Along with the question of international peace and security, which attracted top priority consideration at the San Francisco Conference, and the matter which occupied substantially a significant place in the deliberation, was the question of promotion and protection of human rights. Majority of the delegations stressed the need of the inclusion of human rights obligations in the Charter of the new Organization. They showed the link between the maintenance of peace and promotion of human rights. It was realized that peace cannot be established unless human rights are recognized. Since the United Nations was the first international organization to devote such a considerable thought to this question, an agreement was evolved at the Conference to make several references to human rights in the Charter — more than to any other matter. Promotion of human rights was made one of the basic Purposes of the Organization. Subsequently, the UN organs with a view to fulfil this objective during their functioning in the first two decades, adopted an International Bill of Rights, the first one ever adopted at the international level.

The UN efforts, in fact, surpassed the League of Nations, in its concern to the promotion of human rights. The Covenant of the League of Nations did not have any reference to "human rights and fundamental freedoms". It seems, its drafters were more concerned with the maintenance of international peace and security, the pacific settlement of disputes,
the establishment of a mandate system, and the protection of national minorities. Like the Economic and Social Council of the United Nations, there was no main organ of the League charged with economic, social and humanitarian functions. Neither the Council nor the Assembly of the League of Nations subsequently dealt with the questions of human rights. It did not either consider the charges of alleged violations of such rights. Unlike the United Nations, the League did not condemn the systematic and continuous suppression and denial of human liberties in Communist Russia, Fascist Italy and Nazi Germany. There have been no debate and resolutions condemning such infringements of human rights.

The fact that the question of human rights was not mentioned in the League Covenant and was not dealt with by the League, perhaps reflects the traditional view that the question of human rights fell solely within the domestic jurisdiction of a state concerned. Article 15(8) of the Covenant prohibited the League Council to interfere in a matter of domestic jurisdiction, if the matter is so found by the Council in accordance with international law. Since the economic, social and humanitarian functions of the League were limited, the member states continued to believe that international law covered relations between the states only, and not the relations of the citizens to their governments.

However, it should be recognized that the League did
make indirectly certain advancements in the field of human rights. Firstly, it adopted many Conventions and recommendations to eliminate social evils such as slavery, forced labour, the traffic in narcotics, women and children. These activities of the League showed that labour questions such as, wages, working hours and conditions had become matters of international concern and interest and could no longer be regarded as matters of national concern alone. 1 Secondly, the League's mandatory system of territories 2 and its concern with the problems of minorities 3 represented, in part, the growing international concern with the rights of the individuals living in mandated territories and, in part, growing international concern with the right of self-determination of peoples.

THE GENESIS OF THE UN CHARTER

The Second World War period and what followed marked a turning point in the evolution of the concept of human rights. Several historical factors including development in science and technology, intellectual liberalism, war-time propaganda


2. See Quincy Wright, Mandates Under the League of Nations (Chicago, 1930). See also Ibid., pp. 97-98.

declarations and sharp reaction to Nazi atrocities brought to focus the need for observance and promotion of human rights. It is meaningful to note that much before the war ended, Allied Powers in their various declarations had expressed commitments to promotion of human rights as an essential condition of achieving international peace and social progress. The Atlantic Charter of 14 August 1941, which was subscribed to by 26 nations, expressed the hope "to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want". The signatory Governments to the Declaration by the Wartime United Nations of 1 January 1942 expressed their conviction "that complete victory ... is essential to defend life, liberty, independence and religious freedom, and to preserve human rights...".

It is interesting to note that the US Department of State, in its early draft of the UN Charter (prepared in 1942), included a Bill of Rights containing "a common programme

5. Ibid., p. 11.
of human rights" to which all members would have to subscribe. The draft Charter prescribed that the UN purpose was to establish and maintain "the instrumentalities by which peace and human rights may be assured." Though an agreement was reached on the main provisions relating to civil and political rights, difficulties cropped up with regard to the formulation of economic rights such as freedom from want and right to public education. There was also no agreement on the measures of implementation. In its next draft Charter, the Department of State, included the "Declaration of Human Rights" (to be annexed to the Charter); which would be given effect by member states without discrimination as to nationality, language, race, political opinion or religious belief. However, later the idea of preparing a Declaration was dropped and the "Plan for a General International Organization" contained only a provision empowering the General Assembly to initiate studies and make recommendations for "the promotion of the observance of basic human rights in accordance with principles or undertakings agreed upon by the states members of the International Organization". Then, it made a similar provision in its


"Tentative Proposals for a General International Organization" submitted to the Dumbarton Oakes Conference. 8

The Dumbarton Oakes Proposals

The matter of inclusion on human rights was discussed in the Conference of Dumbarton Oakes. In view of the British and Soviet objections to the inclusion of specific human rights obligations in the Charter, the Dumbarton Oakes Proposals (hereafter referred as DOP) contained only one direct reference to human rights and fundamental freedoms. Chapter IX (Arrangements for International Economic and Social Co-operation) Section A (Purpose and Relationships) read: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, the Organization should facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms ...." 9 However, there were two indirect references to human rights in the DOP. One of the declared Purposes of the proposed Organization was "to achieve international co-operation in solution of international economic, social

8. See for the details, n.6, pp.474; 483-85.
and other humanitarian problems". The second reference was found in the powers of the General Assembly which included, among others, the power to make recommendations with respect to international economic, social and other humanitarian matters. The words human rights were not explicitly mentioned in these clauses.

