Chapter - IV
PROBLEM OF OBSERVANCE : REPORTING AND MONITORING

While UN efforts to lay down human rights norms and standards has been fairly impressive, its efforts to seek observance and implementation has met with little or no success. Over the years, the United Nations has instituted many forums to discuss, monitor and seek the observance of human rights and fundamental freedoms. Most notable among them are the Commission on Human Rights, the Committee on the Elimination of Racial Discrimination (CERD) and the Human Rights Committee created under the Covenant on Civil and Political Rights (CCPR/C), and of course, the UN General Assembly itself. Further, various procedures and institutional arrangements have been evolved within the UN framework for monitoring the observance or violation of human rights, which for the purpose of our analyses could be identified as follows — the periodic reporting procedure; the communications procedure; the procedure for cases involving consistent pattern of gross violation; procedures set by the Racial Convention and the international Covenants. This chapter attempts an analyses of these frameworks and procedures noted above with a view to see the extent to which the question of domestic jurisdiction has been used by member states as a defence. The focus here is to examine the limitations and constraints experienced by the international monitoring or supervising mechanism in the promotion and protection of human rights.
Along with the norms and standards to be followed by all countries in the promotion of respect for human rights, it was also deemed essential to evolve some institutional arrangements which would enable the international community to ascertain the progress, or lack of it, in the observance of those norms. However, there was the usual reluctance of the states parties and member states, since such an institutional arrangement was considered as infringement of state sovereignty. Indeed, human rights questions are such area of activity where a state would like to find fault with the human rights situations of other countries, but would be least willing to let others look into its own affairs. Nonetheless, this is also true that hardly any member state would like to lag behind in vowing its commitments to human rights. Except South Africa, no other country has gone on record to say that it does not believe in human rights and fundamental freedoms to be guaranteed to all irrespective of race, religion, language, etc. As such, some initial steps in the direction of international monitoring attempted, beginning in 1950, were as a result of the French proposal made in the Commission on Human Rights which was considered as innocuous enough to gain acceptance without any serious opposition.¹

Periodic Reports: Relying on Articles 55 and 56 of the UN Charter and the Universal Declaration, Rene Cassin, the well-known French jurist and a protagonist of human rights, made a proposal in the Commission which suggested that member states submit annual reports on the manner in which they have promoted respect for human rights and the progress made thereof for the consideration of the Commission, and that these reports should be prepared in accordance with the format suggested by the Commission. The Commission, by modifying this proposal, asked member states to forward annually to the Secretary General reports on the progress of human rights achieved by them and noted that the reports thus received would be useful for the preparation of the **UN Yearbook on Human Rights**.  

This proposal ran into difficulty as the member states were not willing to compromise the promotion of human rights with that of the state sovereignty. At the eleventh session, the Economic and Social Council (ECOSOC) discussed this matter, but it was postponed for further study. The Chilean representative noted that the original French proposal had involved two issues. On the one hand, the member states were obligated to forward reports on the manner in which human rights had been respected and promoted during the year in their territories, and on the other,  

2. Ibid., pp.28-29.
the Commission would have consequently assumed the "right" to analyse what had been done in each state, and to frame appropriate recommendations. The second aspect of the proposal was unacceptable to him, as he considered that the states cooperating with the United Nations and forwarding reports thereby would expose themselves to the criticism of states which withhold such information. His delegation had thought that the time had not come for the Commission to assume such a "right". It cannot act as advisor to governments or parliaments. 3

In 1953, the US delegate made a fresh proposal which was on the similar lines as the earlier proposal made by Rene Cassin. He suggested that the General Assembly recommend that each member transmit annually to the Secretary General a report on developments and achievements in the field of human rights in its country for consideration by the Commission, which may subsequently submit to the ECOSOC "such comments and conclusions" based on its study of such reports. 4 This proposal, as revised, would have recommended that each member transmit annually to the Secretary General a report on results achieved and difficulties encountered in its country in the promotion of human rights. 5

In explaining this proposal, the US delegate stated that its

3. UN Doc. E/AC.7/SR.141 (pp.8-14) and SR.143 (pp.4-8).
5. UN Doc. E/CN.4/L.266/Rev.2.
object was "to enable the Commission each year to review the state of observance of human rights in the world, just as the ECOSOC and the Social Commission did in their particular fields, with special emphasis on a particular subject." The US proposal met opposition on the ground of Art. 2(7) and an interesting debate on the question ensued.

Opposing the adoption of such a resolution the Soviet delegate pointed out that the proposed resolution attempted to establish "an obligation to report on certain domestic matters to the United Nations"; whereas Article 2(7) of the Charter prohibited intervention in such matters. He argued that the reports required in the resolution from member states went far beyond the powers conferred on the ECOSOC by Article 62 of the Charter. He thought that the Council could only make recommendations on human rights, whereas it was proposed that the Council's subordinate organ, the Commission on Human Rights, should be authorized both to invite studies and to call for reports — a situation that was plainly indefensible.

However, the French delegate observed that the present basis of the legal obligation in respect of the UN observance of human rights on member states was only the Charter. He was

confident that even the International Court would regard any serious case of human rights violation a question of positive international law. Since the Charter contained no detailed criteria in respect of the observance of such obligation, it was obviously the task of the United Nations to promote their (human rights) advancement — a task which is carried out by two classic methods: (i) one is that of international instruments and (ii) that of recommendations by ECOSOC and the Assembly. He thought that it was quite clear that recommendations concerning human rights were rather different from other recommendations. Articles 55 and 56 of the Charter created a general obligation for states to co-operate with the United Nations in promoting respect for human rights, and a general obligation obviously carried more weight when given practical form by a recommendation. With regard to the alleged limitation of Art.2(7), he contended that the Charter took a position: No one could affirm that in the matter of human rights, competence was withdrawn from states and was conferred "exclusively" on the United Nations; on the other hand, no one could maintain that Art.2(7) applied to human rights in the same way as it applied to political questions essentially within the domestic jurisdiction of a state. 8

The U.S. proposal was considered at the 10th and 11th sessions of the Commission on Human Rights and was finally adopted at the 12th session in a considerably revised form. The Commission thought that Articles 55 and 56 of the Charter constituted a sound juridical basis, and the Universal Declaration a proper historic setting, for the institution of a system of annual reports. It was emphasized that "the role of the Commission was not to criticize individual governments "on the basis of reports," but to ascertain "the results obtained and difficulties encountered so that nations might share their experience with one another." ECOSOC Resolution 624-B of 1956: Considering that the annual reports may impose a great burden on member states, and the UN Secretariat may also find it difficult to analyse them, the ECOSOC adopted resolution 624-B by which it requested member states to transmit to the Secretary General every three years a report describing developments and the progress achieved during the preceding three years in the field of human rights. The first of such reports should cover the period 1954-1956. The reports should deal with the status of human rights of the member state as well as of its dependent territories, and situations

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10. E/2844, pp.4-7.
relevant to the rights enumerated in the Universal Declaration including the rights of peoples to self-determination. This resolution also stated that the UN Specialized Agencies too should submit reports in respect of the rights falling within their respective purview summarizing the information received from the member states during the preceding three years. The Secretary General was entrusted with the task of formulating guidelines for the preparation of the report topic-wise, and a summary of the reports received, for the consideration of the Commission.

