Chapter - II

BASIC HUMAN RIGHTS INSTRUMENTS

As the United Nations became an operational system in January 1946, international concern with the promotion of human rights gained new grounds. Commitments relating to human rights in the UN Charter led to a first concrete step, when the ECOSOC, in its very first session, set up what Art.68 has enjoined it to do by way of setting up the UN Commission for the Promotion of human rights. The Commission on Human Rights (hereafter referred to simply as the CHR) thus established was given an extensive mandate

1. The CHR was initially established by ECOSOC Resol. 5(I) of 16 February 1946 in nucleus form. In the same year, by ECOSOC Resol. 9(II) of 21 June, a Permanent Commission was established on the recommendation of the nucleus Commission. Originally, the Commission's membership was 18, which was enlarged to 21 in 1961, 32 in 1966 and 43 in 1979. It is interesting to note that the nucleus Commission in its first and only report (ESCOR, 2nd Sess., Annex B) had recommended that all members of the Commission should serve as non-governmental representatives appointed by the ECOSOC out of a list of nominees submitted by member States of the United Nations. The nucleus Commission's contention was that the CHR should not again consist of representatives of government like the General Assembly or the ECOSOC. This suggestion was discussed at the third session of the ECOSOC, but no agreement was reached on the question whether persons attending the Commission should be appointed in that individual capacity or as representatives of the government. The ECOSOC, on the other hand, decided to leave the matter to each of the 18 governments concerned whether to nominate a government servant or an independent person. /ESCOR, 3rd Sess., Suppl.No.2, Annex 4a/. In the beginning, governments used to put forward their candidate, during election, generally with an indication of the
to deal with any matter relating to human rights. It was to prepare, \textit{inter alia}, recommendations and draft international declarations and Conventions relating to human rights and also to undertake special tasks assigned to it by the General Assembly or the ECOSOC, including the investigation of allegations concerning violations of human rights and the handling of communications relating to such violations.

Under the Charter's mandate, the UN organs/bodies over the last four decades have adopted more than twenty

(\textit{\textsuperscript{previous f/n. cont...}})

representative they will appoint, if elected. After elections some used to nominate government servants and some non-governmental persons, but all the persons nominated sat in the Commission as government representatives. Many scholars and observers of the United Nations have considered that the Commission consisting of individual experts would have been more active, but one British scholar remarks that getting acceptance of states for the \textit{international} instruments prepared by the Commission would be more easier if such instruments are prepared by the representatives of the Member States rather than persons in their "individual capacity" who are most of the time ignorant of government reactions. See Samuel Hoar, "The UN Commission on Human Rights", in Evan Luard (ed.), \textit{International Protection of Human Rights} (London, 1967), p.62.

However, it was agreed that the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, which was established by the CHR in 1947, should consist of "experts" in their "individual capacity". Presently the Sub-Commission is composed of 26 persons.
five instruments of human rights — practically covering every aspect of human rights. Though all of these instruments are significant, this chapter focuses only on the Universal Declaration of Human Rights (1948) and the two international Covenants (1966), which are the most basic instruments and constitute an international bill of rights. Since the international Convention on the Elimination of All Forms of Racial Discrimination was the first instrument which had provided for implementation machinery, its drafting and content is briefly discussed along with the above instruments.

**UNIVERSAL DECLARATION OF HUMAN RIGHTS**

The CHR, from its very first session, discussed the preparation of a draft declaration of human rights. It had before it several draft declarations, including those submitted by Chile, Cuba and Panama. The Commission did not prepare any drafts, but decided that its Chairman (Mrs. Eleanor Roosevelt), Vice-chairman (P.C. Chang) and Rapporteur (Charles Malik) undertake, with the assistance of the Secretariat, the task of preparing a preliminary draft International Bill of Rights. It asked them to submit the draft at its next session. During this session, a drafting

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2. For the report of this session to the ECOSOC See Doc.E/259.
Committee consisting of the representatives from Australia, Chile, China, France, Lebanon, the United Kingdom, the U.S. and the USSR, was created by ECOSOC resolution 46(IV) to prepare a preliminary report. In the drafting Committee's first session a division occurred between those who wanted the International Bill of Rights to take the form of a "Declaration or Manifesto", and those who felt that it should take the form of a Convention". The latter agreed, however, that the Assembly may at the time of adopting a Convention approve also a Declaration "wider in content and more general in expression". Accordingly, the Committee, under the Chairmanship of Mrs. Roosevelt, prepared two documents: a Draft Declaration setting forth "general principles", and a Draft Convention on "those matters which the Committee felt might lend themselves to formulation as binding obligations". While some members considered that a Declaration would "in itself have considerable moral weight", others observed that "a more effective method for establishing human rights would be to embody them in a Convention in which the signatories would recognize them as international law". However, the Committee adopted 36 articles for incorporation in an International Declaration on Human Rights.

The Commission's second session (2-17 December 1947) appointed a Working Group which prepared a draft Declaration containing 33 articles on every aspect of human rights. It is interesting to note that the draft included an article on the right of petition (Art. 20). Another positive outcome of this session was that the conception of an International Bill of Rights comprising three parts began to crystallize: a declaration, a Convention and measures of implementation. It had become evident that many governments were prepared to accept a draft declaration if it were to precede and not replace a Convention. The Commission revised both the drafts (of the Drafting Committee and Working Group) and replaced from them the word "convention" by a "Covenant". The US and Australian delegates expressed the view that the language of the Declaration was confused in that it was "both declaratory and mandatory", and as it imposed "no legal obligation it should be drafted in declaratory form only". The French representative emphasized that the Declaration constituted something new: "the individual becomes a subject of international law in respect of his life and liberty; principles are affirmed, side by side with those already laid down by the majority of national laws which no national or international authority had hitherto been able to proclaim, let alone enforce". The Working Committee pointed out that the "domestic jurisdiction" clause of Art. 2(7) "only covered questions which
had not become international" in one way or another. "Once states agreed that such questions should form the subject of a Declaration or a Convention, they clearly placed them outside their domestic jurisdiction and Art. 2(7) become inapplicable". The US delegate was of the opinion that "the removal of the subject matter from 'domestic jurisdiction' should be limited to the Convention". 4

The third session of the Commission (24 May to 18 June 1948) considered the report of the drafting committee. 5 The individual articles of the draft Declaration were examined thoroughly on the basis of the amendments submitted by various representatives. It adopted, by 12-0-4 votes (Byelorussian SSR, Ukrainian SSR, the USSR and Yugoslavia), a draft International Declaration on Human Rights which consisted of a preamble and 28 articles. It did not consider the article on petition, because measures of implementation were not discussed in this session, 6 and did not include an article on the protection of minorities. 7

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6. E/600. See also E/CN.4/SR.61, p.12, for the preliminary decision of the Commission.