It is worth noting that, like Article 15, paragraph 8 of the League Covenant, the clause regarding domestic jurisdiction in the DOP was also explicitly confined to the peaceful settlement of disputes. The latter read: "the provisions of paragraphs 1 to 6 of Section A should not apply to situations or disputes arising out of matters which by international law are solely within the domestic jurisdiction of the state concerned."10

THE DRAFTING OF THE CHARTER PROVISIONS ON HUMAN RIGHTS AND "DOMESTIC JURISDICTION" AT UNCIO

In the opening plenary sessions of the United Nations Conference on International Organization (UNCIO), held at San Francisco from 25 April to 26 June 1945, the delegates of many States showed interest in human rights. The Australian delegate spoke of the promises of the Atlantic Charter and the need to provide machinery to assure fulfilment of those promises.

10. Ibid., p.99.
promises and pledges. His reference was primarily towards matters of economic welfare. He urged the inclusion of these pledges in the Charter of the World Organization.\footnote{11} The Indian delegate asked for the recognition of the dignity of common man and the fundamental rights of human beings.\footnote{12} South African Premier Smuts concluded his address to the Plenary Session with a brief plea for the inclusion of human rights language in the Preamble of the Charter.\footnote{13} Penama, often a champion of human rights in UN forums, proposed an International Bill of Rights to be included in the Charter.\footnote{14}

In the Committee meetings of the UNCONF, large number of delegates felt that the reference to human rights and fundamental freedoms in the DOP was inadequate. It was felt that something more had to be inserted in the final version of the Charter. Hence, many suggestions were made at San Francisco to broaden the provisions on human rights.

\textbf{Drafting of the Preamble:}

Some states suggested broadening of the Preamble, so as to include in it a reference to human rights. Their


\footnote{12} Ibid., p.245.

\footnote{13} Ibid., pp.425-26.

\footnote{14} Ibid., p.560.
suggestions were considered most important, as the Preamble is not only regarded as an integral part of the Charter, but a guiding force and spirit of the whole document. Colombia was one of those countries, to suggest such a proposal; and asked the contracting parties to agree upon the necessity of declaring that the international recognition and protection of the essential rights of the individual is a necessary condition of peace, both within states and in their relations with each other. 15 South Africa too requested the inclusion of a principle in the Charter "to establish faith in fundamental human rights ... in the equal rights of men and women and of nations large and small", and to live up to the proposed ends by "the establishment of conditions under which the fundamental human rights and freedoms can be maintained". It also proposed that a "declaration of human rights" be added in the Charter as the War was "fought for justice", and decency of fundamental rights of man. 16

These amendments were discussed in Committee I/1 (the Committee concerned with the discussions on Preamble, Purposes and Principles) of the Conference and the Committee agreed to adopt the South African draft of a Preamble, with

16. Ibid., pp.474, 476-77.
the reservation that the final form should be agreed on later.\textsuperscript{17} The Committee, in adopting this amendment, held that faith in the dignity and worth of the human person was among the most important factors which moved men and women in all lands to accept the sacrifices by which victory was achieved, and this faith needed reaffirmation in the Charter, especially after it has been trampled upon by Nazism and Fascism.\textsuperscript{18}

\textbf{Drafting of Purposes:}

Similarly, many amendments were proposed to modify Chapter I (Purposes) of the DOP. On the initiation of the US delegation, the sponsoring Powers proposed a joint amendment to supplement paragraph 3 of the Proposals (dealing with economic, social and other humanitarian matters), by declaring that one of the UN Purposes should be the "promotion and encouragement of respect for human rights and fundamental freedoms for all without distinction as to race, language, religion or sex".\textsuperscript{19} Almost identical was an Egyptian amendment which suggested the insertion of the words "to promote

\textsuperscript{17} \textit{UNCIO,} Docs. vol.6, p.277.

\textsuperscript{18} Ibid., p.359. On the final version, see p.366.

\textsuperscript{19} \textit{UNCIO,} Docs. vol.3, p.640.
respect for human rights and fundamental freedoms", in addition, conformity with the principles embodied in the Atlantic Charter was demanded. India and France requested more substantial changes. India proposed the inclusion of a new Purpose, besides four other Purposes, "to promote recognition of fundamental human rights for all men and women irrespective of race, colour or creed, in all nations ...." France proposed that it be declared one of the Purposes of the Organization "to see to it that the essential liberties of all are respected without distinction of race, language, or creed".