The first series of triennial reports came for Commission's consideration at its 14th session in 1958 and the second series at its 17th session (1961). Since it was very difficult for the Commission to examine in detail the extensive documentation, it appointed a Committee on Periodic Reports, consisting of 6 of its members, with a mandate to meet immediately before the Commission's session in 1962. This Committee was asked to examine the summaries of the second triennial reports (1957-59) prepared by the Secretary-General, and to prepare "draft comments, conclusions, recommendations of an objective and general character."\textsuperscript{11} Accordingly, the Commission met early in 1962 and considered all those reports and recommended that widespread publicity be given to those reports. The Commission considered and accepted these

\textsuperscript{11} ESCOR, 32nd Sess., Suppl. No. 8, (E/3456), pp. 9-11.
recommendations, which enabled, *inter alia*, the adoption of resolution 888-B of 1962 by the ECOSOC.

**Resolutions 888-B of 1962 and 1074 C of 1965:** Noting that still in a number of countries and territories, the position of human rights was unsatisfactory and very few reports were coming to the United Nations, resolution 888-B (1962) *inter alia*, decided that the system of triennial reporting be continued. It urged member states to improve the quality of reports by providing more information concerning the problems and difficulties which have been encountered or may be encountered; and it was also emphasized that the members must report on the developments in human rights field not only of the metropolitan areas but also of all its dependent territories, including Non-Self-Governing and Trust Territories with reference to their right of self-determination. It found the information contained in the second series of reports most useful.

After the consideration of the third series of reports covering the years 1960-62, both by the Committee on Periodic Reports and the Commission on Human Rights, a few recommendations emerged, which were finally approved by the ECOSOC in the form of a resolution — 1074-C (28 July 1965). This resolution brought about some important procedural changes. Firstly, it introduced a new method by which the reports have to be submitted annually in the following cycle; (a) The reports submitted in the
first year will be relating to the civil and political rights and the first such reports should cover the period ending 30 June 1965; (b) the reports submitted in the second year should be on economic, social and cultural rights and the first of such reports should cover the period ending 30 June 1966; and (c) the reports submitted in the third year should exclusively be on the freedom of information, and the first of such reports should cover the period ending 30 June 1967. Secondly, in another procedural change, the Secretary General was asked to forward the information received from members and Specialized Agencies or comments received from Non-Governmental Organizations (NGOs) in full, together with a subject and country index, to the Commission, Sub-Commission and the Commission on the Status of Women. Thirdly, the Commission was requested to establish an ad hoc Committee, from amongst its members, with a mandate to study and evaluate the periodic reports and other information received thereupon.

Resolution 1596(L) of 21 May 1971: With a view to allowing governments more time for the preparation of their reports and to permit the members of the Ad hoc Committee to study and evaluate the materials carefully, the ECOSOC revised the system of periodic reporting. Through resolution 1596(L) of 1971, it decided that member states would now be asked to submit their reports once in every two years in a continuing cycle: the first, on civil and political rights, to be submitted in 1972; the second, on economic, social and cultural rights, in 1974; and
the third, on freedom of information, in 1976.

From 1973 to 1977, the Commission examined the periodic reports on human rights with the assistance of Ad hoc Committee. Though the system of periodic reports continued till 1980, perhaps due to the various reporting procedures contained in the human rights instruments (including those of the Covenants on human rights) having become operational, the General Assembly decided, through resolution 35/209 of 17 December 1980, to terminate certain activities (which the Secretary-General had identified as obsolete, ineffective or of marginal usefulness), including the system of periodic reports on human rights. The Commission concurred in this, in decision 10 (XXXVII) of 13 March 1981.

These reports, however, it should be noted, were of little use since member states provided only official information concerning the formal constitutional provisions, administrative mechanisms, and legal institutions available to the individual in the realization of his rights. Generally, they sketched a rosy picture of human rights situation, and hardly touched upon the violations or denials of human rights and the difficulties encountered in their promotion.

Communications

For monitoring and considering complaints/petitions from individuals, or group of individuals or from other sources,
which are coming in thousands to the United Nations since its inception, the ECOSOC established three important communication procedures. These are contained in ECOSOC resolutions 728 F of 30 July 1959; 1235 of 6 June 1967 and 1503 of 27 May 1970. Though it was formally affirmed and reaffirmed many times by ECOSOC (and also by the Commission on Human Rights) that the Commission had no power to take, or even recommend, action on allegations concerning individual human rights complaints, the passage of resolution 1235 of ECOSOC and resolution 8 (XXIII) of the Commission in 1967, together with 1503 procedure, led to the collapse of the "no-power" doctrine. The analyses of these procedures, which thus follows, will indicate that neither the Commission nor any member state can assert that the Commission has no power to take action.

Before 1959, the ECOSOC procedure regarding communications, contained in resolution 75(V) (5 August 1947) and Supplemented by resolutions 116-A (VI) of 1 March 1948 and 275-D of 17 Feb. 1950 (X), was very simple. It provided that the communications received should be classified into two lists: (i) a non-confidential list containing a brief indication of the substance of each communication which deals with the principles involved in promotion of respect for and observance of human rights, and (ii) a confidential list containing a brief indication of the substance of other communications concerning human rights and furnish this list to members of the Commission in private meetings. The "other communications include, of course, communications alleging that human rights have been violated.
To improve this procedure further, the Commission made substantial recommendations (in 1958) to the ECOSOC. The Council, basing on these recommendations, adopted a resolution 728 F (1959) which sets up the first important procedure to deal with the communications.

The Resolution 728-F (1959): This resolution, though recognized had "no power that the Commission on Human Rights to take any action" in regard to any complaint concerning human rights, has provided that:

(a) the Secretary General continue with his work of compiling the communications into two lists — a non-confidential list dealing with principles involved in the promotion of human rights and a confidential list containing a brief indication of other human rights communications which mostly dealt with the allegations of denial or violations of human rights; (b) the confidential list would be placed before the members of the Commission in private meetings without disclosing the identity of the authors unless waived; and (c) that each state to which a particular communication is related to is provided with a copy of that communication (without divulging the identity of the author) for reply. Replies received from governments are also placed before the Commission in summary or in full as desired by the concerned government.

Why this procedure adopted a cautious approach towards communications — by not empowering the Commission to take or recommend action while dealing with them — in those days is easy to understand. Most of the governments generally considered that the promotion of human rights was a matter of domestic
jurisdiction under Art. 2(7) — beyond the purview of international organization/accountability. No further action, like investigation or publication of alleged violations, contained in the communications was possible in the absence of treaty obligations. However, it was a good beginning in evolving procedures to deal with such communications.