7. All proposals concerning such an article were rejected. See E/CN.4/SR.73 and 74.
The ECOSOC, without discussing the Commission's draft declaration, simply referred it to the General Assembly for possible adoption. The Assembly, subsequently referred it to its Third Committee, which spent 81 meetings in considering and discussing the draft. During the Third Committee's discussion there were two differing views as to the implications of the Declaration to the sovereignty of member states. The French representative, Rene Cassin, said that the Declaration could be considered as the authoritative interpretation of the UN Charter. By the adoption of the Declaration, he argued, the question of human rights was a matter no longer of domestic, but of international concern. The competence of the UN organs on the subject of human rights could not be challenged on the ground of Article 2(7) of the Charter. Similarly, the representative of Norway, while pointing out the significance of the Declaration, argued that the question of human rights should not be regarded as falling within the domestic jurisdiction of states. Panama too objected to the "off-repeated sophistry" that the United Nations was helpless to prevent violation of human rights, because it could not interfere in matters which under Article 2(7) were within the domestic jurisdiction

8. GAOR, 3rd Sess. Part I, 3rd Cttee., p.61. This view was also shared by the representative of Egypt. See UN. Doc. A/C.3/SR.92, p.12.

9. Ibid., p.35.
of States. The Panamanian delegate observed that the Charter also included provisions concerning human rights. Article 2(7), he protested, dealt with questions which fell "exclusively within the domestic jurisdiction", and could not apply to matters covered under international law. Consequently, he argued, it could not be invoked in case of human rights matters. 10

Whereas, the representatives of the USSR and Byelorussia criticized and opposed the adoption of the Declaration. The Soviet delegate regretted that the sovereign rights of States were not affirmed in the Declaration, although it was in accordance with Article 2(7) of the Charter. He said that the Declaration was directed against national sovereignty and was, therefore, entirely inconsistent with the UN Principles. In plenary sessions, he pointed out that the Declaration did not contain measures for guaranteeing those rights. Besides, he said, the Declaration was incomplete and lacked provisions regarding protection of the rights of minorities. 11 The Byelorussian representative complained that the Declaration did not even mention the existence of the state as such "and seemed thus to envisage the individual as being outside his own milieu." 12

10. Ibid., p.43.
Several delegations, including those of New Zealand and the Soviet Union, tried for different reasons to postpone the adoption of the Declaration. The New Zealanders were opposed to adopting any declaration until the Covenant was ready: "If the Declaration were adopted first", its representative argued, "there was less likelihood that the Covenant would be adopted at all". The Soviet delegate introduced a draft resolution (A/C. 3/407) which stated that the text of the Declaration considered by the Third Committee required "serious improvements in a whole series of articles" and which requested the Assembly to postpone the final adoption of the Declaration. This draft resolution was rejected on the ground that it has been introduced in the Committee after the formal adoption of the Declaration by it.

After a thorough discussion, the draft Declaration was adopted by the Third Committee, in its 178th meeting, by a roll-call-vote of 29-0-7 (Byelorussia, Canada, Czechoslovakia, Poland, Ukrainian, Yugoslavia and the USSR). The draft Declaration as amended, was adopted unanimously on 10 December 1948, by the Plenary of General Assembly, as "The Universal Declaration of Human Rights [GA Resn. 217(III)]".

During discussion, many delegations emphasized the significance of the Declaration. Mrs. Roosevelt, the Chairman of the Commission, stated that the Declaration represented a great step forward in the promotion and protection of human rights and fundamental freedoms. She said, it "was not a treaty or international agreement and did not impose legal obligations; it was rather a statement of basic principles of inalienable human rights, setting up a common standard of achievement for all peoples and all nations", and added: "although it was not legally binding, the Declaration would, nevertheless, have considerable weight."15

It is interesting to note that the right of individual petition included in Article 20 of the draft Declaration was dropped from the text finally approved by the Assembly. Though the question of petition came before the Assembly's Third Committee for discussion, many amendments to the draft article were proposed. However, the majority of delegates felt that it would not be worthwhile to include any such right in the Declaration, which was not legally binding. The Soviet Union was more vocal in its criticisms and opposition to the right of petition. Her delegate opposed the right on the ground that every state has a machinery to redress alleged wrongs.

15. GAOR, 3rd Sess., Part I, 3rd Cotteo, p.32.
within the framework of each state and that the inclusion of such a right would be a violation of national sovereignty. Finally, the Assembly in accordance with the UK proposal (A/C. 3/370) decided to request the ECOSOC to give further examination to the problem of petition when studying the draft covenant on human rights and the measures of implementation.

It is worth noting that during the preparation of the Declaration, a novel proposal came from the Australian delegate. He suggested that an International Court of Human Rights be established to ensure promotion and protection of human rights. This proposal did not get consideration and support from member states. Probably, member Governments thought that its establishment would infringe their sovereignty.

The Declaration represents an international consensus on the common rights to be recognized and observed by all peoples and nations. It has recognized both the civil and political rights and the economic, social and cultural rights. Articles 3 to 21 deal with the civil and political rights such as right to life, liberty and security of person; right to freedom from slavery and servitude; right to freedom from torture and cruel, inhuman or degrading treatment or punishment; right to recognition as a person before the law; right
to equal protection of the law; right to an effective judicial remedy for violations of human rights; rights to freedom from arbitrary arrest, detention or exile; right to a fair trial and public hearing by an independent and impartial tribunal; right to be presumed innocent until proved guilty; right to freedom from arbitrary interference with privacy, family, home or correspondence; right to freedom of movement and residence; right to seek asylum; right to a nationality; right to marry and to found a family; to own property; right to freedom of opinion and expression; right of peaceful assembly and association; right to take part in government; and the right of equal access to public service.

Articles 22 to 28 of the Universal Declaration deal with economic, social and cultural rights, such as right to social security; right to work and to form and join trade unions; right to equal pay for equal work; right to rest and leisure; right to education; and the right to participate in the cultural life of the community.

Each of these rights, contained in the Declaration, are to be protected without distinction as to race, colour, sex, language, religion, political or other opinion, property or other status, birth or national or social origin (Article 2). Possibly the most novel provision of this document is its declaration that "everyone is entitled to a social and economic order in which the rights and freedoms set forth
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

The increasing membership of African states in the United Nations and the occurrence of various incidents of anti-semitism and racial discrimination between 1959 and 1960 in various parts of the world, and their subsequent condemnation by the Sub-commission on the Prevention of Discrimination and protection of Minorities and the CHR through resolution 6(XVI) had not only prompted the adoption of resolutions by UN organs condemning such practices but had also led to the adoption of a UN Declaration and Convention on the Elimination of All Forms of Racial Discrimination. The General Assembly was first among UN organs to condemn, through resolution 1510 (XV) of 12 December 1960, all manifestations and practices of racial, religious and national hatred in the political, economic, social, educational and cultural spheres of the life of society, as violations of the provisions of UN Charter and the Universal Declaration.

On the requisition of the Sub-commission and the CHR, the ECOSOC recommended to the General Assembly the adoption of a draft resolution on "Manifestations of Racial Prejudice..."
and National and Religious Intolerance [Resol. 826B (XXII)],
27 July 1961]. This resolution referred to the "continued
existence and manifestations of racial prejudice and national
and religious intolerance in different parts of the world"
and invited governments to make efforts to educate public
opinion, with a view to the eradication of such manifestations,
to take steps to rescind discriminatory laws, to adopt legis-
lation, if necessary, for prohibiting discrimination and to
take measures to combat prejudices and intolerance.