Brazil, the Dominican Republic and Mexico proposed a joint amendment to include among the Purposes of the Organization, "to ensure respect for human rights and fundamental freedoms, without discrimination against race, sex, condition, or creed". The Panamanian delegation proposed a most extensive amendment to make it a purpose of the Organization to maintain and observe the standards set forth in the

20. Ibid., p.453.
21. Ibid., p.527
22. Ibid., p.383.
23. Ibid., p.602.
proposed "Declaration of Essential Human Rights". The proposed Declaration should contain a fullfledged bill of rights, and that should be made an integral part of the Charter.24 Likewise, the Uguguyan proposal required not only that the Organization "ensure" that members live up to minimum standards of decency in the treatment of their own citizens but also that it "guarantee" respect for essential human rights and liberties by adopting a system of effective international guardianship of these rights, besides adopting international bill of rights. Moreover, it was proposed that the "Charter of Mankind" should be submitted to the consideration of the Assembly within a period of not more than six months.25

The Chilean suggestions too were far-reaching. It requested the explicit statement that in order to achieve the Organization's Purposes, every state must guarantee to the individual full and complete protection of his freedom and the right to live and to work, and also the free exercise of religion, profession, science and arts. It further requested that governments undertake to guarantee to their people freedom of press and information.26


25. Ibid., pp.34-35.

26. Ibid., p.294.
During discussion on these amendments, priority was sought to consider first the Declaration of the Rights of Man, but it was ruled out by the Chairman of the Committee I/1 on the ground that this subject did not have priority over other aspects of Chapter I. The Cuban delegation declared, in this connexion, that the proposed "Declaration" should not be insisted upon, and taking note of such suggestions the General Assembly should be expected to give them proper consideration.

At the 10th meeting of the Committee I/1, the delegate of Panama presented a motion to read the passage of Article 1, para 3; "and promotion and protection of human rights and fundamental freedoms...", as against the Committee's draft "promotion and encouragement" of respect for human rights. Several delegates supported his proposal, but the U.S. and British delegates and the Rapporteur of the Committee objected to such alteration, as they believed that the amendment would raise the question as to whether or not the Organization should actively impose human rights and fundamental freedoms within individual countries, and that it would lead many peoples

27. UNICO, Docs. vol.6, p.303.
28. Ibid., pp.303-4.
of the world to expect more of the Organization than it could successfully accomplish. Hence, the Committee decided not to adopt such a motion, and subsequently it was rejected. 30

What is of greater interest to us is the report of the Rapporteur of Sub-Committee I/1/A to Committee I/1 of the Conference. While summarizing other amendments, he said that it was proposed to use the words "to ensure" or "to protect" (human rights) instead of "to promote and encourage respect", but it was held that assuring or protecting such rights was a matter of domestic concern of each state. The report, however, added that if such rights and freedoms were grossly violated or denied, so as to create conditions which threatened international peace, then they cease to be the sole concern of each state. 31 During discussion in the Conference, suggestions were made to draft a bill or to include in the Charter an already drafted bill on the rights of the individual. 32 These suggestions, though received sympathy in the Committee I of Commission I, it decided that the conference could not draft such a bill, because it was short of time. It was felt that the Organization once formed would

30. Ibid., p.325.

31. Ibid., pp.696, 704-05.

32. This suggestion was made by Panama, which got defeated. See Ibid., p.705.
do better to consider the suggestions and to deal effectively with them through a Special Commission or by some other method. The Committee recommended that the General Assembly consider the proposal and give it effect.³³

In Commission I, the text of Article 1 of the Charter was adopted without further discussion.³⁴

Drafting of "Principles":

The Cuban delegation was the first to propose an amendment to Chapter II (Principles of the Organization) of the DOP. This amendment sought to change the wording of the Chapter so as to read:

In pursuit of the Purposes mentioned in Chapter II, the states which are members of the Organization shall conform their acts to the principles, contained in ... the "Declaration of the International Duties and Rights of the Individual" which the General Assembly shall adopt within the shortest possible time after it is constituted.

In Annex B of its proposal, the delegation urged the Assembly to include in its Declaration all the fundamental rights of individual.³⁵

³³. Ibid., p.456.
³⁴. Ibid., p.65.
Panama proposed to modify Chapter II to the effect that each state must treat its citizens in a manner which would not violate the dictates of humanity or shock the conscience of mankind. 36 Uruguay suggested that paragraph 2, be amended so to make it an obligation of member states "to respect ... the essential rights of mankind, internationally established and guaranteed". 37 Norway demanded the addition of a new paragraph providing that all members of the Organization undertake to defend life, liberty and religious freedom, and to preserve human rights and justice. 38 New Zealand also proposed the insertion of a new paragraph reading as: "all members undertake to preserve, protect and promote human rights and in particular the rights of freedom from want, freedom from fear, freedom of speech and freedom of worship". 39

There was considerable discussion, in Committee I/1, on the Uruguyan suggestion which asked for the insertion of a statement in the Charter concerning the maintenance of human rights. The delegate of Uruguay insisted that the maintenance of human rights be included among "Principles", arguing that

36. Ibid., p.269.
37. Ibid., p.35.
38. Ibid., p.366.
39. Ibid., p.486.
its mention in Chapter I (Purposes) would bind only the Organization and not the member states. If this suggestion had been accepted at the Conference, any member state found violating the "Principles" of the Charter may have faced expulsion from the Organization (under Article 6 of the Charter, or Chapter V, Section B, paragraph 3 of the DOP). This might have been the reason why Uruguay was pleading for making reference to human rights in Charter "Principles". It was quite aware of the fact that there was no such penalty provided for violation of "Purposes" either in the Dumbarton Proposals or in the Charter.

