUANGOs are quasi-autonomous non-governmental organizations, such as the International Organization for Standardization (ISO). (The ISO is actually not purely an NGO, since its membership is by nation, and each nation is represented by what the ISO Council determines to be the 'most broadly representative' standardization body of a nation. That body might itself be a nongovernmental organization; for example, the United States is represented in ISO by the American National Standards Institute, which is independent of the federal government. However, other countries can be represented by national governmental agencies; this is the trend in Europe);
- *TANGO:* Short for technical assistance NGO;
- *TNGO:* Short for transnational NGO;
- *GSO:* Grassroots Support Organization;
- *MANGO:* Short for market advocacy NGO;
- *NGDO:* Non-governmental development organization.

USAID refers to NGOs as private voluntary organisations. However many scholars have argued that this definition is highly problematic as many NGOs are in fact state and corporate funded and managed projects with professional staff. NGOs exist for a variety of reasons, usually to further the political or social goals of their members or funders. Examples include improving the state of the natural environment, encouraging the observance of human rights, improving the welfare of the disadvantaged, or representing a corporate agenda. However, there are a huge number of such organizations and their goals cover a broad range of political and philosophical positions. This can also easily be applied to private schools and athletic organizations.

ACTIVITIES

There are also numerous classifications of NGOs. The

typology the World Bank uses divides them into Operational and Advocacy: Operational NGOs Operational NGOs seek to "achieve small scale change directly through projects. They mobilize financial resources, materials and volunteers to create localized programmes in the field. They hold large scale fundraising events, apply to governments and organizations for grants and contracts in order to raise money for projects.

They often operate in a hierarchical structure; with a main headquarter that is staffed by professionals who plan projects, create budgets, keep accounts, report, and communicate with operational fieldworkers who work directly on projects Operational NGOs deal with a wide range of issues, but are most often associated with the delivery of services and welfare, emergency relief and environmental issues. Operational NGOs can be further categorized, one frequently used categorization is the division into relief-oriented versus development-oriented organizations; they can also be classified according to whether they stress service delivery or participation; or whether they are religious or secular; and whether they are more public or private-oriented. Operational NGOs can be community-based, national or international. The defining activity of operational NGOs is implementing projects Campaigning NGOs Campaigning NGOs seek to "achieve large scale change promoted indirectly through influence of the political system." Campaigning NGOs need an efficient and effective group of professional members who are able to keep supporters informed, and motivated. They must plan and host demonstrations and events that will keep their cause in the media.

They must maintain a large informed network of supporters who can be mobilized for events to garner media attention and influence policy changes. The defining activity of campaigning NGOs is holding demonstrations. Campaigning NGOs often deal with issues relating to human rights, women's rights, children's rights. The primary purpose of an Advocacy NGO is to defend or promote a specific cause. As opposed to operational project management, these organizations typically try to raise awareness, acceptance and knowledge by lobbying, press work and activist events.

Operational and Campaigning NGOs It is not uncommon for NGOs to make use of both activities. Many times, operational NGOs will use campaigning techniques if they continually face the same issues in the field that could be remedied through policy changes. At the same time, Campaigning NGOs, like human rights organizations often have programmes that assist the individual victims they are trying to help through their advocacy work.

CONCERNS ABOUT NGOS

Non Governmental Organisations were intended to fill a gap in government services, but in some countries like India, NGOs are gaining a powerful stronghold in decision making. Most donors of NGOs require demonstration of a relationship with governments in the interest of sustainability. State Governments themselves are vulnerable because they lack strategic planning and vision. They are therefore sometimes tightly bound by a nexus of NGOs, political bodies, commercial organisations and major donors/funders, making decisions that have short term outputs but no long term impact. NGOs in India are largely unregulated, highly ambitious and political, and recepients of large funds, both from the government and international donors. Many NGOs often take up responsibilities that are much outside their skill ambit and the government has no access to the number of projects or amount of fund received by these NGOs. There is a pressing need to regulate this group while not curtailing their unique position of acting as a mirror/supplement to government activities.

METHODS

NGOs vary in their methods. Some act primarily as lobbyists, while others primarily conduct programmes and activities. For instance, an NGO such as Oxfam Oxfam is an international confederation of 14 organisations working in 98 countries worldwide to find lasting solutions to poverty and injustice. Oxfam works directly with communities and seeks to influence the powerful to ensure that poor people can improve their lives and livelihoods and have a say in decisions that affect them.

The Oxfam International Secretariat leads, facilitates, and supports collaboration between the Oxfam affiliates to increase

Oxfam's impact on poverty and injustice through advocacy campaigns, development programmes and emergency response. Oxfam was originally founded in Oxford in 1942 as the Oxford Committee for Famine Relief by a group of Quakers, social activists, and Oxford academics; this is now Oxfam Great Britain, still based in Oxford, UK. It was one of several local committees formed in support of the National Famine Relief Committee.

Their mission was to persuade the British government to allow food relief through the Allied blockade for the starving citizens of Axis-occupied Greece. The first overseas Oxfam was founded in Canada in 1963. The organisation changed its name to its telegraph address, OXFAM, in 1965.), concerned with poverty alleviation, might provide needy people with the equipment and skills to find food and clean drinking water, whereas an NGO like the FFDA The Forum for Fact-finding Documentation and Advocacy (FFDA) is an Indian human rights monitoring organization founded in 1995 that fights to promote and protects human rights in India by working with the victims of human rights violations and their organizations. It educates the victims and their communities, and facilitates and builds the capacity of the organizations of victims to take their own action collectively. It addresses the issues of displacement and forced eviction, violence against women and children, exploitation, torture, abuse and discrimination against Dalits (untouchable and low caste poor), and attacks on minorities and indigenous communities.

Based on the learning and work experiences, FFDA integrated democracy monitoring into its core activity as the basic path to ensure rights of above said target group; participation in decision making and asking accountability and good governance of the state in particular.

It focuses on having a right to:

- Social and political participation;
- A sustainable livelihood;
- Education, particularly access for girls and tribal children;
- Life and security;
- Identity.

FFDA investigates, reports on, and campaigns against human rights abuses. Tribal and Dalit people, especially women and children, are its priority. FFDA is led by Subash Chandra Mohapatra. Helps through investigation and documentation of human rights violations and provides legal assistance to victims of human rights abuses. Others, such as Afghanistan Information Management Services, provide specialized technical products and services to support development activities implemented on the ground by other organizations.

PUBLIC RELATIONS

Non-governmental organisations need healthy relationships with the public to meet their goals. Foundations and charities use sophisticated public relations campaigns to raise funds and employ standard lobbying techniques with governments. Interest groups may be of political importance because of their ability to influence social and political outcomes. A code of ethics was established in 2002 by The World Association of Non Governmental NGOs.

PROJECT MANAGEMENT

There is an increasing awareness that management techniques are crucial to project success in non-governmental organizations. Generally, non-governmental organizations that are private have either a community or environmental focus. They address varieties of issues such as religion, emergency aid, or humanitarian affairs. They mobilize public support and voluntary contributions for aid; they often have strong links with community groups in developing countries, and they often work in areas where government-to-government aid is not possible. NGOs are accepted as a part of the international relations landscape, and while they influence national and multilateral policy-making, increasingly they are more directly involved in local action.

STAFFING

Not all people working for non-governmental organizations are volunteers. In general terms, volunteering is the practice of people working on behalf of others or a particular cause without

payment for their time and services. Volunteering is generally considered an altruistic activity, intended to promote good or improve human quality of life, but people also volunteer for their own skill development, to meet others, to make contacts for possible employment, to have fun, and a variety of other reasons that could be considered self-serving. Volunteering takes many forms and is performed by a wide range of people. Many volunteers are specifically trained in the areas they work in, such as medicine, education, or emergency rescue. Other volunteers serve on an as-needed basis, such as in response to a natural disaster or for a beach-cleanup. In a military context, a volunteer army is an army whose soldiers chose to enter service, as opposed to having been conscripted. Such volunteers do not work for free and are given regular pay.

There is some dispute as to whether expatriates should be sent to developing countries. Frequently this type of personnel is employed to satisfy a donor who wants to see the supported project managed by someone from an industrialized country. The term developed country is used to describe countries that have a high level of development according to some criteria. Which criteria, and which countries are classified as being developed, is a contentious issue and is surrounded by fierce debate. Economic criteria have tended to dominate discussions.

One such criterion is income per capita; countries with high gross domestic product (GDP) per capita would thus be described as developed countries. Another economic criterion is industrialization; countries in which the tertiary and quaternary sectors of industry dominate would thus be described as developed. More recently another measure, the Human Development Index (HDI), which combines an economic measure, national income, with other measures, indices for life expectancy and education has become prominent.

This criterion would define developed countries as those with a very high (HDI) rating. However, many anomalies exist when determining "developed" status by whichever measure is used. Countries not fitting such definitions are classified as developing countries or undeveloped countries. However, the expertise these employees or volunteers may be counterbalanced by a number of

factors: the cost of foreigners is typically higher, they have no grass root Grassroots democracy is a tendency towards designing political processes where as much decision-making authority as practical is shifted to the organization's lowest geographic level of organization: principle of subsidiarity.