Accordingly, the General Assembly, at its Seventeenth
session (1962), allocated the item of manifestations of racial
discrimination to its Third Committee. A draft resolution
was submitted to the Third Committee, by the Central African
Republic, Chad, Dahomey, Guinea, the Ivory Coast, Mali,
Mauritania and Upper Volta (presently known as Burkina Faso),
on the preparation of an international Convention on the
elimination of all forms of racial discrimination. Several
revisions were proposed for the draft resolution, and many
delегations suggested new formulations, some demanding only
a declaration and others favouring a Convention on religious
as well as racial discrimination. Finally, the Third Com-
nittee adopted two resolutions — G.A. Resol. 1780 (XVII) and
Resol. 1781 (XVII). The former asked for the preparation of
a draft declaration and a draft convention on the elimination
of all forms of racial discrimination and the latter asked
for a similar kind of declaration on Convention on the elimination of all forms of religious intolerance. The purpose of these resolutions was to put into effect the principle of equality of all men and peoples without distinctions to race, colour or religion.

Due to the objections by Arab delegations which were eager to displace the question of anti-semitism and the socialist representatives, who did not consider religious discrimination an important matter, the decision to separate the instruments on religious intolerance and those on racial discrimination was arrived at as a compromise.17

During debate in the Third Committee, it was the representative of Czechoslovakia who not only welcomed the ECOSOC resol. 826B(XXXII) as a step towards the elimination of racial discrimination, but also declared that her delegation was prepared to support and cosponsor the draft resolution calling for an international Convention on the elimination of racial discrimination.18 The Philippines said that the Committee had two tasks — one to consider urgent measures (to be taken or at least initiated by the governments, specialized agencies and NGOs) in order to deal


effectively with actual manifestations of racial prejudice and religious intolerance, and the second to consider long term measures to achieve the final and total elimination of all such manifestations. The delegate of New Zealand favoured only a declaration rather than a Convention on the subject, and felt that the problem of removing prejudices could be solved by education, information and example, rather than by legislation.

In accordance with resol. 1780 (XVII) of the Third Committee, the ECOSOC asked the CHR to prepare a draft declaration and a draft Convention on the elimination of all forms of racial discrimination, the former was to be submitted to the Assembly at its 18th session, and the latter was to be submitted to it at its 19th session and in any event, not later than its 20th session.

Accordingly, on 20 November 1963, the General Assembly adopted, on the recommendation of the Third Committee, Resol. 1904 (XVIII), proclaiming the UN Declaration on the Elimination of All Forms of Racial Discrimination. By resol.1906


20. Ibid., SR.1171, p.191.
(XVIII), the Assembly requested the ECOSOC to invite the CHR to give top priority to the preparation of the draft international Convention.

The work on the preparation of the Convention first began at the Sub-Commission's level, which devoted 21 meetings of its 16th session (13-31 January 1964) for the purpose. It had before it many documents including the text of the Declaration on the subject, UNESCO Convention against Discrimination in Education, and three drafts submitted by its members Morris Abram (US),21 Peter Calvocoresi (UK);22 and jointly by Messrs. Boris S. Ivanov (USSR) and Wojciech Ketrzynski (Poland).23 The Sub-commission took as a basis for its work the draft prepared by Morris Abram and adopted a preamble and ten articles.24 The Sub-commission also decided to transmit to the CHR a preliminary draft "as an expression of the general views of the sub-commission" an additional measures of implementation.

At its 20th session (17 Feb. to 13 March 1964), the CHR debated the draft prepared by the Sub-commission and


considered the working paper prepared by the Secretary General (E/CN.4/L.679) which concerned with the final clauses. Besides the debates of the 17th and 18th sessions of the Assembly, it also had before it proposals and comments from the governments of Burma, Honduras, Madagascar, Nigeria, Trinidad and Tobago, Ukranian SSR, the USSR, the UK and a working paper on a draft Convention submitted by Czechoslovakia to the 17th session of the Assembly. The CHR devoted its 775th to 810th meetings for the preparation of Convention. On the recommendation of the CHR, the ECOSOC adopted resol. 1015 B(XXXVII) on 30 July 1964, which submitted to the Assembly the substantive articles prepared by the Commission together with additional proposals (such as the one submitted by the US on anti-semitism ) and the texts on measures of implementation for the final adoption by the General Assembly.

On 24 September 1965, the Assembly allocated to the Third Committee the item on the Convention, which devoted 43 meetings for consideration of the texts of the substantive articles and the measures of implementation and final clauses of the Convention. Among all the measures of implementation discussed in the Committee, the provision on individual petition was subject to many amendments and was not acceptable to Member States as an obligatory system. It was agreed to make the communication procedure as an optional system. The representative of Ghana pointed out in this regard
that it was necessary to reconcile the "sincere wish of many delegations to use the right of petition and communication as an effective weapon against discrimination" with the fact that many states "were jealous of their sovereignty and were reluctant to acknowledge that right".\textsuperscript{25} However, it should be noted that the Racial Convention was an improvement over the Optional Protocol of the CCPR, as it not only grants the right of petition to individuals but also extends this right to groups of individuals.

On the draft resolution proposed by Greece and Hungary, which was finally approved by a roll-call vote, the Third Committee decided not to include in the Convention a provision on anti-semitism.\textsuperscript{26}

On 21 December 1965 the report of the Third Committee (A/6181) was submitted to the General Assembly. After a brief discussion, the Convention was adopted on the same day by 106 votes to 0, with 1 abstention, Mexico. G.A. Res. 2106 A (XX). Mexico later announced that it was giving its affirmative vote to the Convention.\textsuperscript{27}

\textsuperscript{25} A/C.3/SR.1355, p.10.

\textsuperscript{26} For a detailed discussion in the CHR and the Third Committee on the provision of anti-Semitism, see Natan Lerner, UN Convention on the Elimination of All Forms of Racial Discrimination, 2nd edn. (Alphen aan den Rijn, 1980), pp.68-73.

\textsuperscript{27} A/PV.1408, pp.2-5.
Among all the substantive provisions of the Convention, Articles 2 and 5 are by far the most important. Under Article 2 of the Convention, each state party undertakes (a) to engage in no act or practice of racial discrimination against persons, group of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) to refrain from sponsoring, defending or supporting racial discrimination by any persons or organizations; (c) to review governmental, national and local policies and to amend, rescind or nullify any laws or regulations which have the effect of creating or perpetuating racial discrimination wherever it exists; (d) to prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization; and (e) to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division. Under Art. 5, the states parties are obliged to "undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right to everyone, without distinction as to race, colour or national or ethnic origin, to equality before law", notably in the enjoyment of (a) the right to equal treatment before tribunals;
(b) the right to security of person and protection by the state against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution; (c) the right to vote and contest election, to take part in the Government and to have equal access to public services; (d) other civil rights, in particular:

(i) The right to freedom of movement and residence within the state;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(vii) The right to freedom of thought, conscience and religion;

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association.