Resolution 1235 (1967): Two resolutions adopted in 1967 — one by the ECOSOC (i.e. resolution 1235) and other by the Commission on Human Rights (i.e. resolution 8(XXIII) — introduced more improvised methods, which acknowledged for the first time that "the lack of power" statement of the Commission had become redundant in view of creating a comprehensive mechanism to implement human rights norms and the accelerating process of decolonization in the sixties. This doctrine was superseded by resolution 1235. This resolution empowered the Commission and the Sub-Commission not only to examine petitions, but to "investigate" and study those situations which appeared to reveal a consistent pattern of gross violations of human rights and to report back to ECOSOC with recommendations.

12. The procedure set forth by this resolution is discussed below under a separate heading entitled "Cases of Gross Violation".

13. The Commission had recognized in its very first report (E/259, para 22) that "it had no power to take action in regard to any complaints concerning human rights". The ECOSOC resolution 728-F too had reaffirmed this.
Eventually, under this procedure the Working Groups appointed by the Commission and the Sub-Commission inquired into human rights violations in Southern Africa, Chile, Cyprus and occupied territories of the Middle East. It is interesting to note that since 1976 controversy has revolved around the activities of the Sub-Commission which has tried unsuccessfully to place certain items, such as atrocities alleged to have taken place in Uganda, on the Commission's agenda, and to draw attention to human rights violations in African countries other than those practicing apartheid. Thus, it can be said that this resolution is a great step forward in comparison with the "no action doctrine" prevailing earlier.

The Resolution 1503 (1970): The adoption of resolution 1503 by the ECOSOC, on 27 May 1970, was an important milestone in the development of a UN communications system to promote and protect human rights. With its adoption the Council had completed the establishment of the new UN machinery for dealing with communications. The fact that the resolution was adopted with a marginal majority voting (14 to 7 with 6 abstentions) and despite the strong and persistent objections raised at all stages of its drafting on the grounds that the envisaged machinery was inconsistent with international law (as the individual was not a subject of that law), and the principle enshrined in Art.2(7) of the
Charter, reveals that it sets forth an important machinery to deal with thousands of communications coming to the United Nations every month. It is learnt from an authoritative source that the Secretary General receives every year approximately 20,000 to 25,000 and even 50,000 communications.

The salient features of 1503 procedure are as follows: Firstly, it has introduced a three-tier machinery to deal with communications revealing a consistent pattern of gross and reliably attested violations of human rights — a Working Group of the Sub-Commission; the Sub-Commission and the Commission on Human Rights. The first machinery, i.e. the Working Group would meet once in a year in private meetings immediately before the session of the Sub-Commission. The Working Group is required to consider all communications including replies of governments.

14. It was also pointed out by the opponents that the proposed procedure (i.e. 1503 procedure) constituted an illegal abstinence for the procedure set forth in the Optional Protocol to the CCPR. The supporters were of the view that the procedure was not an infringement of state sovereignty as the UN organs under the Charter were already empowered to "examine" and "study" any human rights matters, and the consent of states was expressly required by the proposed resolution for initiating an "investigation". It was said that governments were further protected by the confidentiality rule and other clauses against risks of abuse. In view of the co-ordination clause embodied in the resolution, the new procedure would not prejudice the operation of the Optional Protocol. For the debates, in the Social Committee and Plenary, see, Docs. E/AC.7/SR.637-43 and E/SR.1693. (ESCOR, 48th Sess., Suppl. No. 5, The Commission on Human Rights, Report on 26th Session, 24 February-27 March 1970 (UN Doc. E/4816), paras. 420-24).

received under resolution 728 F with a view to bringing to the attention of the Sub-Commission these communications which reveal a consistent pattern of gross and reliably attested violations of human rights. The Secretary General, with a view to help in this task, will provide to the members of the Sub-Commission every month a list of communications received by him, together with replies of governments, if any.

The second body, i.e., the Sub-Commission, then will consider in private meetings (which are held in Camera) all those communications brought to its attention by the Working Group. It is authorised to determine whether the particular situation of gross and reliably attested violations of human rights has to be referred to the Commission for its consideration. Finally, the Commission, after examining the situations referred to it by the Sub-Commission, would determine: (a) whether it required a thorough study by the Commission or (b) an investigation by an ad hoc committee of the Commission, with the consent of the state concerned and under conditions determined by agreement with it. Such investigation can be undertaken only if all available measures at the national level have been exhausted and if the situation does not relate to a matter which is dealt with under any other procedure.

Another characteristic feature of the "1503 procedure" is that its intention is not to expose publicly the government complained of. Its aim is not even to condemn states, but rather to find out whether allegations of gross violation of
human rights are substantiated and, if so, to help the states concerned to put an end to, or at least curtail, such violations.

The most important and much criticized feature of this procedure is its confidential character, i.e., the deliberations of the Commission and Sub-Commission are conducted in private meetings and nothing is known or publicized. Even the actions envisaged in the implementation of the resolution must remain in confidence until such time as the Commission may decide to make recommendations to ECOSOC.

The Commission has two methods to deal with the situations of serious human rights violations. Firstly, through open and public discussion of such situations following a decision of the Commission to set up a Committee or Working Group to study a particular situation. Secondly, it can examine, in closed-door meetings, with the assistance of Working Groups, the communications referred to it by the Sub-Commission under 1503 procedure from the list of Secretary General.

With the adoption of the "rules of admissibility" of communications by the Sub-Commission, on 13 August 1971, the 1503 procedure started functioning. A brief analysis of its practice can show the usefulness of this procedure.

It is almost fifteen years now that this procedure is in operation. During this period, a number of countries have come under its investigation or study. In the beginning it was feared that this procedure would lead only to more condemnations of South Africa and Southern Rhodesia (Zimbabwe). These fears have been proved wrong. It is difficult to present a complete or an actual picture of what happened in the Commission and Sub-Commission, because under 1503 procedure any discussion or any action decided upon is confidential until such time as the Commission decides to refer a particular situation to the ECOSOC. Therefore, the story of what actually happened in those bodies can be sketched out with the help of newspaper reports and from unofficial sources.

In the summer of 1972, when the new procedure started functioning for the first time, the working group of the Sub-Commission considered over 20,000 individual communications and submitted a confidential report.\textsuperscript{17} According to the \textit{New York Times} the communications relating to Greece, Iran, and Portugal, were brought to the attention of Sub-Commission.\textsuperscript{18} Though the Sub-Commission discussed the report of Working Group in closed

\textsuperscript{17} \textit{Report of the Sub-Commission on its Twenty-Fifth Session} (E/CN.4/1101), para. 109.

session, no action on these communications was taken. Instead all those communications were referred back to the Working Group for re-examination in the light of replies of governments, if any. In 1973 too a few cases, which were under consideration, were signalled out by the London Times. These were relating to the UK (in respect of Northern Ireland), Portugal, Iran, Indonesia, Burundi, Tanzania, Brazil and Guyana. In 1974, The New York Post had reported that the Sub-Commission had recommended to Commission to investigate situations in Brazil, Chile, Indonesia, Israel, South Vietnam and Uganda, under 1503 procedure. It is interesting to note that South Vietnam was singled out although it was not a UN member. In 1976, the situations of Bolivia, Chile, Equatorial Guinea, South Korea, Malawi and Uganda were considered. This was the second time that a situation of a non-member of the UN (South Korea) was mentioned. The decisions taken by the Commission were kept well-guarded secret. However, the names of countries, mentioned above, became known only when a reporter obtained the information in the Press room by listening the meetings of the Group over earphones.