To cite a specific hypothetical example, a national grassroots organization would place as much decision-making power as possible in the hands of a local chapter instead of the head office. The principle is that for democratic power to be best exercised it must be vested in a local community instead of isolated, atomized individuals, essentially making it the opposite of national supremacy.

As such, grassroots organizations exist in contrast to so-called participatory systems, which tend to allow individuals equal access to decision-making irrespective of their standing in a local community, or which particular community they reside in. As well, grassroots systems also differ from representative systems that allow local communities or national memberships to elect representatives who then go on to make decisions. The difference between the three systems comes down to where they rest on two different axes: the rootedness in a community (*i.e.* grassroots versus national or international); and the ability of all individuals to participate in the decision-making process (*i.e.* participatory versus representative.) connections in the country they are sent to, and local expertise is often undervalued.

The NGO sector is an important employer in terms of numbers. For example, by the end of 1995, CONCERN worldwide, an international Northern NGO working against poverty, employed 174 expatriates and just over 5,000 national staff working in ten developing countries in Africa and Asia, and in Haiti.

FUNDING

Large NGOs may have annual budgets in the hundreds of millions or billions of dollars. For instance, the budget of the American Association of Retired Persons (AARP) AARP, formerly the American Association of Retired Persons, is a United States-based non-governmental organization and interest group, founded

by Dr. Ethel Percy Andrus in 1958 and based in Washington, D.C. According to its mission statement, it is "a nonprofit, nonpartisan membership organization for people age 50 and over dedicated to enhancing quality of life for all as we age," which "provides a wide range of unique benefits, special products, and services for our members."

AARP operates as a non-profit advocate for its members and as one of the most powerful lobbying groups in the United States. The vision of its charitable affiliate, the AARP Foundation, is "A country that is free of poverty where no older person feels vulnerable." AARP does not market endorsed insurance, other financial products, travel or discounts.

A separate subsidiary provides quality control over the products and services made available by AARP-endorsed providers. AARP claims over 40 million members, making it one of the largest membership organizations in the United States.) was over US$540 million in 1999. Funding such large budgets demands significant fundraising efforts on the part of most NGOs. Major sources of NGO funding are membership dues, the sale of goods and services, grants from international institutions or national governments, and private donations.

Several EU-grants provide funds accessible to NGOs. Even though the term "non-governmental organization" implies independence from governments, most NGOs depend heavily on governments for their funding. A quarter of the US$162 million income in 1998 of the famine-relief organization Famine relief is an organized effort to reduce starvation in a region in which there is famine.

A famine is a phenomenon in which a large proportion of the population of a region or country are so undernourished that death by starvation becomes increasingly common. In spite of the much greater technological and economic resources of the modern world, famine still strikes many parts of the world, mostly in the developing nations.

Famine is associated with naturally-occurring crop failure and pestilence and artificially with war and genocide. In the past few decades, a more nuanced view focused on the economic and political circumstances leading to modern famine has emerged.

Modern relief agencies categorize various gradations of famine according to a famine scale.

Many areas that suffered famines in the past have protected themselves through technological and social development. The first area in Europe to eliminate famine was the Netherlands, which saw its last peacetime famines in the early-17th century as it became a major economic power and established a complex political organization. A prominent economist on the subject, Nobel laureate Amartya Sen, has noted that no functioning democracy has ever suffered a famine, although he admits that malnutrition can occur in a democracy and he does not consider mid 19th century Ireland to be a functioning democracy.

The bulk of the world's food aid is given to people in areas where poverty is endemic; or to people who has suffered due to a natural disaster other than famine (such as the victims of the 2004 Indian Ocean Tsunami), or have lost their crops due to conflicts (such as in the Darfur region of Sudan). Only a small amount of food aid goes to people who are suffering as a direct consequence of famine.) Oxfam was donated by the British government and the EU. The Christian relief and development organization World Vision United States collected US$55 million worth of goods in 1998 from the American government.

Nobel Prize winner Medecins Sans Frontières (MSF) (known in the USA as Doctors Without Borders) gets 46% of its income from government sources. Government funding of NGOs is controversial, since, according to David Rieff, writing in The New Republic, "the whole point of humanitarian intervention was precisely that NGOs and civil society had both a right and an obligation to respond with acts of aid and solidarity to people in need or being subjected to repression or want by the forces that controlled them, whatever the governments concerned might think about the matter."

Some NGOs, such as Greenpeace Greenpeace is a non-governmental environmental organization with offices in over 40 countries and with an international coordinating body in Amsterdam, Netherlands. Greenpeace states its goal is to "ensure the ability of the Earth to nurture life in all its diversity" and focuses its work on world wide issues such as global warming,

deforestation, overfishing, commercial whaling and anti-nuclear issues. Greenpeace uses direct action, lobbying and research to achieve its goals. The global organization does not accept funding from governments, corporations or political parties, relying on more than 2.8 million individual supporters and foundation grants.

Greenpeace evolved from the peace movement and anti-nuclear protests in Vancouver, British Columbia in the early 1970s. On September 15, 1971, the newly founded Don't Make a Wave Committee sent a chartered ship, Phyllis Cormack, renamed Greenpeace for the protest, from Vancouver to oppose United States testing of nuclear devices in Amchitka, Alaska. The Don't Make a Wave Committee subsequently adopted the name Greenpeace.

In a few years Greenpeace spread to several countries and started to campaign on other environmental issues such as commercial whaling and toxic waste. In the late 1970s the different regional Greenpeace groups formed Greenpeace International to oversee the goals and operations of the regional organizations globally. Greenpeace received international attention during the 80s when the French intelligence agency bombed the Rainbow Warrior in Auckland's Waitemata Harbour, one of the most well-known vessels operated by Greenpeace, killing one. In the following years Greenpeace evolved into one of the largest environmental organizations in the world.

Greenpeace is known for its direct actions and has been described as the most visible environmental organization in the world. Greenpeace has raised environmental issues to public knowledge, influenced both the private and the public sector. Greenpeace has also been a source of controversy; its motives and methods have received criticism and the organization's direct actions have sparked legal actions against Greenpeace activists do not accept funding from governments or intergovernmental organizations.

MONITORING AND CONTROL

In a March 2000 report on United Nations Reform priorities, former U.N. Secretary General Kofi Annan wrote in favour of

international humanitarian intervention, arguing that the international community has a "right to protect" citizens of the world against ethnic cleansing, genocide, and crimes against humanity. On the heels of the report, the Canadian government launched the Responsibility to Protect R2PPDF (434 KiB) project, outlining the issue of humanitarian intervention. While the R2P doctrine has wide applications, among the more controversial has been the Canadian government's use of R2P to justify its intervention and support of the coup in Haiti.

Years after R2P, the World Federalist Movement, an organization which supports "the creation of democratic global structures accountable to the citizens of the world and call for the division of international authority among separate agencies", has launched Responsibility to Protect—Engaging Civil Society (R2PCS). A collaboration between the WFM and the Canadian government, this project aims to bring NGOs into lockstep with the principles outlined under the original R2P project.

The governments of the countries an NGO works or is registered in may require reporting or other monitoring and oversight. Funders generally require reporting and assessment, such information is not necessarily publicly available. There may also be associations and watchdog organizations that research and publish details on the actions of NGOs working in particular geographic or programme areas.

In recent years, many large corporations have increased their corporate social responsibility departments in an attempt to preempt NGO campaigns against certain corporate practices. As the logic goes, if corporations work with NGOs, NGOs will not work against corporations. In December 2007, The United States Department of Defence Assistant Secretary of Defence (Health Affairs) S. Ward Casscells established an International Health International health, also called geographic medicine or global health, is a field of health care, usually with a public health emphasis, dealing with health across regional or national boundaries. One subset of international medicine, travel medicine, prepares travellers with immunizations, prophylactic medications, preventive techniques such as bednets and residual pesticides, in-transit care, and post-travel care for exotic illnesses.

International health, however, more often refers to health personnel or organizations from one area or nation providing direct health care, or health sector development, in another area or nation. It is this sense of the term that is explained here. More recently, public health experts have become interested in global processes that impact on human health. Globalization and health, for example, illustrates the complex and changing sociological environment within which the determinants of health and disease express themselves. Division under Force Health Protection and Readiness.

Part of International Health's mission is to communicate with NGOs in areas of mutual interest. Department of Defence Directive 3000.05, in 2005, requires DoD to regard stability-enhancing activities as a mission of importance equal to warfighting. In compliance with international law, DoD has necessarily built a capacity to improve essential services in areas of conflict such as Iraq, where the customary lead agencies (State Department and USAID) find it difficult to operate. Unlike the "co-option" strategy described for corporations, the OASD(HA) recognizes the neutrality of health as an essential service. International Health cultivates collaborative relationships with NGOs, albeit at arms-length, recognizing their traditional independence, expertise and honest broker status. While the goals of DoD and NGOs may seem incongruent, the DoD's emphasis on stability and security to reduce and prevent conflict suggests, on careful analysis, important mutual interests.

LEGAL STATUS

The legal form of NGOs is diverse and depends upon homegrown variations in each country's laws and practices.