Insertion of a New Principle: "Domestic Jurisdiction"

As noted earlier, the clause about domestic jurisdiction in the DOP was limited to peaceful settlement of disputes. Hence, there was a possibility that the Charter provisions of human rights could have been interpreted to mean that the United Nations or any of its organs can interfere in the internal affairs of member states, especially when these states engage themselves in gross violation of these rights and freedoms. To prevent such an interpretation, the Sponsoring Powers, proposed an amendment to the "domestic jurisdiction"

40. UNCIO, Docs., vol.6, p.291.
clause and also suggested that the provision be shifted from Chapter VIII of the Proposals to Chapter II on Principles (subsequently the Conference decided to include Chapter II in Chapter I). The proposal also asked for the substantial revision in the text, such as the substitution of "essentially" for "solely" and the elimination of any reference to international law. The wordings of the amended draft were as follows:

Nothing contained in this Chapter shall authorize the Organization to intervene in matters which are essentially within the domestic jurisdiction of the state concerned or shall require the members to submit such matters to settlement under this Charter; but this principle shall not prejudice the application of Chapter VIII, Section B.(41)

The Sponsoring Power's amendment was considered to be necessary because of the broadening of the Organization's functions, particularly with respect to economic, social and cultural matters. One of the declared Purposes of the United Nations was to deal with member states in carrying out its economic and social obligations, instead of allowing the Organization to "penetrate directly into the domestic life and economy of each state". This amendment was thought to be necessary in view of such broadening of functions of

42. UNCEO, Docs., vol.6, pp.507-8.
the Organization (under Article 56), and "to make sure that the United Nations under prevalent world conditions should not go beyond acceptable limits or exceed due limitations". Both the rule and the exception "can be looked upon as being really implicit in any Organisation, which is genuinely international in character".43 The other reason for such a change was to make it a general limitation on the powers of all the Organs of the United Nations as against the League Covenant and DOP which put the limitation only on the powers of the League Council and the Security Council respectively.

There were a few other amendments of this nature mostly dealing with non-intervention in the internal affairs of the States. Panama, which had requested earlier that a Declaration of Essential Human Rights be made an integral part of the Charter, demanded at the same time that Chapter II should contain a provision that "each State has a legal duty to refrain from intervention in the internal affairs of any state".44 Similarly, Mexico also demanded the inclusion of a paragraph 3 in Chapter II that "no state has a right to intervene, directly or indirectly, in the internal affairs of another state".45

43. Ibid., p.486.
44. UNCSO, Docs., vol.3, p.270.
45. Ibid., p.179.
The French delegation proposed the addition of the following clause at the end of the DOP on domestic jurisdiction: "...unless the clear violation of essential liberties and of human rights [which] constitutes in itself a threat capable of compromising peace". France was the only country which asked explicitly to extend the exception principle to human rights. Ecuador demanded non-intervention "without prejudice to the rights and powers vested in the Organization by the present Charter". Iran wanted to restrict such intervention to cases "inconsistent with the Purposes of the Organization".

The amendment of Sponsoring Powers, which sought to shift domestic jurisdiction provision from the Chapter of Pacific Settlement of Disputes to Chapter II (on the "Principles" of the Organization), was severely criticized at the Conference. The Leader of the Australian delegation, H.V. Evatt, objected to the last sentence of the amendment (regarding the "exception") and argued that if the amended version of the domestic jurisdiction principle is deemed necessary to enable the Security Council to deal with grave infringements of basic rights within a state, the proper

46. Ibid., p. 386.
47. Ibid., p. 396.
48. Ibid., p. 554.
course would be to declare the protection of minorities as a matter of "legitimate international concern", or to make a formal international convention providing for the proper treatment of minorities. In that case, he said, it would be plain that nothing in the amendment would limit the power of the Council to intervene, since the rule of domestic jurisdiction ceases to apply as soon as the matter ceases to be one of domestic jurisdiction. He found the language of this amendment too permissive. He thought that it would permit the Security Council to interfere not only in the domestic affairs of an aggressor state, but also in those of its victims, as it was empowered under Chapter VIII, Section A of the DOP to make recommendations to the "parties" to a dispute and the victim is surely a "party". He proposed to tighten up the "exception" by confining it not to "the application of Chapter VII, Section B", but rather to "the application of enforcement measures under Chapter VIII, Section B". The real motive behind this change, as he argued, was to serve the interests of all members of the Organization, and specially small states, other than the permanent members of the Security Council who would be excluded from such action of interference by virtue of their veto power.