In 1977, the crisis arose when a delegate from the United Kingdom, being dissatisfied with the action taken by the Commission under the confidential 1503 procedure in relation to Uganda, tried to raise the question in public session. The Commission refused him permission to raise the issue and decided that the situation in Uganda should be discussed only in private session. The issue raised by the UK that whether a public discussion of human rights violations in a particular country is barred merely because the same country is being considered under 1503 procedure, prompted the Commission to announce publicly in its 1978 report the list of countries in respect of which action was being considered or taken under 1503 procedure. The Commission's report mentioned the names of nine countries: Bolivia, Equatorial Guinea, Ethiopia, Indonesia, Malawi, Paraguay, South Korea, Uganda and Uruguay. The Commission's decision to announce publicly these names was to prevent any public debate of the situations prevailing in those countries. This decision served two purposes. One, the confidentiality of the procedure (or at least of the discussions and decisions under it) is maintained, and second, the situations were prevented or discouraged to be discussed.

23. See ESCOR, 1978, Suppl. No. 4 (E/1978/34), The Report of the Commission on Human Rights (E/CN.4/1292, p. 47). In the period 1979-82, the following names of the countries were the subject of 1503 decisions, as is known by the announcement of countries in the annual reports of the CHR to ECOSOC. They included, Afghanistan, Argentina, Bolivia, Burma, the Central African Republic, Chile, El Salvador, Equatorial Guinea, Ethiopia, German Democratic Republic, Guatemala, Haiti, Indonesia, Japan, the Republic of Korea, Malawi, Mozambique, Paraguay, Uganda, Uruguay and Venezuela.
openly. The public announcement of the names of countries proved beneficial on another count. It enabled the Commission to take another important decision in 1979 in the case of Equatorial Guinea by announcing that the human rights situation in that country could now be discussed in public as a result of the refusal of that government to co-operate with the Commission. This precedent has great potentiality as a persuasive means to encourage governments to co-operate with the Commission with a view to making the 1503 procedure effective.

Over the years, the 1503 procedure is being further improved to make it more effective. In 1976, in view of the coming into force of the International Covenants and the Optional Protocol, it was decided to request the ECOSOC to review 1503 procedure in order to avoid duplication and to improving the effectiveness of UN machinery.24 In 1978, the Commission decided to extend invitations to those states, which were under consideration, "to send representatives to address the Commission and to answer any questions put by members of the Commission". The Commission decided to issue these invitations during the first week of the annual debate.25 This means that the representatives

24. Resolution 1(XXIX), E/CN.4/1218 Chapter XVII.
25. E/5927, Chapter XXVI, Part B, p.136 (Decision 5 (XXXIV)), para.a and b.
of states under examination cannot address the Working Group of the Commission which does the preliminary work during a period of one week prior to the annual session. Nevertheless, one writer considers that this is an important development because it gives the state concerned an opportunity to participate in the debates of the Commission to defend itself. Once a hearing has been held, the decision of the Commission will presumably carry more weight in the eyes of the state that may eventually be condemned by the Commission. Moreover, it has been suggested that, by involving the state concerned at early stage in a confidential meeting, further human rights violations might be prevented in a quiet way. 26

Despite the gradually improving UN procedure and its usefulness, a number of scholars and delegates of member states have pointed out many drawbacks of 1503 procedure. Antonio Cassesse, for example, remarked that the confidential character of the procedure is its major flaw. Since the meetings were held in private, neither the authors of the communication nor the governments complained of (but since 1978, the Commission is publicly announcing the names of these governments) are known. Though the actions taken under this procedure are not known,

It is generally believed that they are neither very strong nor uniform and effective. He considers that the confidentiality surrounding the procedure deprives various competent UN organs of much valuable materials on human rights.  

27. Theodore C. Van Boven, former Director of the UN Human Rights Division, wrote that in the beginning the procedure appeared very promising, but due to many procedural technicalities, its time consuming character and the inability of the Commission to act effectively, the high expectations turned into disappointments.  

28. Secondly, it has been commented by many that so far the 1503 procedure has not yielded even one thorough study or investigation of the gross violation of human rights situations. But a recent study points out that the establishment of an ad hoc Working Group in Chile was prompted by the fact that the Chilean human rights violations were before the Commission under 1503 procedure. (This was also revealed by the first report of the


This study considers that the Chilean investigation is probably the best result that the 1503 procedure has had. Interestingly, the Commission, with the permission of ECOSOC, transmitted all confidential documents to the ad hoc Working Group. 30

Thirdly, it is interesting to note that, at the 29th session of the Sub-Commission, the experts from Soviet Union and other socialist states were leading a campaign to review (which amounts to the abolition of) the 1503 procedure. They pointed out that the human rights covenants having entered into force, leads to a duplication of procedures. 31 The Soviet viewpoint has not been accepted for two reasons. First, under the CCPR, the Human Rights Committee has jurisdiction to consider only individual complaints by victims against states which have ratified the Optional Protocol (till 1 January 1985 only 34 UN members had ratified it), 32 whereas under the "1503 procedure", the Commission is not concerned with individual complaints as such but is required to consider situations of gross violations, whether revealed in communications from individuals, or NGOs containing informative studies of particular situations. Second,

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30. The ad hoc Group on Chile was established in 1975. See Zuijdwijk, n. 26, pp. 54 and 377.

31. E/CN. 4/Sub-2/SR.776, S. N. Smirnov (USSR) para 3, Mr. Singh (India), para 19; Aurelin Christescu (Romania), para 15; Mohd. Khalifa (Egypt), para. 17.

32. See n. 75, for the list of States Parties to the Optional Protocol.
the "1503 procedure", unlike the Covenant procedures, is of universal application i.e., it is applicable to all UN members, irrespective of their ratification or not of the international Covenants and the Optional Protocol. Thus, there is no duplication between the two sets of obligations.

Though many writers are critical of the confidential character of this procedure, one American scholar has assumed that at least some countries may wish to reply to charges of injustices mentioned in the communications coming under this procedure, so that their answer puts them in a favourable light.33 Many experts in the Sub-Commission also justified its confidential nature. One of the principal reasons, said the French expert, for confidentiality is to encourage victims to come forward to report to UN bodies of the violation of human rights and to assure him of no further harassment by his government.34

Notwithstanding the arguments both for and against the 1503 Procedure that were advanced, it is certainly an improvement on the frameworks designed earlier. However, there is further scope for streamlining the system. First, to expedite the work under this procedure the Commission and the Sub-Commission should hold many formal and informal meetings of longer duration. At


34. These included Benjamin Whitekar (UK), Mrs.Nicole Questiaux (France) and Mr.Antonia Cassesse (Italy), See E/CN.4/Sub.2/3R.766, pp.1-6.
present, they meet once a year. As a result, there is considerable lapse of crucial time in the filing of grievance under 1503 procedure and the decision arrived at by the Commission. Second, the confidentially of the procedure should be reduced, subject of course to the protection of the complainants by safeguarding their anonymity, so that the pressure of public opinion is brought to bear.