However, four main family groups of NGOs can be found worldwide:

1. Unincorporated and voluntary association A voluntary association or union (also sometimes called a voluntary organization, unincorporated association, or just an association) is a group of individuals who enter into an agreement as volunteers to form a body (or organization) to accomplish a purpose. Strictly speaking

in many jurisdictions no formalities are necessary to start an association. In some jurisdictions, there is a minimum for the number of persons starting an association. Some jurisdictions require that the association register with the police or other official body to inform the public of the association's existence. This is not necessarily a tool of political control but much more a way of protecting the economy from fraud. In many such jurisdictions, only a registered association is a juristic person whose membership is not responsible for the financial acts of the association. Any group of persons may, of course, work as an association but in such case, the persons making a transaction in the name of the association are all responsible for it.

2. Trusts, charities and foundations A foundation (also a charitable foundation) is a legal categorization of nonprofit organizations that will typically either donate funds and support to other organizations, or provide the source of funding for its own charitable purposes. This type of non-profit organization differs from a private foundation which is typically endowed by an individual or family.
3. Companies not just for profit Not Just For Profit (NJFP) is a concept that captures an expanded set of values for defining and evaluating for-profit private sector organizations, not only by their ability to generate profit as is done traditionally, but also by their determination and success in driving a benefit for people and/or the planet and operating sustainably. The concept is applicable to companies of all sizes and all levels of maturity, from a startup company to global enterprise. The NJFP concept builds on the triple bottom line (TBL) reporting used in large corporation corporate social responsibility (CSR) strategies.
4. Entities formed or registered under special NGO or nonprofit laws.

NGOs are not subjects of international law, as states are. An exception is the International Committee of the Red Cross The

International Committee of the Red Cross (ICRC) is a private humanitarian institution based in Geneva, Switzerland. States parties (signatories) to the four Geneva Conventions of 1949 and their Additional Protocols of 1977 and 2005, have given the ICRC a mandate to protect the victims of international and internal armed conflicts. Such victims include war wounded, prisoners, refugees, civilians, and other non-combatants.

The ICRC is part of the International Red Cross and Red Crescent Movement along with the International Federation and 186 National Societies.It is the oldest and most honoured organization within the Movement and one of the most widely recognized organizations in the world, having won three Nobel Peace Prizes in 1917, 1944, and 1963) which is subject to certain specific matters, mainly relating to the Geneva Convention.

The Council of Europe in Strasbourg drafted the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations in 1986, which sets a common legal basis for the existence and work of NGOs in Europe. Article 11 of the European Convention on Human Rights protects the right to freedom of association, which is also a fundamental norm for NGOs.

CRITIQUES

Stuart Becker provides the following summary of the primary critiques of NGOs: "There's a debate that, NGOs take the place of what should belong to popular movements of the poor. Others argue that NGOs are often imperialist in nature, that they sometimes operate in a racist manner in Third World countries and that they fulfill a similar function to that of the clergy during the colonial era. Philosopher Peter Hallward argues that they are an aristocratic form of politics."

STEPS IN ESTABLISHING NGOS

The first step in the establishment of the NGO is to identify the area of peculiar needs of the society, such as health, HIV/AIDS, Maternal Mortality, Polio, food, shelter, education, civil liberty and poverty alleviation among others. The second step is to identify people of similar minds; there must be a unity of purpose.

The third step is to engage the services of a qualified legal practitioner for guidance for the Registration process. Some NGOs can be registered with the regional or central government and that depends on the scope of the operations of the proposed NGO. The next important step also is to identify the internal or external partners with a clearly stated objectives and plan of actions.

ADVANTAGES AND DISADVANTAGES

Advantages

- They have the ability to experiment freely with innovative approaches and, if necessary, to take risks.
- They are flexible in adapting to local situations and responding to local needs and therefore able to develop integrated projects, as well as sectoral projects.
- They enjoy good rapport with people and can render micro-assistance to very poor peope as they can identify those who are most in need and tailor assistance to their needs.
- They have the ability to communicate at all levels, from the neighbour hood to the top levels of government.
- They are able to recruit both experts and highly motivated staff with fewer restrictions than the government.

Disadvantages

- Paternalistic attitudes restrict the degree of participation in programme/project design.
- Restricted/constrained ways of apporach to a problem or area.
- Redued/less replicability of an idea, due to non-representativeness of the project or selected area, relatively small project coverage, dependence on outside financial resources, etc.
- “Territorial possessiveness” of an area or project reduces cooperation between agencies, seen as threatening or competitive.

9

Transnational Corporations and HR

INTRODUCTION

Transnational corporations (TNCs) continue to reinforce their hold on the natural resources of the planet, dictating their agendas to the weakest countries and exploiting their peoples. Directly or indirectly, they bear an enormous responsibility for the deterioration of the environment and for the systematic increase of human rights violations. Able to be both everywhere and nowhere, they escape from practically all democratic and judicial control.

Not a single day passes without news of events connected to transnational corporations: buy-outs and mergers entailing layoffs, corruption, war, pollution etc., with all the consequences that these imply. The current economic, political and ideological context has doubtless favoured the TNCs' ascendancy, conferring upon them a power without precedent in history. Of course, all TNCs do not systematically violate human rights. Some assume responsibilities more readily than others. All, on the other hand, follow the same logic: systematic use of the disparities between countries arising from unequal development in order to increase their profits.

By doing so, they all, overall, accept the increase of these inequalities and the degradation of the quality of life of whole swathes of the world's population. These practices, which are in effect throughout the whole world, have been meticulously furthered by the policies of the international financial institutions: after having largely contributed to the spiral of debt of poor countries, the International Monetary Fund (IMF) and the World Bank (WB) have imposed structural readjustment measures

favourable to the TNCs. By impoverishing these countries, these measures have violated the human rights of these countries' populations such as the right to health and to life. Then, with the arrival on the scene of the World Trade Organization (WTO) and the absolute priority given to trade over all other considerations, the last brick of the edifice was put into place. The TNCs have since had essentially free rein within a framework tailor made by the IMF/WB/WTO triumvirate to serve TNC interests. The unbridled privatizations that the WTO has championed, alone, have substantially added to the power of today's TNCs.

Employing (directly) only 3,7% of the world's total labour force, TNCs control and orient most of its production, while amassing huge amounts of capital. The volume of business of the biggest TNCs equals or surpasses the gross national product (GDP) of numerous countries, and the volume of business of several of them is greater than the GDP of the 100 poorest countries combined. Notwithstanding these results, the TNCs have been elevated to the rank of "privileged development agents" by the promoters of neoliberal globalization. They have the wind at their back, and they influence practically all aspects of life.

Enjoying immense esteem, they have managed to enroll most governments in their service. The statement of the former United State Secretary of State, Colin Powell, concerning the economic agreement among the countries of the North American continent (FTAA), is, in this respect, revealing: "Our objective is the guarantee to North American businesses, through the Free Trade Agreement of the Americas, of the control of a territory that extends from the Arctic pole to the Antarctic, and to assure free access, without obstacles or difficulties, to our products, services, technologies and capital throughout the hemisphere."

In the same vein, one might point out the arrogance of the president of the Swiss-Swedish industrial group Asea Brown Boveri (ABB), who stated: "I would define globalization by the freedom for my group to invest where it wants, for as long as it wants, to produce what it wants, supplying itself where it wants, and submitting to the least constraints possible regarding labour law and employee benefits." This supremacy goes hand in hand with the perpetration by TNCs of serious and widespread human

rights violations, violations that rival those caused by governments, which are often complicit.

These violations concern:

- Damage to the environment;
- Child labour;
- Financial crime;
- Inhuman working conditions;
- Ignoring of workers' and trade union rights;
- Attacks on the rights of workers and the murder of union leaders;
- The corruption and illegal financing of political parties;
- Forced labour;
- The denial of the rights of peoples;
- Perversion of government functions;
- The non-observance of the precautionary principle;
- Criminal neglect entailing the death of thousands of persons; etc.

The disasters caused by TNCs are far from concerning only privatized public services (water, electricity, transports etc.); they touch practically every aspect of life. Indeed, highly sensitive sectors such as health and defence do not escape the long arm of the TNCs. The pharmaceutical corporations abandon, without the slightest compunction, insolvable AIDS victims while neglecting other illnesses such as tuberculosis or malaria.

Whereas the official line vaunts the merits of the agreement on access to medicines for the countries of the South negotiated within the WTO at Doha (November 2001) and at Cancún (2003), epidemics continue to propagate, the sick continue to die for the most part without any care), the price of medicines remains exorbitant and countries with the ability to produce generics are threatened by law suits and sanctions.

Even the "defence" of countries (it might be more realistic to speak of "attack capability") has become a new market and is undergoing privatization. For a dozen years or more, mercenary companies, for the most part based legally in the United States, the United Kingdom and South Africa, have been offering their services to governments. They have the ability to intervene anywhere in the world and have already taken part in numerous

conflicts in Africa, Latin America and Asia, Afghanistan and Iraq, where the United States army out-sources logistic and support tasks to mercenary supply corporations. Among others, Kellogg, Brown and Root5 are recent examples. Of course, these past few years, most of the Western countries have shifted from conscripted to professional armies.