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) The right to form and join trade unions;
(iii) The right to housing;
(iv) The right to public health, medical care, social security and social services;
(v) The right to education and training;
(vi) The right to equal participation in cultural activities;

The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

The Convention was the first international instrument to provide for the implementation machinery, these included an independent committee of 18 experts to supervise the implementation of the Convention, the reporting and inter-state communication procedure; the conciliation procedure and individual petition system. These measures of implementation are discussed in Chapter IV of this study.

INTERNATIONAL COVENANTS ON HUMAN RIGHTS

The domestic jurisdiction clause contained in Art.2(7) of the Charter, was more frequently invoked in UN forums during the drafting of international Covenants than in the drafting of any other instrument of human rights. The question of non-intervention in a member state's domestic affairs was mostly raised by socialist states during the consideration of measures of implementation of the Covenants.
However, some other states too supported them occasionally as they wanted to hide behind the wall of domestic jurisdiction, whenever the question of promotion and protection of the human rights of their citizens came up for discussion in UN forums.

The drafting of the Covenants began as early as May 1948, when the Commission, besides its heavy workload in relation to the drafting of the Universal Declaration of Human Rights (which was completed in December 1948), was able to prepare a preliminary draft Covenant on human rights. However, it did not have sufficient time to examine number of proposals for additional articles (to be included in the proposed Covenant) including the right of self-determination and economic and social rights.

Pursuant to the General Assembly resolution 217B(III), the Commission in its fifth session discussed the question of the right of petition by individuals. It adopted, after discussion, a draft resolution (E/1371) requesting the ECOSOC to ask the Secretary-General to prepare a study on this question, including the receivability and the preliminary examination of petitions. The Soviet delegate voted against the draft resolution, as, in his view, the resolution virtually requested the Secretary-General to distort the provisions of the Charter and was contrary to Art.2(7). 28

In accordance with Assembly resolution 217(RIII), the Commission, at its sixth session, submitted to the ECOSOC a draft International Covenant on Human Rights, which contained 42 articles. The first 18 articles were substantive in nature, which defined the human rights that each state Party to the Covenant would undertake "to respect and to ensure to all individuals within its territory", and the remaining procedural in nature. The latter (Arts. 19-41) dealt with the measures of implementation. They provided for the establishment of a Human Rights Committee and stipulated that if a State Party to the Covenant considered that another state party was not giving effect to the provisions contained in the Covenant, it could first communicate the matter directly to that state for rectification. If the matter was not adjusted to the satisfaction of both within six months, either state had the right to refer the matter to the Human Rights Committee. The Committee was empowered to "ascertain the facts and make available its good offices to the states concerned with a view to a friendly solution of the matter".

The ECOSOC, in its eleventh session, discussed the draft Covenant submitted by the Commission (E/1681, annex.I) together with the report of the Commission's Sixth session.

(E/1681 and Corr. I and Add. I). The Council had before it many draft resolutions — one of them submitted by France (A/AC. 7/L. 50 and Add. 1), asked for further review of the first 18 articles of the proposed Covenant and consider the desirability of including economic and social rights. However, the Council adopted a resolution (3031(IX)) on 9 August 1950, by which it transmitted the draft Covenant to the General Assembly for its consideration.

In its fifth session, the Assembly's Third Commission and Plenary considered the draft Covenant submitted by the ECOSOC. During that consideration, the Soviet representative submitted to the Third Committee and subsequently to the Assembly an amendment, 30 which stated that: "...articles 19 to 41 of the draft Covenant should be deleted, since their inclusion would constitute an attempt at intervention in the domestic affairs of states and an encroachment on their sovereignty." The Soviet draft also stated that the first 18 articles did not correspond to the aims envisaged either in the rights enumerated or in the guarantees provided. It also sought to include a proposal which would state that the

30. In the Third Committee, the text (GAOR, 5th Sess., Annexes, agenda item 63, pp. 17-18, A/C.3/L. 96) was submitted in the form of an amendment to a joint resolution presented by Brazil, Turkey and the United States (ibid., p. 11, A/C.3/L. 76). In the General Assembly, the text (ibid., pp. 35-36, A/ 1576) was submitted in the form of an amendment to the draft resolution adopted by the Third Committee (ibid., pp. 33-34, A/1559).
implementation of the Covenant fell entirely within the domestic jurisdiction of states.

Representatives opposing the Soviet amendment observed, in both the Assembly and the Commission, that human rights were governed by the Charter, and as regards the states parties to the Covenant, they would also be governed by the provisions of the Covenant after their entry into force. Some delegates contended that a matter governed by an international agreement could not fall essentially within the domestic jurisdiction of a party to the agreement. It would be a self-contradiction to state that the subject of a treaty obligation remained within domestic jurisdiction and could not, therefore, be the subject of international settlement or adjudication. Some pointed out that since human rights were governed by international obligations, they came under the UN jurisdiction, and not under the domestic jurisdiction of its members. It was said that seven references had been made to human rights in the Charter. A few others drew a distinction between accidental violations of human rights and fundamental freedoms affecting individuals or small groups, and


systematic violations which had international repercussions and created tensions beyond the borders of the State where they actually occurred. The former could fall within domestic jurisdiction, and the latter could not.33

Both the Third Committee and the General Assembly rejected the amendment submitted by the Soviet Union.34

After a thorough discussion, the Assembly adopted a resolution 421(V) on 4 December 1950, which called upon the ECOSOC to request the Commission to continue to give priority in its work to the completion of the draft Covenant and measures for its implementation. During the consideration of this resolution by the ECOSOC, the Soviet delegate submitted a draft resolution,35 urging once again the deletion from the draft Covenants, the "implementation" provisions contained in articles 19 to 41. The Soviet resolution stated that these provisions would constitute an attempt at intervention in the domestic affairs of states and at encroachment on their sovereignty. However, the Council decided not to vote on the Soviet draft, in view of certain alternate proposals, and transmitted it to the Commission.

33. E/CN.4/SR.211, p.11.


35. ESCOR, 12th Sess., Annexes, agenda item 12, pp.8-9; E/L.137.
The Commission discussed the Soviet draft resolution at its seventh session. The arguments advanced in the discussion were similar to those advanced at the fifth session of the General Assembly. The Commission, however, voted against the Soviet draft.

The question of domestic jurisdiction was raised in the Third Committee during its consideration of the question of insertion of clauses relating to the admissibility of reservations to Covenants on human rights. The delegates of Czechoslovakia and the USSR, among others, questioned the competence of the Committee to deal with this matter, which they held, fell entirely within the jurisdiction of each state. The Czechoslovakia representative considered it the duty of every state party to the Covenant to give effect to its provisions, and that no reservations formulated by it could be permitted to relieve it of that duty. The principle of national sovereignty conferred on each state the right to formulate reservations to any international covenant. Therefore, it was not the function of an international organization to rule on the admissibility of reservations. However, it was considered desirable to include provisions relating to admissibility or non-admissibility of reservations.