There is also another problem. Many supporters of the "1503 procedure" are concerned about many thousands of communications that never reach the United Nations because of their seizure by governments. Unfortunately, there exists no international obligation for member states not to interfere in the correspondence between the individual and an international organization regarding petitions. According to a recent study, neither UN nor state practice seems to support such right. Therefore, it can be suggested that a new procedure should be devised whereby the delivery of such communications is ensured.

CASES OF GROSS VIOLATIONS

In response to the ECOSOC resolution 1102 of 4 March 1966,


36. In this resolution, the ECOSOC invited the Commission to consider at its 22nd session (in 1966) as a matter of importance and urgency, the question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid in all countries.
the Commission on Human Rights decided through resolution 8(XXIII) of 1967 to give annual consideration to the item entitled "Question of Violations of human rights in all countries, including the policies of racial discrimination and of apartheid with particular reference to colonial and other dependent countries. Under the same resolution, the Commission asked the Sub-Commission to prepare a report containing information on violations of human rights and fundamental freedoms from all available sources. This request authorized the Sub-Commission also to place the "question of violations of human rights and fundamental freedoms" on its agenda as an annual item. In retrospect, this resolution was important not only for the development of a new UN procedure to examine petitions but also for the initiation of an annual debate in the Commission and Sub-Commission on human rights violations occurring in any part of the world.

In resolution 8 (XXIII), the Commission also requested the ECOSOC to grant the Commission and the Sub-Commission authority to "examine" various information relevant to gross violations contained in communications listed by the Secretariat pursuant to ECOSOC resolution 728 F. The Commission also sought the power to "recommend and adopt general and specific measures" to deal

with violations of human rights. Subsequently, the ECOSOC, with a view to improve Commission's new procedure (to deal with gross violations), granted this request through its resolution 1235. Under this resolution, the Commission and the Sub-Commission were given direct access to petitions. Thus, it can be said that acquiring of this power by the Commission is a great step forward in comparison with its earlier doctrine of "no-power-to-take action".

Annually, the Commission and Sub-Commission have been discussing publicly various human rights situations prevailing in the world. The discussions in the Commission in February 1968 were stormy, as it was discussing the human rights situations prevailing in Greece (due to coup d'etat in Greece, of 21 April 1967, a military dictatorship was established, which was arbitrarily arresting and detaining political prisoners) and Haiti. The representatives of both Greece and Haiti appeared before the Commission to defend their respective countries. The Greek representative argued "without prejudice to the rights of Member States under the Charter or the principle of non-intervention in the affairs of states" that an emergency situation existed in Greece, that his country went through a transitional period and that it could not be compared with consistent violations of human rights "based on racist or dictatorial philosophies perpetuating themselves to the point of falling within the
Commission's terms of reference". 38 His Government would oppose any action by the Commission in accordance with Art. 2(7) of the Charter. 39 Similarly, the Haitian delegate denied the allegations against his Government made in the communications. It was said that the attacks against Haiti were aimed at diverting attention from the most serious situations in Southern Africa. Art. 2(7) would be invoked to oppose any investigation. 40 Since there was no consensus at the Commission and the Sub-Commission on the nature of action to be recommended for Greece and Haiti, and there were strong criticisms of the Commission's interpretation of resolution 8 (XXIII) by Tanzania, the Commission did not adopt any resolution to take action with respect to Southern Africa, Greece and Haiti. It merely adopted, in the end, a resolution concerning the protection of human rights in the Israeli-occupied territories of Middle East. 41

This resolution prompted the establishment of various ad hoc Working Groups and investigating missions to inquire into the situations of human rights violation. It should be noted that, though this procedure is very rudimentary, is primarily

40. Ibid., para.169.
aimed at seeking the publicity or exposure of certain (notorious) human rights situations. It can have an immediate impact through mass media and can draw the attention of world public opinion to such serious cases of disregard of human freedoms. By doing so, the Commission can exert a considerable influence on the governments concerned.

It is interesting to note that, in 1977 the General Assembly opened a new chapter in the field of promotion and achievement of human rights at the global level. In that year, through resolution 32/130 of 16 December 1977, it assigned to the Commission the task of preparing "an over-all analysis of the alternative approaches and ways and means within the UN system for improving the effective enjoyment of human rights and fundamental freedoms". Thus, it is hoped that new and effective procedures would be evolved and established in future to monitor human rights situations. But so far in accordance with this resolution no new and alternative approaches have been worked out.

CONVENTION ON RACIAL DISCRIMINATION PROCEDURE

The International Convention on the Elimination of All Forms of Racial Discrimination, is considered as the first human rights instrument of the United Nations to have provided for the "strongest" system of implementation machinery. Under Articles 8 to 16, it provides for three methods — a reporting procedure, the inter-state communication and conciliation procedure and the
procedure of petitions by the individuals and groups of individuals.

(a) **The Reporting Procedure** is governed by Articles 8 to 11. Art. 8 provides for the establishment of the Committee on the Elimination of Racial Discrimination (hereafter referred to as (CERD) consisting of 18 experts of high moral standing and acknowledged impartiality. These members are to be elected on a secret ballot from among nominations received from States Parties. These members are to act in their personal capacity for a term of four years. However, the term of nine of its members elected at the first election shall expire at the end of two years, which will be decided by lot. To make the membership of CERD a truly global, the Art. requires that in the election consideration will have to be given to equal geographical distribution and the representation of the different forms of civilizations and principal legal systems of the world.

Art. 9 sets out the undertaking of States Parties to the Convention to submit to the Secretary General of the United Nations, for consideration by the CERD, reports on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the Convention. The States Parties are required to submit, within one year of the entry into force of the Convention for that state, the report and thereafter at an interval of every two years and whenever the
CERD so requests. Then the Committee shall submit annual reports to the General Assembly on its activities and may make suggestions and recommendations based on the examination of reports and information received from the States Parties. The CERD may also include its comments in these annual reports.

The Committee (Art.10) will adopt its own rules of procedure and elect its officers for a term of two years. The secretarial services for the sessions of CERD shall be provided by the Secretary General and its meetings will, normally, be held at the Headquarters. The word "normally" indicates that, when necessary and possible, the CERD may also hold meetings at other places. Consequently, the CERD, adopted its rules of procedure at its first and second sessions. Amendments, and additions were incorporated at the 4th, 5th, 7th and 17th sessions and a single document containing the 78 rules of procedure was published in 1978.42

According to these rules of procedure the meetings of the CERD will be held in public unless otherwise decided by it.

The summary records of such meetings are made as documents of general distribution. The CERD adopted this rule on 21 March 1978. There is also a provision for private meetings, the summary records of which are distributed only among members of the Committee, unless it is otherwise decided. Similarly, the reports of States Parties are documents of general distribution.

The guidelines for the content and format of state reports, to be submitted under Art. 9, are provided in a single document CERD/C/36 of the Committee. Besides basing their reports on the provisions of Articles 3 to 7 of the Convention, the States Parties are required to follow these guidelines.