However, authorizing the setting up of mercenary corporations listed on a stock exchange and used in armed conflict poses serious problems, including the functioning of democracy and the sovereignty of states, not to mention the serious violations of human rights and/or international law committed by these "new stake holders". For example, mercenaries from Dyncorp are "accused of procuring minors in Bosnia". Moreover, this very company, in 2001, signed a contract for $3 million with the United States Department of Defence for logistic support and training of rebels in South Sudan. This situation is all the more disturbing in that the transnational character of the activities of the TNCs allows them to be exempt from the purview of national and international laws and regulations that they consider unfavourable to their interests. It is thus urgent to find legal solutions adapted to this situation and to ask questions regarding the future.

Table. Power of TNCs Revenue and Gross Domestic Product for a Sampling of TNCs and Countries[a]

Rank	Corporation	Revenue in Billions of USS 1998	Contries[b] (GDP Approximate Equivalent)
1	General motors (U.S.A)	161.3	Denkark/Thailand
10	Toyota (Japan)	99.7	Portugal/Malaysia
20	Nissho Iwai (Japan)	67.7	New Zealand
30	AT&T (U.S.A)	53.5	Czech Republic
40	Mobile (U.S.A)	47.6	Algeria
50	Sears Roebuck (U.S.A)	41.6	Bangladesh
60	NEC (Japan)	37.2	United Aarab Emirates
70	Suez Lyonnaise des eaux (France)	34.8	Romania
80	Hypo vereinsbank (Germany)	31.8	Morocco
90	Town (Japan)	30.9	Kuwait

100	Motoraola (U.S.A.)	29.4	Kuwait
150	Wait Disney (U.S.A.)	22.9	Belarus
200	Japan Postal Service (Japan)	18.8	Tunisia
250	Albertson's (U.S.A.)	16.0	Sri Lanka
300	Taisei (Japan)	13.8	Lebanon
350	Goodyear (U.S.A)	12.6	Oman
400	Fuji photo film (Japan)	11.2	Ei salvador
450	CSX (Japan)	9.9	Bulgaria
500	Northrop grumman (U.S.A.)	8.9	Zimbabwe
	Five biggest corporations (revenue)	708.9[c]	
	The 100 poorest countries (GDP)	337.8	

Note:

a. A more accurate comparison between countries and corporations would be based on the value addes et not on the income of the corporations. But it is rare that corporationss supply information on the value added in the annual reports.
b. Date from 1997.
c. General motors, Daimler chrysler, Ford motors, Wal–mart stores et mitsui.

Source:

- Peter utting 2000, fortune, 1999 and the would bank, 1999 published in mains visibles: assumer la responsabilite du developpement social, UNRISD, geneve 2000.

THE TRANSNATIONAL CHARACTER OF TNCS' ACTIVITIES AND THE EVASION OF THEIR RESPONSIBILITIES REGARDING HUMAN RIGHTS

To begin with, in order to better understand the problem of TNC responsibility, a definition of TNCs is in order.

DEFINITION OF TNCS

"The term 'transnational corporation' refers to an economic entity or a group of economic entities operating in two or more countries, whatever the legal framework, the country of origin or the country or countries of activity, whether its activity be

considered individually or collectively. Transnational corporations are legal persons in private law with multiple territorial implantations but with a single center for strategic decision making. "They can operate through a parent corporation with subsidiaries; can set up groups within a single economic sector, conglomerates, or alliances having diverse activities; can consolidate through mergers or acquisitions or can create financial holding companies. These holding companies possess only financial capital invested in stock shares through which they control companies or groups of companies.

In all cases (parent company with subsidiaries, groups, conglomerates, alliances and holding company), the decision-making process for the most important matters is centralized. These corporations can establish domicile in one or several countries: in the country of the actual headquarters of the parent company, in the country where its principal activities are located and/or in the country where the company is chartered. "Transnational corporations are active in production, services, finance, communications, basic and applied research, culture, leisure etc. They operate in these areas simultaneously, successively or alternately.

They can segment their activities across various territories, acting through de facto or de jure subsidiaries and/or suppliers, subcontractors or licensees. In such cases, the transnational can maintain control over the 'know how' and the marketing." Another definition, from the Commission on Transnational Corporations of the ECOSOC, whose efforts never bore fruit, emphasizes the quality of the business concern, independent of its legal character in private law, public law or both.

Thus, according to this formulation, TNCs can be defined as: " enterprises, irrespective of their country of origin and their ownership, including private, public or mixed, comprising entities in two or more countries, regardless of the legal form and fields of activities of these entities, which operate under a system of decision- making permitting coherent policies and a common strategy through one or more decision-making centers, in which the entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over

the activities of others and, in particular, to share knowledge, resources and responsibilities with the others."

EVASION OF RESPONSIBILITIES

Transnational corporations, as economic agents, are, in theory, subject to the law of a country, to the jurisdiction of its courts. The transnational group has not, as such, a distinct individual personality for each of the entities that constitute it, with the result that these entities can be held accountable for their acts only in a diffused manner, thus exploiting the different interests of the various countries within which they operate.

In order to evade their responsibilities, the TNCs recur to diverse abusive practices of which the following are some examples:

- The transfer of activities prohibited in one country to another with less stringent regulations and/or the obtaining of the least constraining regulations possible by threatening government and workers with relocation to another country;
- Relocation of very dangerous industries and other activities to places where they will not be subject to strict regulation;
- Relocation to countries with cheap labour and the least social security protection in order to reduce production costs and the use of front companies set up in such a way as to be deliberately complex;
- Fraud;
- Artificial competition;
- Influence networks; etc.

It goes without saying that, if this list is representative, it is far from exhaustive. The phenomenon of maquiladoras (located in free trade zones),where human rights violations (worker and trade union rights as well as the right to life) are frequently cited, is another example.

These "zones without rights" could be the subject of an entire chapter. Other issues, such as privatized prisons in certain countries, where inhumane treatment and detention conditions are rampant, could also be cited. For lack of space, it is not possible to address all the problems posed by TNCs.

ILLUSTRATION 1

RELOCATIONS AND CHIPPING AWAY AT LABOUR STANDARDS

China

In China, numerous subcontractors of TNCs such as Walt Disney, Wal- Mart, Nike and Reebok, "patently violate Chinese labour laws and disregard the guidelines that the multinationals are supposed to hold them to. Regardless of what the multinationals may be doing to assure that company audits are properly conducted, the essential content is lacking.

The Chinese subcontractors operate with very slender margins, too small to be able improve the on-the-job conditions of their workers.

The best solution, for the multinationals would be to accept to pay more for the products that they order, while assuring that the price increase ends up in the pockets of the workers", notes Li Quiang, former worker and current director of China Labour Watch, based in the U.S.A.

Germany

Of course, all things considered, the erosion of labour laws is not the monopoly of the "world's workshop" (China). Edgar Oehler, director of Arbonia-Forster, has noticed a change in the mentality among German workers: "The workers and the unions have become more flexible regarding the implementation of the labour laws, whose unreal aspects they are aware of sic." Michael Girsberg, a Swiss furniture manufacturer, confirms this: "Earnings [in Germany] are lower than in Switzerland, and it is not necessary to pay differentials when they work two shifts."

Colombia

Among the TNCs present in Colombia, those active in the food and petroleum sectors are the best known at the international level pour their frequent human rights violations. Nestle-Colombia represents an exemplary case study in the numerous problems posed by TNCs in the world.

The accusations made by the trade union Sinaltrainal against Nestle are the following:

- Its anti-union strategy extending to the destruction of local unions, in violation of Conventions 87 and 98 of the ILO;
- Its co-responsibility in acts of violence (10 workers and union officials killed between 1986 and 2005) and in threats regarding union officials by paramilitaries during various labour disputes;
- Its endangering of public health by selling outdated milk (in 1979, several children died, poisoned by contaminated infant formula) and by polluting the rivers with residual waters containing toxic substances;
- Its strategy of monopolizing the milk market (Nestle has closed nine plants out of the 13 that it has acquired in Colombia between 1947 and 1979) and of putting downward pressure on prices by importing powdered milk that is often subsidized, with obvious adverse consequences for the small milk producers and cattle raisers of Colombia (forced to abandon their land, very often with a push from the paramilitaries).

During public hearings on Nestle in Colombia held in Berne on 20 October 2005, the council of "judges" condemned Nestle's practices in this country and deemed them "unacceptable from a multinational that claims to be worthy of the good reputation and trust it receives from its customers. Nestle has overstepped all tolerable limits, be it in the poor quality of its products, its neglect of environmental protection, its policies of undermining working conditions, its implacable hostility towards trade unions, or the aggressive promotion of its economic policies."

Further, the council launched an appeal to all concerned to "denounce Nestle's actions and those of other multinationals that violate human rights and expose their employees to violence or dire poverty" and to take measures in Switzerland and in the international arena "in order to force Nestle to respect the rights of trade unions, as stipulated in international conventions and the Colombian constitution, and, if necessary, by taking cases to ordinary courts of law."