49. UNCIO, Docs., vol.6, pp.436 and 439.
50. Ibid., pp.421, 424. Also see p.436.
51. Ibid., p.424.
The Government of Norway, which had suggested earlier, together with Bolivia, that the domestic jurisdiction clause of the DOP be deleted altogether from the Charter, voiced opposition to both the Australian and Sponsoring Powers' amendments. The delegate of Norway said: "It will be a very grave limitation ... to deny ... the right to suggest to one or both parties that they make concessions in matters which, under international law and treaties, are within their domestic jurisdiction". The delegate pointed out that under the Sponsoring Powers' amendment, in some cases, the matter could not be investigated, nor made the subject of friendly advice by the Council under Chapter VIII, Section A, and under the Australian amendment, not even made the subject of recommendation under Chapter VIII, Section B, whether that recommendation was in the nature of a provisional measure or otherwise. Under both the amendments, he said, "still more under the Australian amendment, the Council is debarred from using the more lenient means of good offices and is driven to use, at once and without gradual transition, the more violent means at its disposal". He concluded that the Norwegians favoured an amendment providing that the Security Council might invade domestic jurisdiction under Chapter VIII, Section A, to investigate or promote conciliation of a dispute or situation.


Ibid.
There was also discussion on the proposals submitted by Belgium, Greece and France. The delegation of Belgium had suggested to the DOP that each party to a dispute should have the right to ask the proposed International Court whether the decisions/recommendations of the Security Council "infringe on its essential rights", in case the Court decided in the affirmative, the Council was to decide whether to consider the question or to refer it to the General Assembly. 55 Similarly, the Greek delegation also raised the question as to who should decide whether a particular dispute or situation arose out of a matter of domestic jurisdiction. The delegate proposed that the matter can be referred to the International Court of Justice by one of the parties to a dispute and decide the matter according to international law. 56 John Foster Dulles, the leader of the American delegation, opposed this suggestion on the ground that disputes involving interpretation were not peculiar to domestic jurisdiction clause alone. He said that the problem of disputed jurisdiction was common to all other provisions of the Charter as well. Those states which have accepted the compulsory jurisdiction of the proposed International Court might seek the opinion of that Court in cases of disputed jurisdiction, while the UN organs too could obtain an advisory opinion.

56. UN CIO, Docs., vol.6, pp. 507 and 509.
of the Court in disputed cases. He said it was impossible to introduce the principle of compulsory jurisdiction in case of any particular provision of the Charter. This move could not get the required two-thirds majority and was defeated.

However, the question — "who should decide the matters of domestic jurisdiction" — remained unanswered. During discussion, the Belgian delegate feared that the article on domestic jurisdiction might be interpreted in such a way that each country finally became the judge. The Australian delegation opposed the Belgian amendment arguing that the Organization should not be the judge of its own activities and that in the event of conflicting views as to jurisdiction, the matter should be referred to the Court for advisory opinion. As a result of opposition from American and Australian delegations, the Belgian amendments were defeated.

Similarly, the French amendment, which suggested the inclusion of infringement of human rights under the exception clause was dropped on the ground that it concerned itself primarily with only one of the cases involved in the exception clause. When all the amendments got defeated in the


58. UNCIO, Docs., vol.6, pp.494 and 498.
Conference discussions, the proposal of the Sponsoring governments, with the changes suggested by the Australian delegation, was accepted and adopted by 33 votes to 2. It thus appears in the final text of the Charter. 59

Powers of the UN Organs and Human Rights

The Sponsoring Powers sought to amend Chapter V, Section B, paragraph 6 of the DOP by granting the General Assembly the right to initiate studies and make recommendations for the purpose of promoting international co-operation to "assist in the realization of human rights and basic freedoms for all, without distinction as to race, language, religion or sex..." This amendment also sought to change Chapter IX, Section C and D of the Proposals. In the former case, it wanted to modify the provisions in such a manner as to make it an obligation of members to co-operate with the Organization and grant the Economic and Social Council (ECOSOC) the right to make recommendations for promoting respect for human rights and freedoms. In the latter case, it proposed to create a special commission for the promotion

59, Ibid., p. 113. For the text of this clause, see Art. 2(7) of the Charter.
of human rights. The Panamanian delegation demanded the replacement in Chapter IX, Section A, paragraph 1 (of the DOP) of the words "promote respect" by "safeguard and protect human rights". Mexico moved that the ECOSOC propose to the Assembly all necessary measures for setting up a permanent organization relating to the "protection of the International Rights of Man". Canada and Chile too proposed amendments to broaden the scope of activity of the Assembly and the ECOSOC in respect of human rights.

It is interesting to note that France was the only country which requested the Conference to include in the Security Council's powers the activities relating to human rights. It proposed that the Assembly and the ECOSOC cooperate with the Security Council in the execution of these functions.  