The most important precedent developed by CERD is that it permitted (in accordance with its rule 64A, adopted in 1972) the participation of representatives from the States Parties while their reports were under consideration. This precedent was also followed later by the Human Rights Committee.

Though it is considered that the role of CERD is better than Human Rights Committee, the reporting system did not work perfectly. The States Parties are not prompt in submitting their reports — both initial and periodic reports. A recent

43. For the details of these guidelines, see Lerner, Ibid., pp. 108-113.
UN study pointed out that, as of 1 January 1983, during 13-years functioning of CERD, it had received a total of 476 initial and periodic reports, and 64 supplementary reports containing additional information. General recommendation VI, adopted by CERD, at its 25th session in 1982 noted that no less than 89 reports were overdue from States parties, that 42 of those reports were overdue from 15 states, each with one or more outstanding reports and that four initial reports which were due between 1973 and 1978 were not yet received. Subsequently, the General Assembly noted this situation with great concern and appealed, through resolution 37/44 of 3 December 1982, to all States Parties to the Convention to fulfil their obligations under Art.9 of the Convention and to submit their reports within appropriate time.

(b) Inter-State Communication and Conciliation Procedure

Art.11 provides for state-to-state complaints procedure -- the first one to have been provided by any human rights instrument. It authorizes a State Party, if it considers that another State Party is not giving effect to the provisions of the Convention, to bring the matter to the attention of CERD. The

44. UN Action in the Field of Human Rights (New York, 1983), (UN Publication, Sales No. E.83.XIV.2) ST/HR/2/Rev.2, p.293.
Committee then will transmit the communication to the State Party concerned, which must submit to it within three months, "written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that state." If the matter "is not adjusted to the satisfaction of both Parties ... within six months after the receipt by the receiving state of the initial communication", either state has the right "to refer the matter again" to CERD by notifying it and also the other state.

Articles 12 and 13 provides for the conciliation procedure. Under Art.12, the Chairman of CERD may appoint an ad hoc Conciliation Commission after the Committee has obtained and collated all the information necessary in a dispute. Such a Commission shall consist of five persons, who may or may not be members of CERD. The information obtained and collated by the Committee is made available to the Conciliation Commission. Under Art.13, "when the Commission has fully considered the matter, it shall prepare and submit to the Chairman of CERD a report embodying its findings on all questions of facts relevant to the issue between the parties, and containing such recommendations as may think proper for the amicable settlement of the dispute". Then the Chairman of the Committee communicates the report of ad hoc Commission to each of the States Parties to the dispute. Parties to the conflict are expected to inform the Chairman of the CERD whether or not they accept the recommendations of the Conciliation Commission. If they fail to
do so, the Chairman then circulates the report of the Commission and the declarations of conflicting states to other States Parties of the Convention.

(c) The Right of Petition by Individual or Groups:

Under Art.14 a State Party may recognize the "competence of CERD" to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights contained in the Convention. The Committee is not authorized to receive petitions concerning a State Party which has not made such a declaration. Thus, the Convention creates an optional procedure to deal with individual's petitions. Under this procedure, CERD considers communications in the light of all information made available to it by the State Party concerned and by the petitioner and forwards its suggestions and recommendations, if any, to the State Party concerned and the petitioner.

Art.15 provides for petitions from inhabitants of colonial territories, specially the Trust and Non-Self-Governing Territories.

INTERNATIONAL COVENANTS : PROCEDURE

International Covenants consist of three separate instruments — (i) International Covenant on Economic, Social and Cultural Rights; (ii) International Covenant on Civil and
Political Rights and (iii) Optional Protocol to the Covenant on Civil and Political Rights — and each of them has separate measures of implementation.

The Covenant on Economic, Social and Cultural Rights: Procedure

The only implementation procedure provided for in this Covenant is the reporting procedure. The States Parties undertake to submit reports to the ECOSOC, in addition to their obligation to undertake measures of legislative nature with a view to achieving progressively the full realization of the rights recognized in the Covenant (Art.16). Those reports have to be submitted in accordance with a "programme" to be established by the ECOSOC within one year of the entry into force of the Covenant (Art.17). Consequently, the ECOSOC adopted, on 11 May 1976, a resolution E/1988 (LX) by which it was decided that reports will have to be submitted in three stages at two-years intervals: stage 1 to cover articles 6 to 9 (right to work, to fair working conditions and to social security and rights of trade unions); stage 2 to cover articles 10-12 (family rights and rights to an adequate standard of living and health); and stage 3 to cover articles 13-15 (right to education and culture). These reports, to be submitted to the Secretary-General, should include the measures that the

45. See for the text of this resolution, E/5850.
States Parties have taken to achieve the observance of the rights recognized in the Covenant and the progress made in that respect. They should also indicate factors and difficulties affecting the degree of fulfilment of their obligations under the Covenant. The reports of the first stage were due on 1 September 1977, and the reports on the subsequent stages at biennial intervals thereafter.

The Specialized Agencies were also required to submit to the ECOSOC reports on the progress made in achieving the observance of the provisions of the Covenant falling within the scope of their activities (Art. 18). Their reports of the first stage were due for transmission by 1 December 1977, and the reports on the subsequent stages at biennial intervals thereafter.

The resolution also decided that a Sessional Working Group (SWG) of ECOSOC members should be established, to assist in the consideration of reports whenever reports on the implementation of the Covenant were due for consideration. Consequently, in 1979, a SWG was created which consisted of 15 members that were members of the Council and Parties to the Covenant, as well as observers from other states and the Specialized Agencies. There was a debate on the composition and methods of its working. On a proposal from the Soviet Union, it was decided that only the States Parties to the Covenant be
included in SWG. The Soviet Union held that this would be in
tune with the principles of international law.\textsuperscript{46} Regarding
its working methods, there was agreement among many delegates,\textsuperscript{47}
that the SWG should review reports collectively on a global
level, i.e. article by article, rather than country-by-country.
It was also agreed that the SWG should take its decisions by
consensus, and not through voting.\textsuperscript{48}

In a nutshell, one can say that the precise implement-
ation procedure provided by the Covenant is that the States
Parties would undertake to submit reports to the ECOSOC on the
measures they have taken to the realization of the rights
recognized therein and the progress made. This procedure,
however, is supplemented by a comprehensive three-tier system
of international scrutiny and recommendations. Firstly, the
Specialized Agencies would report to the ECOSOC on the progress
they have made in achieving the observance of rights of this
Covenant (Art.18); Secondly, the ECOSOC may transmit to the
Commission on Human Rights for study and general recommendations,

\textsuperscript{46} E/1978/SR.9, p.3. See for a detailed discussion on this
subject, B.G.Ramcharan, "Implementing the International Coven-
ants on Human Rights", in B.G.Ramcharan (ed.), Human Rights:
Thirty Years After the Universal Declaration (The Hague,1979)
pp.165-67.

\textsuperscript{47} See e.g., E/1978/SR.9, p.9 (Finland); ibid., p.12

\textsuperscript{48} E/1978/SR.9, p.12 (USSR), ibid., SR.12, p.8 (Finland),
p.10. (Tunisia).
or as appropriate, for information, the reports submitted by States Parties (Art.19) and finally, the ECOSOC may report to the General Assembly (Art.21).