ILLUSTRATION 2

RELOCATION OF HIGHLY DANGEROUS ACTIVITIES

Bhopal

On the night of December 2nd, 1984, over 40 tons of lethal methyl isocyanate (MIC) gas spilled out from Union Carbide's pesticide factory in Bhopal, India. With safety systems either malfunctioning or turned off, an area of 40 square kilometers, with a resident population of over half a million, was soon covered with a dense cloud of MIC gas. In the first three days after the accident, over 8,000 people died in Bhopal, mainly from cardiac and respiratory arrest. Since the disaster, over 20,000 people have died from exposure-related illnesses, and of the approximately 520,000 people exposed to the poisonous gases, an estimated 120,000 remain chronically ill. Justice has eluded the people of Bhopal for over 17 years.

Union Carbide negotiated a settlement with the Indian Government in 1989 for US$ 470 million, US$ 370 to US$ 533 per victim, a paltry sum too small to cover most medical bills. In 1987, a Bhopal District Court charged Union Carbide officials, including then CEO Warren Anderson, with culpable homicide, grievous assault and other serious crimes. In 1992, a warrant was issued for Anderson's arrest. In November 1989, the official figure was 3,598 dead. In October 1990, the Indian government was talking of 3,828 dead as a basis for determining claims against Union Carbide. Later, the Bhopal investigative judge reported having done 4,950 post mortem examinations during the first five or six months of the 1985.

The official count then went up to 4,136 in December 1992 and to 7,575 in October 1995–almost double the number used as the basis for the settlement between the government and Union Carbide. The local survivors' organizations estimate that 10 to 15 persons continue to die every month. Further, some 100,000 persons who never received any compensation at all still require intensive medical attention. As for the site, it still has not been cleaned up and thus continues to contaminate the area's groundwater.

ILLUSTRATION 3

COMPLEX MONTAGES

The File on the Prestige: Unpunished Responsibility

TNCs have often resorted to complex financial set-ups for the transport of dangerous and polluting products in order to shirk the responsibilities and the real costs of their activities. An example of this is the oil tanker Prestige, which in November 2002 floundered off the coasts of Portugal, Spain and France, while carrying 77,000 tons of oil. It was registered in the Bahamas, managed from Greece (Coulouthros) and was carrying the oil of a Swiss company run primarily by Englishmen and whose current owners are Russian (Crown Resources of the Alfa Group). In most cases, the captain or the crew of the boat are indicted, if there are any indictments at all. In general, it is public entities and the people who pay for most of the damage caused.

In the case of the Prestige, the International Oil Pollution Compensation Funds (IOPC Funds)* announced that it would pay for cleaning up and compensation to victims only to a maximum of € 150 million. However, the IOPC had itself estimated that the total losses would be as high as a billion euros. According to its bulletin of 8 November 2005, as reported by the Associated Press, the IOPC received 421 claims for compensation in France for a total of nearly € 99 million, including a claim from the French government of over € 67 million. For the time being, it has adjudicated 351 claims for compensation. As for Spain and Portugal, they, up to now, have put in claims for, respectively € 114 million and € 740 million.

ILLUSTRATION 4

FRAUD

Since the fraudulent bankruptcy of Enron, the United States energy broker, several TNCs have hit the front pages.

Parmalat: “The Robbery of the Century”

Parmalat, the Italian agri-business transnational, collapsed

two years ago following a financial scandal, leaving a loss of CHF 22 billion (€ 14 billion) and wiping out some 135,000 investors. The indictments related to the manipulation of its share price on the stock exchange, interference with the oversight authority Consob and false audits.

Saved in extremis from bankruptcy by the Italian government, the company is now undergoing a "restructuring" by Enrico Bondi, its current director. According to Bondi's attorney, Marco De Luca, "A crash leaving a hole of € 14 billion is impossible without the support of financial institutions." For this reason, Bondi has filed claims for damages of over CHF 60 billion against the following banks: UBS, Deutsche Bank, Bank of America, Citigroup and J.P. Morgan. This last has already paid out some CHF 230 millions to settle court actions and claims for damages.

ILLUSTRATION 5

FALSE COMPETITION

Swissair

Following the collapse of Swissair, its profitable subsidiaries were allotted to various share holders. Gate Gourmet, for example, was bought by Texas Paris Pacific, which is financed–just as Swissair was–by the biggest Swiss bank, UBS. Gate Gourmet, which still employs 34,000 workers through the world, artificially lowered the prices of sandwiches in London in order to put pressure on the workers in Geneva to accept a 12% reduction in pay, refusal of which would have resulted in closing down Gate Gourmet, according to a document containing the manipulated figures given to the worker.

ILLUSTRATION 6

INFLUENCE NETWORKS

A minority of powerful men wields enormous force by virtue of not only the financial means at their disposal but also through the networks of influence in the upper echelons of politics and finance. The close ties between, on the one hand, several members

of the United States government and president George W. Bush and, on the other, certain TNCs, in particular those of the energy sector, were openly cited during the run up to the invasion of Iraq 2003. (Cf. among other sources, http:// webplaza.pt.lu/greenpea/ nowar/barons.htm). Two more examples follow.

Nestle

Peter Brabeck-Letmathe, CEO and chairman of the board of Nestle, also sits on other prestigious boards of directors such as Oreal, Credit Suisse, Alcon, Cereal Partners Worldwide, Roche etc. He is also a founding member of the World Economic Forum and a member of the European Roundtable of Industrialists (ERT). But Brabeck is not at all the only member of the Nestle board of directors with close and strong ties to other corporations as well as to private and governmental institutions. Thus, Helmut Maucher, CEO of Nestle from 1981 to 1997, is currently the chairman of the ERT (since 2003) and sits on the board of Bayer A.G., Deutsche Bahn A.G., Henkel, Koc Holding, Ravensburger A.G. and Oreal.

Rainer Gut, chairman of Nestle until the spring of 2005, is also honourary chairman of Credit Suisse, chairman and CEO of Uprona, as well as being a member of the board of Oreal, Pechiney S.A. and Sofina S.A. Andre Kudelski, member of the board at Nestle, is also a member of the board of his own company, Kudelski S.A., as well as a member of the board at Dassault Systems and Groupe Edipresse. He also sits on the Credit Suisse Advisory Board, on the board of the Swiss-American Chamber of Commerce and on the steering committee of Economiesuisse. Nestle has counted among its board members persons such as Kaspar Villiger, a former Swiss Federal Council member and an ardent defender of Swiss banking secrecy, and the late Arthur Dunkel, the director of the GATT (since 1995, the WTO) between 1980 and 1993, one of the main drafters of the Marrakech agriculture agreement that has allowed the liberalization of the agricultural products markets.

Dow, Shell, Dole, Chiquit

Nemagon is the commercial name of the chemical

dibromochloropropane (DBCP) designed to fight the nematodes that thrive on banana plants, causing a discoloration of the fruit and thus making it less attractive–a problem in an international market obsessed by appearances. This pesticide, used widely since the 1970s, helps the plant grow faster and produce bigger bunches of bananas, but it is a toxic chemical substance that is slow to decompose (known also as a persistent organic pollutant or POP). It can remain in the ground for hundreds of years causing harm to living beings and to the environment. A 1958 internal report of the Dow Chemical Company showed that DBCP caused sterility and other serious afflictions in laboratory rats. In 1975, the United States Environmental Protection Agency determined that nemagon had carcinogenic properties.

Two years later, studies demonstrated that a third of the workers making DBCP at the laboratories of Occidental Chemical Corporation had become sterile. The use of nemagon has been prohibited in the United States since 1979, but it was still used in Nicaragua until the TNCs left the country in 1982, leaving behind them thousands of sick farmers. These people are still suffering today from various forms of contamination, and the number of cases of liver failure and cancer has increased exponentially. In January 2001, the Nicaraguan Congress passed Law 364 Ley Especial para la Tramitación de Juicios Promovidos por las Personas Afectadas por el Use de Pesticidas Fabricados a Base de DBCP). This law is the only hope that the farmers have of any compensation by granting them economic and legal support from the government in bringing law suits against the companies in question.

Thanks to this law, the first claims against the Shell Oil Company, Dow Chemical, Occidental Chemical, Standard Fruit, Dole Food and Chiquita Brands International were filed in March 2001. On the basis of Law 364, the pesticide manufacturers Dow and Shell, as well as the grower Dole, were ordered by the courts, in December 2002 and March 2004, to pay almost US$ 600 million to several hundred workers who had been contaminated on the banana plantations. It is estimated that the total amount of compensation will be US$ 17 billion. This amount has attracted many opportunists in search of a windfall, among whom have

been law firms and several political leaders who claim to represent the interests of "those legitimately ill", while at the same time accusing each other of representing people "who never pealed a banana in their life". These disputes have allowed the TNCs to complain of a fraudulent inflation of the number of the sick. Thus, the struggle for compensation is made to look illegitimate, and the court cases drag on and on.

Today, the corporations are trying by any and all means to have these judgements overturned, even requesting help from the United States government so that it will put pressure on the Nicaraguan authorities. The United States has also threatened Nicaragua with stopping their investments if the law in question in not repealed. In this way, the United States government has become an accomplice to the corporations' violations of the Nicaraguan workers' right to health. At the same time, Dow Chemical has introduced an amendment to the fourth version of the free trade agreement between the United States and the Central American countries that allows investors to sue a country for compensation if they consider that a law of the country or a judgement by a local court violates the principle of "just and equitable treatment". As for Dole, it has proposed this year to invest once again in Nicaragua if the government withdraws the claim against it for the use of pesticides.