36. GAOR, 6th Sess., 3rd Ctte., 407th mtg., pp.368 (USSR), p.372 (Czechoslovakia) and p.373 (Byelorussian SSR).

37. See G.A.Res. 546 (VI) of 5 Feb., 1952.
During the Committee's consideration on the measures of implementation of the Covenants, the delegate of the USSR again raised the issue of domestic jurisdiction. He (among others) stated that the only method of implementing the Covenant was by national legislation and the methods proposed by the Commission, especially the establishment of a Human Rights Committee, would amount to intervention in the domestic jurisdiction of States.³⁸

The Commission's 8th session, adopted two resolutions. The first (E/2256A) asked the Assembly to recommend to member states to "uphold the Principles of self-determination of Peoples and Nations", and the second (E/2256B) asked the ECOSOC to request the Assembly to recommend that member states responsible for administering Non-Self-Governing Territories include voluntarily political information, (which is not expressly included in Art. 73(C) of the Charter under which the administering States submit information reports to the United Nations). The latter resolution specifically required member states to include in their information reports under Art.73(e), details regarding the extent to which the right of self-determination is exercised by the people of Non-Self-Governing Territories.

³⁸. GAOR, 6th Sess., 3rd Cotte., 407th mtg., p.368. For some more statements in support of this view, see (Poland) ibid., 408th mtg., p.375, and (Ukrainian SSR), p.381.
These two resolutions were transmitted by the ECOSOC for the Assembly's consideration at its seventh session. The Assembly's Third Committee during its consideration of those resolutions saw a strong opposition to the proposals. The first resolution, along with the recommendation of the Assembly asking the Commission to prepare provisions concerning international respect for the self-determination of peoples for inclusion in the Covenant (Resol. 545(VI) of 5 Feb. 1952) were criticized on the ground that they contravened the provision of Art. 2(7). The objections to the second resolution were coming from the representatives of states administering dependent territories. They contended that these were not in accordance with the Charter, but attempted to amend and extend the scope of the Charter and sought to impose additional obligations on certain states which were not laid down in Chapters XI and XII of the Charter. The transmission of such information, they held, is deliberately excluded from Art. 73(e), as the administration of those territories fell entirely within the domestic jurisdiction of the states concerned. They also considered that the recommendations were discriminatory as they applied only to Non-Self-Governing

Territories. After a thorough discussion the Committee adopted the proposal as a whole on 1 December 1952 by 34-13-6 votes and the Assembly, in its Plenary, considered the Third Committee's recommendations (A/2309 and Corr.1) on 16 December and adopted the draft as resolution 637 (VII).

At the ninth session of the Commission, the representatives of Chile, Egypt and the Philippines submitted a joint amendment to part IV of the draft Covenant on Civil and Political Rights (which deal with the measures of implementation). The amendment which sought to add a new para to Art. 55 of Covenant read:

If the Human Rights Committee considers that the information supplied is not sufficient it may, by a vote of two thirds of all its members, conduct an enquiry within the metropolitan area or non-self-Governing Territory of any state complained against. The state concerned shall afford full facilities necessary for the efficient conduct of the investigation.

This amendment gave rise to the discussion of the problem of domestic jurisdiction. Since it was not only opposed by those who considered that the proposed measures

40. See, for the statements of UK, ibid., 7th Sess., 444th mtg., pp. 156-57; France; ibid., 445th mtg., p. 162.

41. The wordings of the original draft article 55 were: "Any matter referred to it the Committee may call upon the states concerned to supply any relevant information".

42. ESCOR, 16th Sess., Suppl.no.4(E/2256), para 97.
of implementation of the Covenant constituted intervention in domestic jurisdiction of states, but also by others, the Commission rejected the amendment by 9-5-1 votes and by 12 to 13 votes approved the original text.

The question of domestic jurisdiction came up again at the 8th session of Third Committee's consideration on the proposal of right to petition (A/C.3/L.372). This proposal was submitted jointly by Ecuador, Egypt, Guatemala, the Philippines and Uruguay. Subsequently, Afghanistan submitted an amendment (A/C.3/L.390) to this proposal. The proposal, as revised by Afghan amendment, requested the Commission for provisions regarding the right of petition of every natural person, group of persons and non-governmental organizations (NGOs), for inclusion in the Covenant.

The delegates of Denmark, India, Iraq, Israel, Mexico, and Syria supported this proposal. The representatives argued that without the inclusion of right of petitions to individuals, group of individuals and NGOs, the whole value of the Covenant would be in question. They stated

43. See, E/CN.4/SR.388, pp.6-7.

44. See for the results of the roll-call vote on the amendment, ibid., p.13.

45. GAOR, 8th Sess., 3rd Cttee, 523 to 524th mtgs. (India), p.235; (Israel and Mexico), p.229; (Iraq), p.238; (Denmark), p.236.
that the Assembly resolution 421 E(V) was the equivalent to an instruction to the Commission to include the right of petitions in the proposed Covenants. They contended that states were free to ratify or not the Covenants, and could not, therefore, claim that the right of petition to individuals and organizations would constitute an infringement of domestic jurisdiction.

Those who opposed the proposal, 46 argued as usual that to extend the right of petitions to individuals and organizations would lead to intervention in the domestic affairs of states and would violate Art.2(7). It would be against the principle of sovereign equality of states, as it would enable those states which are not Party to the Covenant to invite individuals or NGOs to submit complaints against states which are parties to the Covenants. It was contended that the position of individuals in international law had not yet been clearly established and that it would not be wise to achieve too much at one time. Some delegates said that international relations were not yet so far developed that the right of petition could be granted in such general terms.

However, the Committee and the Assembly at its Plenary

46. Ibid. (Honduras), pp.227-28, 230; (Yugoslavia) p.230; (New Zealand) p.235; (Brazil) pp.233-34; (France) pp.234-35; (Cuba and Ethiopia), p.237.
decided\textsuperscript{47} to transmit the draft resolution (A/C.3/L.372/Rev.1) to the Commission at its tenth session.

At the beginning of its ninth session, the General Assembly referred\textsuperscript{48} to the Third Committee the two draft Covenants on Human Rights which were transmitted by the ECOSOC. During the Committee's general discussion on their contents, some representatives criticized the provisions relating to measures of implementation on the ground that they could lead to intervention in the domestic jurisdiction of the parties to the Covenant.\textsuperscript{49} However, the Committee, concluding the debates, adopted a draft resolution\textsuperscript{50} recommending that it give priority during its next session mainly to the discussion, article by article, of the draft Covenants with a view to their early adoption. Furthermore, para 1(C) of the draft resolution invited the NGOs concerned with the promotion of human rights including those in the Non-Self-Governing and Trust Territories to stimulate public interest in the draft International Covenants on Human Rights by all

\textsuperscript{47} See A/2573B; and GA Reson. 737B(VIII).

\textsuperscript{48} See GAOR, 9th Sess., Plan 478th mtg.

\textsuperscript{49} Ibid., (USSR) 3rd Comttee; 565th mtg., p.110 (Czechoslovakia); 569th mtg., pp.130-31 (Poland) 571st mtg., p.142; and (Byelorussian SSR) 575th mtg., p.163.