The SWG had its first session in 1979. During this session, the primary issues discussed were the procedures for consideration of the state reports and whether attention should be confined to the state reports themselves or whether the group could also take into consideration reports from the Specialized Agencies. It was decided to follow the practice of the Human Rights Committee and consider the state reports individually, including the possibility of oral presentation by representatives of the countries concerned.

Since the beginning, a controversy has prevailed in the SWG over the role of the Specialized Agencies. Although their right to participate in the debates of the Working Group is clear, there were repeated efforts to exclude them. This matter took a serious turn in the Second Session of the SWG (April 1980) when the representative from the ILO sought the permission of the Chairman to make a statement on the consideration of the report of Ecuador. The Soviet and Romanian delegate objected for making a statement on particular country. Finally, the Working Group decided to permit the Specialized Agencies to make only a "general statement" after members of the SWG had spoken.49

It was only in the second session that the Working Group began to examine reports of States Parties submitted under the first stage. The first examination of reports left a great deal to be desired. The Soviet representative seemed determined to prevent any questioning of the Parties' performance under the Covenant. As a result, the report of the SWG just described the work carried out and contained no conclusions or recommendations. Even the second session of the Group's consideration of individual reports took the form of questions and answers, without recommending any action, which could help ECOSOC in exercising its functions in the implementation of the Covenant.

Thus, the first two years functioning of the machinery to implement the Covenant leads to a dismal conclusion that the reporting procedure is seriously flawed. The SWG does not consist of experts like the Human Rights Committee (created under CCPR). Though, after a review of Working Group in 1981, ECOSOC, inter alia, had urged members of the Group to include in their delegations experts in the matters dealt with in the Covenant. At the third session of the Group in April 1981, it was clear that this appeal went unheeded. Barring the Soviet

Union and Norway, all states were represented by members of their permanent missions who had not previously taken part in the work of the Group. As a result, the performance of the members of Group was very poor. They asked superficial questions and were unable to submit proposals for conclusions or recommendations on the consideration of reports.51

However, it can be said that the procedure has a potential to become effective. Its great advantage is that it functions directly under ECOSOC. Since the ECOSOC is empowered to consider reports on economic, social, and cultural rights, it has a unique opportunity to integrate human rights with the economic, social and cultural questions in general52 (which it discusses every year).

Moreover, one should not be upset over the slow progress of this Covenant. Since the rights enumerated therein are so vast that their progressive realization only is possible.

It is encouraging to know that the Covenant has been widely ratified, and the States Parties are increasing every year (As of 1 January 1985 it was ratified by 83 states).

51. Fischer, n.49, p.175.
The Covenant on Civil and Political Rights (CCPR): Procedure

Apart from providing two important procedures, namely: the Reporting Procedure (Art. 40 of the Covenant) and the Inter-State Communication and Conciliation Procedure (Arts. 41 & 42), CCPR provides for the creation of a monitoring body called the "Human Rights Committee" — a distinct feature of this Covenant — (under Articles 28-32) to consider and discuss reports submitted by States Parties to the Covenant under Article 40; to consider communications by a State Party complaining that another State Party is not fulfilling its obligations under the Covenant (Art. 41); and to consider communications from individuals under the Optional Protocol.

Accordingly, the States Parties to the Covenant constituted an 18 member Human Rights Committee, on 20 September 1976, from among the nationals of the States Parties for a term of "four years, who were persons of high moral character and recognized competence in the field of human rights". They were required to serve in their personal capacities.

Under its Rules of Procedure (CCPR/C/3) the Committee has decided to appoint (for a term of two years) from among its members a Chairman, 3 Vice-Chairmen and a Rapporteur. It decided to hold two regular sessions a year. Presently, according to its decision taken at the fourth session (21-25 July 1978), 53 it holds three sessions each year, lasting

approximately three weeks. The first session was held from 21 March to 1 April 1977 and the 23rd session from 22 October to 9 November 1984. The holding of special sessions is also provided for. Sessions are generally held at New York or at Geneva. Its meetings generally could be held in public unless the Committee decides otherwise or it appears from the relevant provisions of the Covenant or Protocol that the meetings should be held in private. Summary records of its public meetings and of its subsidiary bodies are documents of general distribution, unless, in exceptional circumstances, the Committee decides otherwise, and those of the private meetings are to be distributed only among the members of the Committee and other participants of the meetings. The latter can also be made available to others by a decision of the Committee. Generally the decisions are arrived at by a majority of the members present and mostly through a consensus.

(a) The Reporting Procedure:

Among all the procedures contained in this Covenant, the reporting procedure is by far the most effective mechanism to promote human rights in the States Parties. They undertake to submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. The reporting state should also indicate the factors and difficulties experienced during the implementation of the provisions of the
Covenant; such as the difficulties arising out of the existence of different castes, racial, religious and linguistic groups in a society, problems faced in overcoming religious, social and cultural traditions if any. Such reports are to be submitted within one year from the entry into force of the Covenant from the States Parties concerned; after such initial reports, further reports are to be submitted, as decided by the Committee in 1981, at five-year intervals from the date their initial reports were due or considered. Besides, the Committee had power to request an additional report or information, whenever it found that the information contained in the reports was inadequate.

Under rule 69 of the rules of procedure, the Committee can send (through Secretary General) "reminders" to States Parties who fail to submit or delay their reports or additional informations. If, after receiving such reminder(s), the State Party does not submit the report or additional information required, the Committee may state the names of these countries in its annual reports to the Assembly. This rule assumes that such public announcement of non-compliance of reporting duty may compel States to be punctual in their duties. Some States may not like such publicity.

Regarding the form and content of such reports, the Committee's general guidelines prescribed that each report should be divided into two parts. Part I should briefly provide the following: (a) the general legal framework within which civil and political rights are protected in the reporting State, by indicating whether any of the rights referred to in the Covenant are protected either in the Constitution or by a separate "Bill of Rights", and if so what those provisions are; (b) whether the Covenant provisions can be invoked before, and directly enforced by the courts or whether they have been transformed into domestic laws; (c) what jurisdiction does the juridical, administrative or other competent authorities have affecting human rights; (d) what remedies are available to the individual in case of violation of his rights; and (e) whether any other measures have been undertaken to ensure the implementation of the Covenant. In Part II the reports should provide information in relation to each individual article of human rights. This information should state what measures are in force with regard to those rights and whether there exist any limitations in the exercise of those rights. This part also should list the difficulties encountered by States Parties in the realization of these rights. In 1981, the Committee

55. For Committee's general guidelines see the first Report of the Human Rights Committee GAOR, 32nd Sess., Suppl. No.44 / UN Doc.A/32/44, pp.69-70/.
decided further guidelines for subsequent reports, whereby it requested that the reports should include information taking into account the questions raised in the Committee on the examination of any previous report or additional information, besides keeping in view the earlier guidelines, the "general comments" made by the Committee under Art. 40(4), the experience gained in co-operation with the Committee and the progress made since the last report was considered.