DIFFERENT GOVERNMENTS WORKINGS

In general, many countries not only tolerate on their national territory the violations committed by TNCs, but they give them their blessing and even participate actively in them. The ruling elites of the North spare no effort to assure the expansion of their own TNCs. As for those in the South, for the most part they worry very little about these violations, aiming above all to integrate themselves into the world's upper social crust, to enrich themselves and to maintain their power, oblivious to the needs of the overall population of their countries.

It is also true that certain countries of the South simply do not have the means nor the ability to supervise the harmful activities of TNCs, not to mention facing up to the threats and blackmail to which they are subjected. On the other hand, those

governments that can exercise their jurisdiction over TNCs do not wish to do so and content themselves with empty declarations. Thus, the French president, Jacques Chirac, stated on the occasion of the G-8 meeting in Evian, that "the role of the corporation is to produce, but not in just any conditions.

We cannot accept that the pirates of globalization prosper." Worse, when a corporation finds itself on the verge of bankruptcy, it appeals to the government to "clean up the mess", whereas public funds are less and less available owing to the tax breaks accorded to TNCs at the expense of public expenditures. For example, the French government allocated € 16 billion in 2004 to save Alstom and France Telecom. The British government has had to invest € 37.5 billion since 1993 to support its railroads (Railtrack, now Network Rail), even though they were privatized over ten years ago. The United States government has injected some $ 35 billion into the airline industry since 2001 to save both the construction and the travel sector. And the Swiss government spent CHF 2 billion in an effort to save its national airline, Swissair. Considering all the preceding, it is obvious that there is a pressing need for governments to act to promote an international legal framework for TNCs protecting human rights.

"CIVIL SOCIETY" DOING

The huge power of the TNCs and their non-respect of human rights have given rise to ever more numerous and more vocal citizen movements demanding that these companies respect human rights. One example of such a movement is the "Clean Clothes" campaign against child labour, against financial crime, against inhumane working conditions, for the respect of trade union rights and the rights of peoples etc. The objects of most of these campaigns are also dealt with by the Permanent. People's Tribunal, which has denounced:

- Seven sports clothing TNCs for their "generalized assault on workers' rights in the garment industry, the use of child labour, of forced labour etc."
- Two oil company TNCs and the French government for "violation of the rights of the African peoples, linked to oil exporting in Africa."

- Three other TNCs for "undermining the legal functions of governments, non-respect of the precautionary principle, serious negligence causing death to thousands of persons".

These campaigns and symbolic citizen actions have played–and continue to play–an important role in mobilizing public opinion. They have, among other things, contributed much to alerting judicial authorities in various countries, who have demonstrated ever greater interest in the illicit activities of TNCs. Thus, numerous court cases against TNCs and their managers and directors, indicted for several categories of human rights violations, are currently under way in different national jurisdictions. However, these actions at the national level, as significant as they may be, will not suffice, given the capacity of TNCs to be "everywhere and nowhere" and the transnational character of their activities. These actions need to be completed by measures at the international level.

TOWARDS AN INTERNATIONAL JUDICIAL FRAMEWORK FOR TNCS FAVOURING THE PROTECTION OF HUMAN RIGHTS

Under pressure from NGOs and social movements, some TNCs have made declarations of good intentions, claiming to support good governance and the use of ethical rules in business management. But this produces little in the way of a change in their behaviour. In fact, enforceable legal instruments are non-existent, and the state of current legislation does not admit the regulation of TNCs' responsibilities. Hence, it is necessary to create a legal framework such as the norms adopted by the United Nations Sub-Commission for the Promotion and the Protection of Human Rights, with certain reserves.

THE INCONSISTENCY OF VOLUNTARY CODES OF CONDUCT

TNCs are opposed to all enforceable regulations that might affect them, preferring voluntary codes of conduct. Thus, they have adopted numerous voluntary codes of conduct, while spending considerable sums on advertising. These codes have no enforceable

legal status. They act only to define a minimum of what TNCs might tolerate. Observing this minimum is presumed to exempt them from any further responsibility. A study done by the ILO in 1998 pointed out that, of the of all the voluntary codes of conduct reviewed, only 15% mentioned freedom of association, 25% forced labour, 40% earning levels, 45% child labour, 66% non-discrimination and 75% health and on-the-job safety. Generally, the codes are very selective regarding international labour standards. The World Bank, for example, prohibits forced child labour but rejects the principle of freedom of association and has been distrustful of trade unions owing to the their ability to affect the labour market.

Voluntary Codes Pose Other Problems:

- They cannot replace authoritative standards established by national governments and intergovernmental organizations.
- As private initiatives, they fall outside the normative activity of governments and international organizations;
- They are woefully inadequate; Their implementation is erratic for it depends entirely upon the good will of the corporations in question.
- There are no independent mechanisms for monitoring compliance.
- Their requirements are almost always below already existing international standards. In sum, transnational corporations do not take seriously their own codes of conduct. The numerous TNCs that have signed on to the Global Compact (a partnership between the United Nations and TNCs), claiming to be "socially responsible corporations", often violate human rights and workers' rights.

POSSIBILITIES AND LIMITS OF NATIONAL, REGIONAL AND INTERNATIONAL

LEGISLATION: A BRIEF OVERVIEW OF THE SITUATION

Although there is no comprehensive and harmonious legislation designed specifically to address the harmful activities of TNCs in the area of human rights, the existing jurisprudence at the national, regional and international level can serve as a basis

for bringing corporations to law, in certain cases at least, so that their crimes do not go entirely unpunished.

At the National Level

The United States of America: the Alien Tort Claims Act

Passed in 1789, the Alien tort Claims Act (ACTA) allows "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." Originally, this law was passed to prosecute cases of piracy, then the slave trade. It remained largely unused for almost two centuries before being resuscitated in 1979, when the father and sister of Joel Filartiga, a seventeen-year-old who had been tortured to death in Paraguay, used the act against Joel's torturer, who was living in Brooklyn at the time the prohibition of slavery, torture, genocide, war crimes, crimes against humanity etc. However, it deals only with torts, namely cases (as opposed to criminal), with the result that the only outcome possible for a successfully argued case is the awarding of damages.

In the 1990s, numerous suits against TNCs were launched under this law. The first plaintiffs to win, in 1997, pleaded against Unocal, a transnational petroleum company accused of complicity in forced labour, rape and murder committed against Burmese peasants by Burmese soldiers hired by Unocal to assure the security of an oil pipeline construction site across the south of Burma. Fearing a conviction and the court-ordered opening of its archives to public scrutiny, Unocal chose, in April 2005, to negotiate an out-of-court settlement with the victims.

The Swiss banks, under attack for having profited from the Holocaust, had already chosen this route in 1998. To preserve their image and their business in the United States, they agreed to pay US$ 1.25 billion to the representatives of the victims (Jewish organizations based in the United States). Currently, several cases have been brought on the same grounds in the United States. The most recent (July 2005) concerns the biggest agri-food companies in the world, Nestle, Archer Daniels Midland and Cargill. They are accused of complicity in the trafficking of children, torture and the forced labour of Malian children who harvest the cacao

that these corporations import from Ivory Coast. Of 12 to 14 years of age, these children work up to 14 hours a day, are not paid, are barely fed and are often beaten.

However, in 2001, following several scandals linked to child labour, numerous corporations, by signing the voluntary initiative known as "The Harken-Engel Protocol", pledged to observe a system of certification of their cocoa suppliers assuring that the suppliers used no child labour on the plantations and that they treated their employees properly The increasing attention–and use–that the ATCA has received has triggered a series of counterattacks, particularly from the Bush administration, which has invoked, as justification for amending it, the threat to the sovereignty of other countries sic and to international investment.

It is supported in its efforts by other governments, such as the Swiss government, which considers the ATCA "contrary to international law". In a letter to the United States Supreme Court in January 2004, the Swiss authorities argued that the ATCA "interferes with national sovereignty and entails an additional financial cost to government administrations", while requesting that the law be restricted to cases with "an appropriate link" to the United States or "implicating United States citizens".

Along the same lines, on 17 October 2005, Senator Dianne Feinstein (Democrat from California), who was given in May of the same year US$ 10,000 by the Chevron oil company political action committee, sponsored a reform bill (S.1874) that would have effectively rendered the ATCA null and void. This proposal would have barred any complaint against a foreign government for abuses on its own territory, war crimes, crimes against humanity, terrorism and cruel and inhuman treatment. It would have required direct participation in the crime by the accused, not their complicity. And it would have been up to the administration to decide whether a case could be heard by a United States court.Under pressure from human rights groups and unions, Senator Feinstein withdrew the bill on 25 October 2005, claiming that she needed more time to work on its language.

France

In August 2002, with the help of the Sherpa Association,

Burmese refugees took the managers of Totalfinaelf and its affiliate Totalfinaelf E & P Myanmar, respectively Thierry Desmarest and Herve Madeo, to court for incidents of "illegal confinement" going back to 1995. According to the plaintiffs, Burmese military battalions financed by the Total affiliate, between October and December 1995, forcibly recruited workers for the construction of the gas pipeline being built between the Burmese gas field of Yadana, in the Andaman Sea, and an electric power generating plant in Thailand. On 17 May 2004, the Nanterre prosecutor estimated, in a finding sent to the examining judge, that the crimes "of kidnapping and illegal confinement" cited by the plaintiffs in their case were not applicable and should be dropped.