During discussion on the amendments to the powers of the Assembly, in connexion with human rights, no important debate took place. The amendment of the Sponsoring Powers

60. **UNCIO, Docs., vol.3, pp.623 and 627.**
61. **Ibid., p.271.**
62. **Ibid., p.84.**
63. **UNCIO, Docs., vol.10, pp.99-100.**
was unanimously adopted by Committee II/3 (charged with Economic and Social Cooperation) on 26 May 1945. However, more discussion followed regarding the powers of the ECOSOC. The Belgian delegation proposed to re-draft the new text of the drafting Sub-committee of Committee II/3 for Chapter IX, Section D, Paragraph 1 (of the DOP) requiring the Council to set up various commissions, in the sense that the Council "shall set up such commissions as may be required... and notably to promote human rights". The Soviet delegate wanted that the reference to human rights be dropped from the Belgian proposal. However, the reference to human rights was not deleted as the American delegate insisted on its retention. Thus, the Committee unanimously adopted the draft proposed by sub-committee II/3 with changes required by Belgium. 64

Committee II/3 recommended that the original statement of purposes of the Economic and Social Co-operation (contained in Chapter IX, Section A of the DOP, and now in Article 62, para 2 of the Charter) relating to the promotion of human rights and fundamental freedoms be amended to read that the Organization shall promote universal respect for, and observance of, human rights for all, without distinction as to race, 64

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64. Ibid., pp.151-2.
language, religion or sex. However, to remove any possible misgiving that this statement of purposes implied that the Organization might interfere in the domestic affairs of member states, the Committee agreed to a US proposal,\(^{65}\) to include in its report the following statement: "The members of the Committee 3 of Commission II are in full agreement that nothing contained in Chapter IX \(^{7}\) of the Charter, dealing with International Economic and Social cooperation can be construed as giving authority to the Organization to intervene in the domestic affairs of member states".\(^ {66}\)

Those "misgivings" were raised earlier in connexion with the "pledge" required from the member states to "co-operate" with the Organization in achieving its economic and social purposes. There was divergence of opinion on the question whether only "co-operation" with the Organization is needed or separate action too. The delegate of Australia said that the original text contained both a pledge to co-operate with the Organization and a pledge to take separate action, but the Sub-committee had omitted the latter. To reconcile those differences, he recommended a new text: "In order that these purposes may be widely realized, all

\(^{65}\) \textit{UNCIO}, vol.10, p.83.

\(^{66}\) \textit{Ibid.}, pp.271-72.
members pledge themselves to co-operate with the Organization and with each other and to take such independent action as they deem appropriate to achieve these purposes within their own territories. 67

However, the US delegate opposed this version of the text on the ground that if, in addition to pledging co-operation (which implied separate action), the pledge included separate action, that would mean something more than co-operation. Such an addition might imply that an International Organization could intervene in domestic affairs. He said that the safeguarding clause (Art. 2, para 7) in Chapter II (Principles) was not sufficient, since a pledge of the type adopted by Australia would make internal affairs matters of international concern. 68 The Soviet delegate argued that the draft text contained no essential differences in substance. In fact, he thought that signing the Charter alone would be equivalent to a pledge. He emphasized the importance of getting unanimity in the Committee, and for that reason moved that the question be referred back to the drafting Sub-committee to evolve an acceptable formula. 69 The redraft of

67. Ibid., p. 139.
68. The U.S. delegation had also raised objections to the broad objectives of Art. 55, especially to the full employment provision on the ground that it may involve in matters of domestic jurisdiction. Ibid., pp. 39-40; 57-59.
69. Ibid., pp. 140-41.
the drafting Sub-Committee spoke of a pledge "to take joint
and separate action in cooperation with the Organization", was adopted by the Committee by a vote of 34 to 1.70

Thus, it can be said that despite all these difficulties, and a comprehensive debate, the insertion of the various provisions on human rights, in the Charter, can be considered as one of the major accomplishments of the San Francisco Conference.

The final evidence of the intention of the framers in respect of the interpretation of human rights came in the closing plenary sessions of the Conference. Perhaps, the most interesting piece was the statement of the Rapporteur of the Commission that had dealt with the General Assembly, the ECOSOC and the Trusteeship Council. In completing his report, he said: "The San Francisco Conference will go down in history as the first world congress where it is definitely recognized and established by the sovereign will of fifty nations that the individual, just as the state, is a subject of international law".71

70. Ibid., p.161.

HUMAN RIGHTS AND DOMESTIC JURISDICTION UNDER THE CHARTER

The UN Charter makes seven references to human rights — more than to any other subject within the scope of the Charter. The Charter was the first universal multilateral treaty to embody human rights concern in its provisions. The first reference is found in the Preamble which reads:

We the people of the United Nations determined... to reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of nations large and small ... have resolved to combine our efforts to accomplish these aims.

The second reference is made in Chapter I, which deals with the Purposes and Principles of the Organization. Article 1, paragraph 3, states that one of the Purposes of the United Nations is "to achieve international co-operation ... in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

A third reference is contained in Article 13, paragraph 1(b) which directs the General Assembly to initiate studies and make recommendations for the purpose of "promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all — without distinction as to race, sex, language, or religion".