\textsuperscript{50} Ibid., Annexes, Agenda item 58, p.7, A/2808 and Corr.1, para 76.
possible means in their respective countries." Some representatives in the Committee and Plenary meetings objected to this para on the grounds that it could lead to intervention in domestic jurisdiction of member States.\textsuperscript{51} The Australian delegate submitted an amendment for its deletion,\textsuperscript{52} which was rejected by the Assembly. The Assembly later adopted the text submitted by the Third Committee which became resolution 833(IX).\textsuperscript{53}

The question of domestic jurisdiction was again raised during the Assembly's discussion, in its tenth session, on Article 1 of the two draft Covenants which dealt with the right of self-determination of peoples. Some delegates contended that the inclusion in the Covenants of a provision on the right of self-determination would be incompatible with Art. 2(7).\textsuperscript{54} It was said in the Commission that the realization of the right involved the division of existing political realities and the creation of new ones. Therefore, it

\textsuperscript{51} Ibid., (UK), Plen. 504th mtg., p.355; (France), p.356; (France) 3rd Cottee., 586th mtg., p.222.

\textsuperscript{52} Ibid., Plen. 504th mtg., pp.353-54.

\textsuperscript{53} See, Ibid., p.356.

\textsuperscript{54} GAOR, 10th Sess., Annexes, Agenda item 28 (Part I), p.11, A/2910/Add.2; Note Verbale dated 20 July 1955 from the Govt. of Australia to the Secretary-General; ibid., 3rd Cottee., 645th mtg., p.103. See also Report of the Third Cottee., UN Doc. A/3077 (8 December 1955); GAOR, ibid., pp.30-40 (Annexes).
affected the composition and political structure of states.

Nothing could be more clearly within the domestic jurisdiction of a state than its own composition and political structure.\textsuperscript{55} It was also recalled by a delegate of the United Kingdom that the Universal Declaration did not contain article on self-determination, though it was intended to cover all human rights.\textsuperscript{56} The Charter too, specially in Articles 1 and 55, referred to the "Principle", not the "right" of self-determination. As a principle, it had very strong moral force, but it was too complex to translate it into legal terms in an instrument which was to be legally enforced.\textsuperscript{57} Several delegates argued that the realization of the self-determination of peoples fell essentially within the domestic jurisdiction of states.\textsuperscript{58} Some delegations thought that its inclusion in the proposed Covenants might jeopardize their whole future. It was illogical, it was contended, and improper to include this right in the Covenants which were attempting to lay down the rights of the individual; it did not constitute an individual right, rather, it was a collective right of the people.\textsuperscript{59}

\textsuperscript{55} E/CN.4/SR.503, p.8.
\textsuperscript{56} GAOR, 10th Sess., 3rd Cottee., 642nd mtg., p.90.
\textsuperscript{57} Ibid., (Sweden), 641st mtg., pp.86-87; (UK) 642nd mtg., p.90, Also see docs. cited in n.49.
\textsuperscript{58} Ibid., (Canada), 645th mtg., p.103.
\textsuperscript{59} Ibid., (Netherlands), 641st mtg., p.91; (Belgium), p.94 and (Denmark) p.99.
Those who wanted that this right be included in the Covenants, insisted that the "right" of self-determination was most essential for the enjoyment of all other human rights, and must, therefore, appear in the forefront of the Covenants. Although self-determination was a collective right, it nevertheless affected each individual, because "man was a social animal", said the delegate of Greece. Moreover, it was pointed out that, the Assembly at its sixth session, had decided to include an article on this right, and any change in that position would mean a reversal of the decision. The dangers of including the right had been exaggerated by its opponents. The Greek delegate, among others, pointed out that the article was not concerned with minorities or the right of secession and the terms "peoples" and "nations" were not intended to cover such questions. Several representatives rejected the contention that the realization of self-determination fell essentially within the domestic jurisdiction. It was argued that the distinction drawn by some representative between the right and principle of self-determination was artificial and had no juridical significance.

60. Ibid., (Czechoslovakia) 645th mtg., pp.104-5; (USSR), p.108; (Greece), pp.113-14; (Yugoslavia) p.117; (Syria) pp.119-20.

61. Ibid., (Peru) p.118; E/CN.4/SR.500, p.15.

62. Ibid., 3rd Cottee., (Saudi Arabia) 641st mtg., pp.87-88; (Iraq) 643rd mtg., p.93; and (Byelorussian SSR) 644th mtg., p.101.
Furthermore, if an overriding effect were conferred upon Art. 2(7), many provisions of the Charter, including those of self-determination, would be meaningless. Some delegates drew a distinction between minorities living within the metropolitan boundaries of states and the peoples of Non-self-Governing Territories. They held that the realization of self-determination by the former fell essentially within domestic jurisdiction of the states concerned, while the realization of that right by the latter was a question of international concern governed by the provisions of Chapter XI of the Charter, and therefore beyond the scope of domestic jurisdiction.

Despite these objections, and proposals for its deletion, the Third Committee adopted by 33-12-13 votes the text of the article 1 of both the draft Covenants, it provided, *inter alia*, that all people had the right of self-determination, and by virtue of this right, they freely determined their political status and freely pursued their

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63. Ibid., (UK) Plen. 529th mtg., p.117.

64. Ibid., 3rd Cotee., 672th mtg., p.239; 675th mtg., p.257.

65. See Particularly A/C.3/L.460, p.3; and a proposal by Australia, Netherlands and the UK, A/2910/Add.2,3 and 1.

66. GAOR, 10th Sess., 3rd Cotee., 676th mtg., p.262 (29 Nov. 1955).

economic, social and cultural development and that parties to the Covenants would promote the realization of the right of self-determination, and would respect that right in conformity with the provisions of the Charter.

At the eleventh, twelfth and thirteenth sessions, the Third Committee continued its consideration of the two draft Covenants. These sessions were mostly devoted to the substantive articles of the draft Covenants. It adopted a number of articles of both the Covenants. However, there was no further discussion on the "domestic jurisdiction" issue.

The Assembly continued its consideration of the draft Covenants at its fourteenth, sixteenth, seventeenth and eighteenth sessions. The work on the Covenants could not be continued in 1964, at its nineteenth session, due to the special circumstances then prevailing. Though the item was on the agenda of the twentieth session, the Third Committee was unable to deal with it because of its heavy schedule. But the Assembly decided, through resolution 2080(XX), to defer their further consideration until twenty-first session in 1966. Drafting of the Covenants was completed at that session.

The question of "domestic jurisdiction" was again raised in the Assembly's eighteenth session when it was
discussing provisions on the measures of implementation. In the debate of the Third Committee, there was agreement regarding the system of implementation proposed for the draft Covenant on Economic, Social and Cultural Rights. That system would involve the "progressive realization" of the rights contained and provide the Parties to the Covenant to submit reports to the United Nations regarding the progress made in achieving the observance of these rights. On the other hand, conflicting views were expressed regarding the implementation procedure of the Covenant on Civil and Political Rights. The majority of the states preferred, and forcefully argued, that the implementation of this Covenant should be "immediate" and "effective". They favoured a system that would include international machinery to supervise the observance of the rights enumerated in that Covenant. However, the proposed system of implementation machinery was criticized by some representatives as being contrary to the UN Charter and as constituting intervention in matters of domestic jurisdiction.