In a ruling dated 25 June, the Nanterre examining judge Katherine Corner, declared that she was opposed to dropping the charges as requested by the prosecutor and filed an appeal with the appellate court of Versailles. In keeping with the request of the examining judge, the appellate court, on 11 January 2005, rejected the Nanterre prosecution's request for a suspension of the proceedings. On 29 November 2005, in a move similar to Unocal's, Total chose to settle out of court, agreeing to pay the Burmese plaintiffs (eight, originally, but one had died in the meantime) € 10,000 a piece and to set up a fund of € 5.2 million for other persons "who might be able to prove that they had been forcibly employed and for other collective humanitarian acts in favour of housing, health and education". It goes without saying that preparing and bringing cases at the national level requires considerable investments of time and money, and the cases often drag on seemingly endlessly. However, this remains one of the most effective means of reining in the voracious appetite of TNCs. Further, once a conviction has been brought down, it stands as a precedent that can deter future violations.

At the Regional Level

The Organization of Economic Cooperation and Development

Adopted in 1976 and revised in 2000, the Guidelines for Multinational Enterprises of the Organization of Economic

Cooperation and Development (OECD) are non-binding recommendations drafted by member governments for the "multinational businesses" operating in or from OECD countries.They cover such matters as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. The only reference to human rights in the Guidelines is the exhortation that TNCs "respect the human rights of those affected by their activities consistent with the host government's obligations and commitments."

Five years after the 2000 revision, OECD Watch conducted an investigation into the effectiveness of these principles and published its report in September 2005. Its conclusion: "Five years on, there is no conclusive evidence that the Guidelines have had a positive, comprehensive impact on multinational enterprises. As a global mechanism to improve the operations of multinationals, the Guidelines are simply inadequate and deficient." According to this report, several of the National Contact Points (NCPs) of the biggest OECD countries have made it known, quite clearly, that they do not want to get involved in conflicts with business enterprises that have violated the Guidelines.

The United Kingdom NCP openly declared that its role was not to sanction or to hold companies to account, thus eliminating the only possible deterrent effect of the procedures. The United States NCPs also fall into this category. However, it appears that some governments and business federations have recently started to proclaim the virtues of the Guidelines, presumably because of the perceived threat of a binding U.N. instrument on the human rights responsibilities of transnational companies. human rights and lives of individuals through their core business practices and operations, including employment practices, environmental policies, relationships with suppliers and consumers, interactions with Governments and other activities, Noting also that new international human rights issues and concerns are continually emerging and that transnational corporations and other business enterprises often are involved in these issues and concerns, such that further standard-setting and implementation are required at this time and in the future, Acknowledging the universality,

indivisibility, interdependence and interrelatedness of human rights, including the right to development, which entitles every human person and all peoples to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realised.

Reaffirming that transnational corporations and other business enterprises, their officers—including managers, members of corporate boards or directors and other executives—and persons working for them have, inter alia, human rights obligations and responsibilities and that these human rights norms will contribute to the making and development of international law as to those responsibilities and obligations, Solemnly proclaims these Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights and urges that every effort be made so that they become generally known and respected.

A. General Obligations

States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.

B. Right to Equal Opportunity and non-Discriminatory Treatment

Transnational corporations and other business enterprises shall ensure equality of opportunity and treatment, as provided in the relevant international instruments and national legislation as well as international human rights law, for the purpose of eliminating discrimination based on race, colour, sex, language,

religion, political opinion, national or social origin, social status, indigenous status, disability, age—except for children, who may be given greater protection—or other status of the individual unrelated to the inherent requirements to perform the job, or of complying with special measures designed to overcome past discrimination against certain groups.

THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The decision adopted by the African Commission on Human and Peoples' Rights during its 30th regular session (Banjul, October 2001) regarding violations committed against the Ogoni people by the Nigerian national oil company and the TNC Shell with the complicity of the Nigerian government constitutes a case study. According to the Commission, the government "should not allow private parties to destroy or contaminate food sources, and prevent peoples' efforts to feed themselves".

Noting violations of numerous rights listed in the African Charter on Human and Peoples' Rights, such as the right to health (Art. 16), and that "all peoples shall have the right to a general satisfactory environment favourable to their development." (Art. 24), the Commission: "Appeals to the government of the Federal Republic of Nigeria to ensure protection of the environment, health and livelihood of the people of Ogoniland by: "stopping all attacks on Ogoni communities and leaders by the Rivers State Internal Securities Task Force and permitting citizens and independent investigators free access to the territory; "conducting an investigation into the human rights violations described above and prosecuting officials of the security forces, NNPC [Nigerian National Petroleum Corporation] and relevant agencies involved in human rights violations; "ensuring adequate compensation to victims of the human rights violations, including relief and resettlement assistance to victims of government sponsored raids, and undertaking a comprehensive cleanup of lands and rivers damaged by oil operations; "ensuring that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any further oil development is guaranteed through effective and independent

oversight bodies for the petroleum industry; and "providing information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations."

THE EUROPEAN COURT OF HUMAN RIGHTS

In its 10 November 2004 ruling, the European Court of Human Rights unanimously44 condemned Turkey on grounds of non-respect of the right to private and family life (Art.8) for having authorized the corporation E.M. urogold Madencilik (later renamed Normandy Madecilik A.S.) to use cyanide processing in gold extraction in Bergama. In challenging this authorization, the residents of Bergama had alleged that there would be health risks, pollution of the water tables and destruction of the local ecosystem. Although they won their case in court in 1997, the Turkish government on several occasions reaffirmed its trust in the company. So, the plaintiffs went to the European Court of Human Rights in September 1998.

At the International Level

The Tripartite Declaration of the ILO

In 1977, the International Labour Organization approved the Tripartite Principles concerning Multinational Enterprises and Social Policy, whereas in 1976 the OECD had adopted the Guidelines for Multinational Enterprises and in 1974 already the United Nations had begun to draft guidelines for TNCs that were never completed. The Tripartite Declaration is not binding; this is obvious from the text, for it merely recommends to governments, to employers' and workers' organizations and to TNCs voluntary observance of principles dealing with employment, training, working and living conditions as well as professional relations.

Although the Declaration was amended in November 2000, its 35 recommendations, as well as references to 35 ILO conventions, are all of a non-binding character for TNCs. A procedure for monitoring compliance with the Declaration was provided for, based on Article 10 of the ILO constitution.

During its March 1978 sessions, the Administrative Council requested member states to submit periodic reports on their progress in implementing the Declaration, in consultation with employers' and workers' organizations. After examining the reports that it had received, the Administrative Council, during its November 1980 sessions, created a permanent commission in charge of monitoring the Declaration, which would meet at least once a year. It was also decided that governments should submit reports every three years.

A procedure for examining differences of interpretation of the provisions of the Declaration was also set up. The monitoring is carried out by means of a questionnaire sent to governments and to employers' and workers' organizations (but not to TNCs). Once the responses have been examined, they constitute baseline data for an analytical report drafted by a tripartite group, which, in turn, is examined by the Sub-Commission on Multinational Enterprises and approved by the Administrative Council. For the March 2001 session, 100 of the 175 member states of the ILO had responded to the questionnaire. As this is a voluntary procedure, governments are under no obligation to respond. Moreover, the Sub-Commission on Multinational Enterprises can make only recommendations, for it is not authorized–unlike the WTO–to impose sanctions and take effective measures.

The Global Compact

Launched with much pomp and ceremony in July 2000 by U.N. Secretary General Kofi Annon, the Global Compact aspired to encourage TNCs, on a voluntary basis, to commit themselves to observing ten principles based on respect for human rights and work and environmental standards as well as to fighting corruption. Although at its inception several "major" organizations (NGOs and unions, in particular) supported this initiative, the overwhelming majority of NGOs and social movements denounced it as a fraud. In fact, the agreement is without any legal fundament and says nothing about verifying TNC compliance with the commitments that they claim to have made. This "partnership" seems above all designed to offer TNCs signing on to it–often accused of human rights violations–a means

of enhacing the image they project before the public. Today, many NGOs that originally supported the Global Compact have come to acknowledge its limits and now favour standards such as those proposed by the United Nations Sub-Commission for the Promotion and the Protection of Human Rights (see part III). In reaction to this, TNCs attempted to restore credibility to the Compact by holding a summit conference in June 2004 in New York involving a group of NGOs.

The analysis of the United Nations Research Institute for Social Development (UNRISD), which has been working for over a decade on the question of the responsibility of TNCs, is unequivocal concerning public-private partnerships such as the Global Compact: "Public Private Partnerships provide transnational corporations with the opportunity to enhance their image and to influence policies as a result of privileged relations that they entertain with the governments of developing countries and multilateral organizations.

Many of these partnerships are used to break into a new market, to obtain preferential access to developing countries' markets and to exploit this advantage and get a jump on the competition. The partnership approach sometimes ignores certain fundamental incompatibilities existing between developing countries' interests and those of the TNCs. The world macro-economic regime, centered on trade and investment liberalization, which creates conditions favourable to TNCs but often limits the options of developing countries' governments at the same time as it limits their revenue, illustrates this very well.