Article 55, together with Article 56, of the Charter makes
another reference. Article 55, more than any other provision of the Charter, clearly and expressly describes the extension purposes of the United Nations in the human rights fields. These include "respect for the principles of equal rights and self-determination of peoples", promotion of "higher standards of living, full employment, and conditions of economic and social progress and development"; "solution of international economic, social, health and related problems", and the "universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language, or religion". Under Article 56, member states have "pledged" themselves to take joint and separate action in co-operation with the United Nations for the achievement of the purposes set forth in Article 55.

The fifth reference is in Article 62, paragraph 2 which provides that the ECOSOC "may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all". Two other provisions of the same Article contain additional general definitions of the competence of the Council; (1) that it "may prepare draft convention for submissions to General Assembly, with respect to matters falling within its competence [Paragraph 3]"; and (2) that it "may call ... international conferences on matters falling within its competence [paragraph 4]". Under Article 68, the ECOSOC is required
to "set up commissions in economic and social fields and for the promotion of human rights..." This forms the sixth reference.

Finally, there is the reference to human rights in Chapter XII and XIII of the Charter which deals with the International Trusteeship system. Under Article 76(c), it is one of the "basic objectives" of the system "to encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language, or religion...," and under Article 87 the Charter provides for the supervision of the administration of trust territories through a system of reports, examination of petitions and periodic visits to these territories.

In addition, Article 73 provides in a declaration regarding other Non-Self-Governing Territories that the Administering States accept "as a sacred trust" the obligation to promote to the utmost "the well-being of the inhabitants of these territories", and to this end to ensure "their just treatment, and their protection against abuses."

The UN Organs charged with competence on the question of human rights and fundamental freedoms are defined in Article 60 of the Charter:
Responsibility for the discharge of the functions of the Organization set forth in this Chapter—the most important of them dealing with human rights are provided in Article 55 and 56 shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

In addition, Article 2(2) referring to the Charter as a whole, reads as follows: "All Members of the United Nations... shall fulfil in good faith the obligations assumed by them in accordance with the present Charter".

These are the main provisions of the Charter dealing with the promotion of human rights and the Organs charged with their promotion. However, all these obligations and duties of member states and of the Organization are said to be subject to the general limitation of the Charter contained in Article 2(7) which prohibits the United Nations to intervene in "matters of domestic jurisdiction" of any member states; however, such prohibition is inapplicable to the questions of enforcement measures under Chapter VII of the Charter. The extent of this limitation, whether the question of human rights is "essentially" a matter of domestic concern; and what actually constitutes "intervention" in domestic jurisdiction, who decides whether or not in a concrete case it falls within domestic jurisdiction and with what criteria?, and the related questions will be extensively discussed in the next chapter.
The Competence of UN Organs in Human Rights Matters

Under the UN Charter, only two of its principal organs — the General Assembly and the ECOSOC — are entrusted with the work of implementing the provisions of the Charter in the matters of human rights. However, the Trusteeship Council, also performs a few functions relating to encouraging respect for human rights in Trust territories.

The powers and functions of the General Assembly, in the field of human rights, are directly provided in four Articles of the Charter, which include the initiation of studies on, and the discussion/recommendation of, the matters of human rights. Firstly, under Article 10, it is authorized to "discuss any questions or any matters within the scope of the present Charter", and to make recommendations ... on any such questions or matters" (emphasis added). Secondly, according to Article 13, 1(b), the Assembly is made competent to "initiate studies and make recommendations" for the purpose of promoting and assisting in the realization of human rights and fundamental freedoms for all. This expressly provides for discussion of any complaint concerning violation/ infringement of human rights brought before it by a member state. The Assembly has exercised these powers on many occasions. To mention a few cases, they have been used in respect of the question of treatment of Indians in South Africa, the question of Soviet-born wives of foreign nationals...
and even the conduct of non-member states, as in the case of alleged breaches of clauses of the peace treaties by Bulgaria, Hungary and Romania.\textsuperscript{72} Further, this Article provides that the Assembly has to perform its above responsibilities in conformity with the provisions of Chapter IX (Articles 55 and 56) and X (Articles 61-72). Finally, Article 60 also empowers the Assembly.

Thirdly, Article 14 empowers the Assembly to "recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the UN Purposes and Principles". (Emphasis added). Under this Article, it can recommend measures to take action against those states which violate consistently the provisions, Purposes and Principles of the Charter. It can also take action against States which follow discriminatory policies towards their own citizens which are deemed to impair relations among nations.\textsuperscript{73} and,


\textsuperscript{73} For a detailed account as to how many times this article is used/invoked, see Repertory, vol. 1, pp. 463-80; Suppl. No. 1, vol. I, pp. 169-73; Suppl. No. 2, vol. II, pp. 145-51.
(through ECOSOC) discharge the broad UN functions set forth in these Chapters of the Charter.

The ECOSOC and, in particular the Commission on Human Rights (created as its organ under Article 68) are the main instruments provided directly by the Charter for giving effect to its principles and obligations in the matter of human rights. The Council's responsibility is of a general nature. Under Article 62, it has power to make or initiate studies and reports with respect to international economic, social, cultural, educational, health and related matters. It can make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all. It may prepare draft conventions on these matters and call international conferences to initiate discussion at international level.