The issue of national sovereignty and domestic jurisdiction was again invoked in relation to a proposal to

68. See, Ibid., 18th Sess., 3rd Cottee, 1264th mtg., pp.271-72; 1267th to 1269th mtg., pp.287-302; and 1273rd to 1277 mtgs., pp.327-54.

69. Ibid., Annexes, Agenda item 48, A/5655, Paras 110 and 111.

70. Ibid., Paras 112-17.
establish a High Commissioner for Human Rights (this idea first came in 1950 in a proposal of Uruguay (UN Docs. A/C.3/L.93) and also in its 1951 explanatory memorandum (UN Doc. A/C 3/564). The Soviet delegate expressed the view, in the Social Committee of ECOSOC, that the establishment of a High Commissioner could lead to the infringement of national sovereignty, since one person (the High Commissioner) would be authorized to deal with the violation of human rights and the right of petition. On the contrary, some argued that Art. 2(7) did not apply in this case. 71

Even at the concluding stage of the drafting of the human rights Covenants, i.e. at the twenty-first session of the Assembly, the question of domestic jurisdiction was raised in the Third Committee. These objections were raised by the Soviet Union, which had consistently opposed, in previous sessions, to the proposed machinery of implementing the provisions of the Covenant on Civil and political rights. Its delegate said that the measures of implementation should be squarely based on the Principles of the UN Charter, especially the principles of non-intervention in the domestic affairs of states, laid down in Art. 2(7). It should be borne in mind that it was the states parties themselves which would have to implement the substantive articles of the

Covenant, because the observance of human rights was a matter of domestic concern. The delegate favoured "only" the system of reporting, which was, in his view, entirely in accordance with the principles of the Charter. He also said that any procedure under which a state party or an individual could complain before an international organization that another state party had violated the rights recognized in the Covenant would lead to intervention in the domestic affairs of member states, in violation of the Charter. 72

It was also stated that the proposed Human Rights Committee would be able to make recommendations to the United Nations concerning the protection of human rights. Contracting states would have to recognize it as being entitled to examine complaints on matters essentially within their domestic jurisdiction. Such a Committee would in a sense be "supra-national" and would be inconsistent with the principles of national sovereignty recognized in Art.2(7). 73 The representative of Byelorussia stated that the implementing procedure of the Covenant on civil and political rights might in many cases result in a variable interference in the domestic

72. GAOR, 21st Sess., 3rd Cotttee., 1415th mtg., p.220.

73. Ibid. (Mongolia) 1456th mtg., p.485; See also (USSR), p.220. Similar view was also expressed by Poland in 18th Session, ibid., 1247th mtg., p.334.
affairs of sovereign states. He urged that the same measures of implementation be provided in both the Covenants.\(^{74}\)

The delegations, among others, of Saudi Arabia, Mongolia and Dahomy too were critical of the proposed system of implementation. The Saudi delegate drew the attention of members to its proposal (A/C.3/L.1334) (which provides for the enforcement of rights contained in the Covenants at national level, with a national committee of nine independent persons) and said that his proposal would avoid interference in the internal affairs of other states.\(^{75}\) Mongolia, like Byelorussia, preferred a single implementation procedure for both sets of rights. Its delegation was more critical about the system of complaints by individuals under the Optional Protocol. It said, such a system placed individuals on an equal footing with States, which alone were subjects of international law, and also violated the principle of sovereignty and non-intervention contained in Art.2(7). Dahomy too considered this system unacceptable, fearing that this might be used for purposes of intervention in the domestic affairs of a state.\(^{76}\)

\(^{74}\) Ibid., 1414th mtg., p.217.
\(^{75}\) Ibid.
\(^{76}\) Ibid., 1456th mtg., p.485.
On the contrary, many delegates disputed the above contentions. The Uruguayan delegate argued that the adoption of a system of international supervision in the field of civil and political rights could not be regarded as violating the principles of national sovereignty or non-intervention in internal affairs of States. One representative said, states could not retire behind a wall of domestic jurisdiction, and the system of implementation could not be regarded as incompatible with the principles of sovereignty of states. It was also said that accepting or not accepting the Covenants was a matter of domestic jurisdiction of states. By accepting the Covenants in the full exercise of their sovereignty, states parties would undertake obligations of an international character, and it could hardly be claimed that the provisions of these instruments would then be matters falling "exclusively" within domestic jurisdiction. 77

Others argued that the proposed committee would not be a juridical organ but rather a conciliation body. It would not have power to make binding decisions in specific disputes but because of its nature, might contribute to the peaceful settlement of differences. Its establishment would

77. Ibid. (Denmark) 1397th mtg., p.118; (Uruguay) 1415th mtg., p.221. See also the argument of Ecuador, ibid., 18th Sess., 3rd Cottee, 1277th mtg., p.351.
be in keeping with the letter and spirit of the Charter. Other arguments in favour of that position were that the question of protection of human rights did not fall "essentially" within domestic jurisdiction, rather it was now a matter of universal concern. The UN Charter had indelibly and rightly stamped them as matters of international concern. The British delegate said that a matter which was subject to and governed by an international agreement was thereby removed from the category of "matters which are essentially within the domestic jurisdiction" of state.78

The domestic jurisdiction issue was invoked again when the Assembly discussed the proposed article (to be inserted in the Covenant on Civil and Political Rights) on the right of petition by individuals or groups of individuals from the States Parties of the Covenant. It would have empowered the Human Rights Committee to receive such petitions.79 That proposal was criticized by some representatives as constituting a violation of the principle of State sovereignty and an intervention in domestic jurisdiction.80

78. Ibid., (France) 1415th mtg., p.222; (UK) p.222; (Panama) 1417th mtg., p.235; (Iran) p.237; (Venezuela) 1418th mtg., p.243; For the concurring views of Netherlands and Austria see ibid., 18th Sess., 3rd Cottee., 1275th and 1276th mtgs., pp.342-43 and 348.