TNCs and powerful trade pressure groups actively support this regime and are opposed to political reforms proposed by numerous intellectuals, militants and decision-makers. Partnerships with United Nations institutions offer TNCs the means of pursuing their particular political interests within the United Nations, and the U.N. will thus see its public mission undermined if it begins to accept policies that enjoy the preference of business enterprises but are far from enjoying unanimous support throughout the world."47 According to the UNRISD, "The notion of 'partnership' between the U.N. and corporations must be reconsidered". This is why the UNRISD is calling upon

the U.N. to "combat the impression that it is conveying" regarding a legal framework for TNCs and, among other things, to "reinforce the procedures designed to control the respect of ILO and of international human rights standards, to support complaint procedures.

International Center for Settlement of Investment Disputes

Within the World Bank, there is a powerful structure called the International Center for Settlement of Investment Disputes (ICSID) established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). Its headquarters are within the World Bank headquarters, and the chairman of the World Bank is also chairman of board of directors of the ICSID. Little known to the public, this instance "arbitrates" disputes between TNCs and governments. In practice, this means that governments no longer recur to their own courts for settlement of a dispute with a TNC.

As its name indicates, the ICSID Convention is an international treaty, ratified by 136 countries as of 15 December 2002. The ICSID has proven to be a powerful ally of TNCs, for it is subject to heavy-handed influence from the commercial sector and, as already noted, is under the direction of the president of the World Bank. It goes without saying that the World Bank is a long-standing and firm advocate of privatization. Moreover, the norms of the ICSID exclude any mention of human rights and environmental standards.

PRIVATIZATION OF WATER: THE WORLD BANK AT THE SERVICE OF TNCS

The United Nations Commission for Human Rights' Special Rapporteur on the Right to Adequate Housing is disturbed, and justifiably so, by the privatization of water, for "No dwelling should be deprived of water because such deprivation would render it unlivable". In the study of a preliminary case, he showed that the privatization of water has not brought about an improvement in the quality of service for the poorest. The Special Rapporteur has expressed his concern that, in spite of this statement, the World Bank and the regional development banks

consistently support, in the poorest regions of the world, the privatization of water supply services.

According to him, the privatization of public services can have "devastating effects on the economy and on social cohesion in case of default." He cites two examples in the annual report that he presented to the Commission on Human Rights in 2002. In 1999-2000, Bolivia, at the request of the World Bank, turned over the management of its water supply and treatment system for the city of Cochabamba to a single bidder representing several TNCs. Within the framework of this arrangement, which was to last for 40 years, the water rates immediately rose, going from an admittedly negligible level to something in the neighbourhood of 20% of monthly household income.

The armed forces intervened to stop citizen demonstrations, causing six deaths, but the demonstrations continued until the consortium was forced to leave the country. treatment services is subject to rigorous control, a study revealed that after privatization, the profits of the water companies had risen dramatically in real terms while the customers had had to face repeated rate hikes.

The high salaries and the prerequisites accorded to the directors and managers of the private companies triggered a general outcry. The Special Rapporteur concluded that not only "several initiatives of water privatization were considered a failure during the previous years", but also that "a multicountry comparison of public service delivery in developing countries found that 'purely public water supply systems were among the best performing systems overall'".

Disputes Settlement Body of the WTO

Comprising all the member states of the WTO, the Disputes Settlement Body (DSB) constitutes a system designed to settle trade disputes between member states. It allows for a preliminary consultation procedure between the disputing parties. If, after 60 days, no agreement has been arrived at, a panel composed of three independent experts is appointed by DSB. The conclusions of the panel are binding and can be rejected only by a consensus decision of all the WTO member states. DSB decisions can be challenged

before the permanent Appellate Body, composed of six persons. Appellate Body decisions can also be rejected by a consensus decision of all the WTO member states within the 30 days following the decision.

The "violating" country must provide compensation for the violation to the affected country within 20 days. If it persists in its violation of a WTO agreement, it must offer further compensation or be subject to retaliatory measures. In this way, the plaintiff country can apply limited trade sanctions while waiting for the "losing" country to bring its policy into line with the ruling or recommendations.

Theoretically, the sanctions must be imposed in the same sector as that which was the object of the complaint. If that is not possible or effective, they can be imposed in another sector covered by the trade agreement that has been violated. If that, in turn, is neither possible nor effective either, the sanctions can be applied under another trade agreement.

This power to apply sanctions accorded to the WTO poses numerous problems. First, the decisions of the DSB are based on the WTO Agreements. The WTO was created to promote and regulate international trade, and its Agreements are, above all, favourable to TNCs. Thus, the DSB refuses to take into account the precautionary principle, general public interest or human rights. This is illustrated in, among other matters, its treatment of the question of beef containing hormones and that of asbestos. (See the following illustration.) Second, there is a problem of "access, of cost and of structural obstacles" in the DSB system. Thus, for example, the chances of success are conditional upon the choice of defence teams, whereas a veritable international bar, dominated by Western legal experts, has grown up in this area.

Further, the countries of the South, with the exception of the emerging countries, of course, are not at all implicated in the naming of the judges, for the major countries have managed to maintain a decisive influence in this matter. Finally, the DSB jurisprudence, which does not take into account human rights, constitutes a danger not only in that it gives primacy to trade and financial matters over human rights, but in that it reinforces the practical prevalence of the WTO agreements over human rights.

WTO: TRADE AT ANY PRICE

The two cases given below were dealt with by the Disputes Settlement Body (DSB) and show that trade takes precedent over human rights, in general, and over public health, food sovereignty, the precautionary principle and the general interest in particular; governments thus find themselves forced to modify their legislation in order to guarantee trade at any price.

Beef Treated with Hormone

In 1988 (before the creation of the WTO!), the European Union decreed an embargo on meat treated with growth hormones. On 26 January 1996, the United States and Canada brought this matter before the DSB. On 18 August 1997, the panel of the DSB decided that the EU embargo was "inconsistent" with the SPS [sanitary and phytosanitary measures] Agreement of the WTO. On 16 January 1998, the Appellate Body confirmed this decision, ordering the EU to lift the embargo, unless it could demonstrate scientific proof of the dangerousness of meat treated with hormones.

On 12 July 199, the DSB authorized the United States to impose import tariffs on US$ 116.8 million worth of European products per year and Canada to impose tariffs on CA$ 11.3 million. On 7 November, the European Union informed the DSB that it had adopted a new directive (2003/74/CE) "regarding the prohibition on the use in stockfarming of certain hormones" and that "there was no legal basis for the continued imposition of retaliatory measures by Canada and the US".

Asbestos

On 28 May 1989, Canada brought a complaint to the DSB against France (represented by the European Union) for its Decree of 24 December 1996 prohibiting the importing of asbestos and products containing it. On 28 September 2000, the DSB panel decided, among other things, that "the 'prohibition' part of the Decree of 24 December 1996 does not fall within the scope of the TBT [Technical Barriers to Trade] Agreement". On appeal by Canada, the Appellate Body, in its 12 March 2001 ruling, confirmed the merit of the French decree, arguing that the French

Decree is "necessary to protect human life or health", but, in favour of Canada, it "reversed the Panel's finding that the TBT Agreement does not apply to the prohibitions in the measure concerning asbestos and asbestos-containing products and found that the TBT Agreement applies to the measure viewed as an integrated whole. At its meeting of 5 April 2001, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report."

Conventional U.N. Human Rights Bodies

Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights is the U.N. body to which is entrusted monitoring of the implementation of the International Covenant on Economic, Social and Cultural Rights by countries that have ratified it. Since 1990, the Committee has sounded the alarm concerning violations committed by TNCs. Its General Observation No 361 regarding the obligations of governments, in conformity with Article 2 §3 of the Covenant, was cited by in the working document prepared by the Sub-Commission, that is to say:

"that the adoption of legislative measures is by no means way exhaustive of the obligations of States parties, for the phrase 'by all appropriate means' must be given its full and natural meaning, which is to say that the provision of judicial remedies in support of those rights should be included in those measures; it also means that States should be careful not to take any deliberately retroactive measures. In that context, States should draw up a range of legislative measures criminalizing all activities by transnational corporations which violate the above-mentioned [economic, social and cultural] rights."

Moreover, in its General Observation No 15 on the right to water, adopted in November 2002, the Committee on Economic, Social and Cultural Rights states that:

"The obligation to protect requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporation and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and

other measure to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems."

Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this General Comment, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.

In it final conclusions, adopted in 2004, following the examination of the periodic report of Ecuador, the Committee declared that it was "deeply concerned that natural extracting concessions have been granted to international companies without the full consent of the concerned communities". It was also concerned about "the negative health and environmental impacts of natural resource extracting companies' activities at the expense of the exercise of land and culture rights of the affected indigenous communities and the equilibrium of the ecosystem". (§ 12) The Committee also requested that the government "ensure that indigenous people participate in decisions affecting their lives" and, further, requested particularly "that the State party consult and seek the consent of the indigenous people concerned prior to the implementation of natural resources-extracting projects and on public policy affecting them, in accordance with ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Committee strongly recommends that the State party implement legislative and administrative measures to avoid violations of environmental laws and rights by transnational companies."