The Security Council is the only UN organ, which has executive and legislative powers of binding nature. But, unfortunately, this body is not the normal instrument of the Organization in the promotion and protection of human rights. It has no powers to frame general policies for

74. See Repertory, vol. III (New York, 1955), pp. 251-72, for the details of recommendations made by ECOSOC in its first 18 sessions.
implementing that objective of the Charter. However, it has an unlimited reservoir of power — a power not confined to recommendations and not always restricted by the reservation of domestic jurisdiction — for the protection of human rights. Article 34 of the Charter authorizes the Council to determine whether the continuance of a dispute or situation is likely to endanger peace and security. Such a dispute or situation might arise due to willful refusal to respect human rights or to systematic and flagrant denial of those rights by a member state. It may determine whether these actions of nations become a source of international friction, the continuance of which endanger maintenance of international peace and security. It may investigate such disputes or situation. Thus, it can be said that the Council under the authority of Article 34 may intervene in such matters/disputes, notwithstanding that the situation or dispute was originally a matter essentially within the domestic jurisdiction of the state concerned.

Similarly, Article 39 also provides the Security Council the powers of investigation to determine measures of action with respect to threats to peace, breaches of the peace and acts of aggression. Under the authority of this provision, it is the duty of the Council to determine the existence of any threat to the peace and to make recommendations for maintaining and securing international peace. If the Council finds, therefore, that the infringement of the
basic human rights of some persons within their own states as to threaten peace, it is bound to decide what measures should be taken in order to ensure the fulfilment in good faith of obligations assumed by member states under the Charter.

SUMMARY OBSERVATIONS

As a result of the establishment of the League of Nations, the post-World War I period brought a new thinking, which was of course in embryonic and rudimentary form in its contents, among nation-states towards the growing realization of the significance of human rights of minorities and the welfare of mandatory territories. The League did not concern much on "individual" human rights or their universalization. It was generally concerned much with the specific human rights problems such as slavery; forced labour; traffic in narcotics, children, and women etc. The League's emphasis on the rights and welfare of the individuals living in mandatory territories was an implied reference towards the growing international concern with regard to the right of self-determination of peoples, and the emergence of nation-states. Though the League did not create any internationally applicable machinery to promote human rights, its activities (though not revolutionary) however, seen in retrospect, constituted an important beginning towards the respect
for and recognition of human rights at international level.

The Second World War not only accelerated this process, but also laid a foundation of the permanent structures to evolve universal human rights norms. The San Francisco Conference resulted in the establishment of the United Nations, which in subsequent years created a number of human rights bodies. The Conference was a landmark in the history of nations, as it devoted considerable efforts on including human rights provisions/obligations in the Charter — the first international conference to have done so. It recognized the close link between the maintenance of peace and human rights. It was recognized that without one the other is not possible.

Much before the San Francisco Conference, the US Department of State (in 1942) had included a draft Bill of Rights in its early draft of the UN Charter. Since there was no agreement on the rights to be included and measures of implementation to be provided, the US draft proposed the inclusion of a Declaration on human rights as an annexure to the Charter. Due to the British and Soviet objections for inclusion of specific human rights obligations in the Charter, the idea of "Declaration" too was dropped and it was proposed that in the Dumbarton Oakes proposals two references should be provided — one in the Chapter on Purposes and other in the
Powers of the General Assembly, which would have to initiate studies and adopt recommendations on the promotion of human rights.

It was only at the UNCIO that many delegations expressed their deep interest in human rights and proposed various amendments to Dumbarton Proposals. Notable among them were the proposals submitted by the delegations of Panama and South Africa. Panama proposed for the inclusion of an International bill of rights, whereas South Africa sought the inclusion of human rights references in the Preamble and a Declaration on rights in the Charter. Brazil, Dominican Republic, France and India wanted that promotion of human rights be made as one of the basic purposes of the Charter.

As there was no agreement on the inclusion of either a Bill or Declaration of Rights in the Charter, the Conference agreed to a Cuban suggestion that such proposals be dropped and that the General Assembly should be expected to give them consideration at a later stage. Therefore, it was agreed to make some references to human rights in the Preamble and various articles on Purposes and Powers of the UN organs.

One of the unique agreements reached at UNCIO, which gave rise to the controversy whether human rights fall under the exclusive jurisdiction of member states, was that
while recognizing the significance of human rights in the UN Charter, it also agreed to recognize the concept of domestic jurisdiction. While rejecting the French proposal, which had asked for exclusion of the application of domestic jurisdiction principle to human rights, the conference agreed to the Sponsoring Powers' proposal that the domestic jurisdiction provision be applicable to the whole of the Charter.

In conclusion it can be said that though the UN Charter was not a perfect document, as it did not elaborate and spell out the specific human rights norms and obligations, was a historic step in the long march of man to a better world. The task of spelling out was assigned to the General Assembly, the ECOSOC (under Art. 13 and 62) and the Commission on Human Rights (to be created under Art. 68 of the Charter).