79. Ibid., Annexes, agenda item 62, A/6546, Paras 474-85.

The Soviet delegate argued that the UN Charter provided for the acceptance of petitions only within the framework of the Trusteeship system and made no provision for petitions from citizens of independent states. Such petitions under the Covenant would, therefore, contravene the principle of non-intervention in matters within domestic jurisdiction contained in Art. 2(7). That principle was unalterable and any clause which purported to modify it would be inoperative under Article 103 of the Charter, which provides precedence for the Charter over any international agreement. 81

In reply to those criticisms, the Colombian representative argued that the proposed provision to permit the Human Rights Committee to receive communications from individuals was optional and was thus entirely compatible with the principle of state sovereignty. Moreover, individuals would be able to avoid themselves of such a procedure only after they had exhausted all the available domestic remedies. The primacy of domestic jurisdiction was, therefore, safeguarded. Others stated that an Optional Clause granting the right of petition to individuals would not violate state sovereignty or violate Art. 2(7), because such a clause would concern only those states which have agreed to be bound by it. 82

81. Ibid., 1439th mtg., p. 370.
82. See Ibid., 1438th mtg., p. 362. See also, Ibid. (Israel) p. 364; (Ghana and France) p. 365; (Iraq) 1439th mtg., p. 368; (Chile) p. 370; (Canada) pp. 371-72 (Ecuador) p. 372; (Guatemala) 1440th mtg., pp. 373-74 (Philippines) p. 374; (Belgium) p. 375 and (USA) p. 376, and (Uruguay) p. 378.
In view of conflicting views on the proposal, it was decided as a compromise to include the provisions relating to individual communications in a separate Optional Protocol, annexed to the Covenant. 83

After considering many proposals and amendments, the Third Committee, however, adopted the two Covenants unanimously and the Optional Protocol was adopted by a roll-call vote of 59 to 2 with 32 abstentions. The General Assembly too, on 16 December 1966, in its Plenary session unanimously adopted both the Covenants by a recorded vote, and the Optional Protocol by a vote of 66 to 2 with 38 abstentions.

Both these Covenants not only include almost all the rights recognized in the Universal Declaration but also elaborate the economic, social and cultural rights. However, the right to property, which was included in the Universal Declaration (Art.17), is not included in either Covenant. It proved impossible in the United Nations to reach agreement between countries of widely different political philosophies on a definition of this right.

There are two distinctive features of these Covenants. First, unlike the Universal Declaration, they contain a provision on the right of self-determination of peoples.

83. Ibid., Annexes, Agenda item 62, A/6546, Para 485.
Second, they include measures of implementation to ensure the effective realization of the rights contained in the Covenants, and provide a kind of international supervision of the application of these rights. However, there are two principal differences between their implementation procedures:

(1) Under the Covenant on Civil and Political Rights the States Parties undertake to implement the provisions "immediately" upon its entry into force; whereas the States Parties to the Covenant on Economic, Social and Cultural Rights assume responsibility to give effect to its provisions "progressively".

(2) The former Covenant provides for the establishment of the Human Rights Committee, which supervises the implementation of the rights contained in the Covenant. The States Parties undertake to submit reports to the Committee (see Articles 28, 29 and 40) besides providing for a system of state-to-state communication and conciliation in matters concerning the application of the Covenant (see Art.41); whereas the latter Covenant provides "only" a system of reporting (see Art.16). It does not provide for the establishment of a Committee to look after the implementation. 84

84. These measures of implementation are elaborated in greater detail in Chapter IV of this study.
SUMMARY OBSERVATIONS

At the outset it can be said that the adoption of the Universal Declaration of Human Rights (UDHR) and the two international Covenants, along with the adoption of Convention against racial discrimination, represented an important milestone in the history of mankind in general and the United Nations in particular. The first three documents constituted an International Bill of Rights. It was for the first time that an internationally agreed list of human rights norms/standards, to which all individuals were entitled, was provided in these instruments. The fact that the Racial Convention entered into force in early 1969 and the two Covenants together with the Optional Protocol in early 1976 represented another step forward in the United Nations efforts to promote basic human rights. The provisions of right contained in these Covenants are now legally binding on the States Parties.

The history of the drafting of the two Covenants (which were very broad in their content), unlike the UDHR and the Racial Convention, was unreasonably long. It took almost 18 years for their codification, while the Universal Declaration was drafted in just over 18 months. This delay, among other things, could be for the following reasons. First, the Covenants were the most comprehensive human rights
treaties ever prepared by an international community. They contained not only almost all the basic rights of the individual—civil, political, economic, social and cultural rights—but provided measures for their implementation. Second, since the UN membership was increasing while these Covenants were being drafted, discussion on individual articles became unwieldy, and it also became difficult for UN bodies to accommodate/harmonize the interests of all the nations. Long diplomatic persuations were needed to arrive at consensus and sort out the differences and divisions among various states on the subject of human rights. The differences were too deep, especially among the countries of liberal-democratic and socialist countries. Much time was required to accommodate, bridge, submerge, and conceal these divisions. Third, delay also resulted over the inclusion or scope of particular rights. The newly independent states and socialist countries, who were against colonialism, brought a new dimension to human rights ideology by insisting the inclusion, in the Covenants, of the right of all peoples to self-determination. Finally, the UN bodies (specially the General Assembly) were overburdened with the work of maintaining and keeping peace in the crisis-situations in many parts of the world; this was the time the United Nations undertook major peacekeeping operations.
One of the interesting and remarkable developments that took place between the adoption of the UDHR and the two Covenants was the adoption of an international Convention on the Elimination of All Forms of Racial Discrimination. As noted earlier, its adoption was due to increasing awareness among all States, and more particularly the Afro-Asian states, regarding the applicability of basic human rights norms to all individuals without discrimination as to race or religion. It was the first international instrument to have provided an implementation machinery. The fact that the preparation and adoption of this Convention did not take more than three years, reveal that there were no differences among member States on the urgency of codifying a Convention on Racial Discrimination. Its adoption is the recognition of the Charter's faith that human rights should be protected without any discrimination based on sex, race, religion, colour or social status.

However, at the end, one point also needs to be mentioned. The fact that it took nearly two decades to complete the adoption of the two Covenants and another decade to get minimum ratifications for their coming into force reveals that states are reluctant to recognize international jurisdiction concerning human rights. It seems, many states still consider the question of human rights a matter of domestic jurisdiction. It is surprising to note that of the 80 States Parties to the Covenant on Civil and Political Rights,
only 16 states\(^{85}\) have deposited declarations recognizing the competence of the Human Rights Committee under Article 41, which provides for state-to-state communication in matters concerning the application of the Covenant. Under Article 41, a state Party to the Covenant may communicate the matter to other state party/parties, if it finds that that state party (provided this state has recognized the competence of the Committee) is not giving effect to the provisions of the Covenant. If the matter is not adjusted to the satisfaction of both states parties concerned within 6 months, either state can refer the matter to the Human Rights Committee. The reluctance or the delay of other states parties to the Covenant in depositing declarations (under Article 41) recognising the competence of the Committee suggests that they still consider the system of implementation as constituting interference in their domestic affairs.

While agreeing with the above point, it can be said in conclusion that the promotion and protection of human rights is gradually becoming a matter of UN/international concern with the spelling out of the basic human rights to

\(^{85}\) These states are: Austria, Canada, Denmark, Ecuador, Finland, Federal Republic of Germany, Iceland, Italy, Luxembourg, Netherlands, New Zealand, Norway, Peru, Senegal, Sri Lanka, Sweden and the United Kingdom. This information is upto 1 January 1985.
which every member state of the United Nations is obliged to recognize and undertake measures to promote them.

Prior to the adoption of basic human rights instruments, states could claim that they are not bound to respect any human rights as they were not defined in the Charter. Also, prior to the coming into force of human rights Covenants/Conventions, member states (as they were too jealous of their sovereignty) could pridely assert that how they treated their citizens was a matter of their exclusive concern; now the same states which are parties to these instruments cannot make such claims any more, as they are bound by the obligations contained in those documents.