In the consideration of State reports, or additional informations, the Committee has followed the practice of the CERD, i.e. to request the representatives of the States Parties to be present at the meetings when their reports are being examined. Such a representative should be able to answer questions which may be put to him by the members of the Committee and make statements on reports already submitted by his State, and may also submit additional information from his State. The purpose of this exercise is to promote a meaningful dialogue between the members of the Committee and the representative of the reporting State.

Under Art. 40(4) of the Covenant, the Committee may formulate "general comments" on the basis of its examination of reports or informations supplied by the State Parties. These "comments" are communicated to the States Parties for their

observations and comments, which they should send within the time limit prescribed by the Committee. The Committee may also transmit to the ECOSOC these "comments" coming from States Parties, together with the copies of the reports it has received from them and the observations, if any, submitted thereafter. It may also submit its reports and the general comments to the States Parties. This procedure confers an advantage on the ECOSOC by enabling it to get copies of reports of States Parties, by which it can not only coordinate the work of the Committee and the Commission on Human Rights, but can also integrate its other programmes with that of human rights.

Under Art. 45 of the Covenant (and Rule 63), the Committee submits to the General Assembly, through the ECOSOC, an annual report on its activities.

A cursory evaluation of the practice of the Human Rights Committee provides some illuminating and interesting facts regarding the reporting procedure. The Committee has emerged in less than a decade's experience as the most important organ striving for the universal enforcement of human rights. Its sessions on the consideration of State reports have provided a forum for constructive dialogue between the States Parties and UN bodies. Though the questioning of state representatives by the Committee is not like "cross-questioning" in juridical sense, it has enabled the Committee members to extract useful informations from them.

Though most of the reporting states generally provide an excellent picture of human rights in their reports, it is
contrasted by the Committee members. Not all the states follow this practice. There are some countries who were candid enough to admit in their reports that they are not in full observance of all the provisions of the Covenant. The representative of Madagascar pointed out that "the promotion of civil and political rights in his country had been hampered by the lack of judicial facilities, the sharp rise in crime and the worsening of the economic situation as a result of the world economic crisis." 57 The representative of Venezuela acknowledged that "some legal provisions still in force were not in conformity with the Covenant." 58 Similarly, the representative of Rwanda appealed to the Committee "for assistance in training lawyers and judges with a view to assisting administration to fulfil its obligations under the Covenant." 59 The reports of Madagascar, Rwanda and Venezuela are examples to show that the states, by indicating the factors and difficulties affecting the implementation of the Covenant in their countries, can share their problems with other members and international organisation.

Many of the reports submitted under CCPR have only referred to the paper provisions of the constitutions or domestic legislation to demonstrate compliance with the Covenant. The


59. UN Doc. CCPR/C/SR.363, p.9 (15 July 1982).
Committee members repeatedly told the state representatives that the Covenant must be implemented in fact and not merely on paper. Not only this, the Committee many a times took a serious note of state reports which did not meet the required guidelines. It found Chilean report incomplete and inadequate, and asked the Chilean government to submit additional report. Similarly the initial report of Jordan was considered by the Committee to be, "incomplete in form as well as in substance". The report of Kenya was also brief and incomplete and did not reflect the human rights situation in that country.

It is disappointing to note that the reporting states are much slower in submitting their reports. They use various methods to slow down the progress of the Committee. Their non-co-operation with the Committee with regards to their reporting obligation is responsible for the dismal record of its achievements. Though the states are required to submit their reports within one year after the Covenant comes into force for them. They are not prompt in submitting such reports. They do not comply with their reporting duty even after receiving a number of reminders from the Committee. Of the 35 initial reports

60. See, for instance, the statement by Mr. Tomuschat on the report of Iran, UN Doc.CCPR/C/SR.366, p.2 (19 July 1982).


which should have been received by 22 March 1977, only 16 arrived on time. By 31 January 1981, 60 reports were due of which only 44 had been received. Reports had not been received from four states (Jamaica, Lebanon, Rwanda and Uruguay) whose reports were due in 1978, four states (Dominican Republic, Guinea, Peru and Venezuela) whose reports were due in 1979 and five states whose reports were due in 1980.64

The presence and participation of a state representative is essential when the report of a given state is under examination by the Committee. The State Party can jeopardise sometimes this rule by not sending a representative. This tactic is used to delay the consideration of reports by the Committee. Without the co-operation of the States Parties in this regard no constructive dialogue is possible. For instance, in 1982 the report of Guinea was not taken up by the Committee at its 16th session, because her representative was not present before the Committee. Then the Committee decided to obtain, by every other possible means, the attendance of her representative.65

Besides this, there is another problem i.e. the subjection of Committee members by state representatives. In 1982 when

64. Each report of the Committee contains a table on the status of state reports under CCPR. See all the reports. The 1983 report states that by 31 July 1983, of the 12 initial reports 7 were due and also 9 second periodic reports were due. For the list of names whose reports were due, see UN Doc.A/38/40, p.104-5 (1983).

65. UN Doc.CCPR/C/SR.363, p.6 (15 July 1982).
the Committee was discussing a report of Iran, which was only of four pages long, the Iranian representative could not tolerate the criticisms of the Committee on the nature and content of the report. When the members asked a number of questions on matters relating to the Covenant, the Iranian delegate described the Committee's hearings on his country's report as a "political inquisition". There is yet another problem. The Committee has less time to examine in detail the initial and subsequent reports coming from the States Parties, as it presently meets only three times a year. Each session lasting for three weeks. Since at present there are 80 States Parties to the Covenant, the reports of the states are piling up at the Committee and waiting to be disposed off. To cope up with this problem the Committee needs to increase its period of each session.

The reporting procedure has many other deficiencies. Firstly, the Committee is authorised to make "general comments" and "recommendations" only. There was no consensus in the Committee on the nature of comments and recommendations. One view held is that the Committee may make comments directed to a particular state, provided they are general in character.

66. See, for the statement of Iranian representative, UN Doc.CCPR/C/SR.368, pp.2-5; 11-12; (21 July 1982).
i.e., not relating to named individuals or specific cases. The more conservative position (taken by the Socialist States) contended that the "general comments" provision precludes recommendations addressed to particular states. The conservative opinion was not accepted. Secondly, the states concerned are not required (legally) to take any action on the comments made by the Committee on their reports. They may submit their observations on any comments that may be made or may just ignore them completely. Further, the Committee's conclusions are not submitted to an authoritative organ empowered to make formal and specific recommendations to the governments concerned. And there is no provision that ECOSOC is to pursue the Committee's comments with recommendations for necessary remedies. It is also remarked that though the Committee is composed of "experts" serving "in their personal capacities", some of the representatives had been, and often continue to be, government officials. As a result, they are not performing their functions "impartially". While taking a decision, they may come under the political pressure of their governments. Fourthly, the opportunities for obtaining


independent information are clearly inadequate, which will impose additional burden on members of the Committee. Generally members depend on the information supplied by the government sources, some times they may depend on the non-official sources as they had done in the case of Chile.

It is not surprising that there are some weaknesses in the reporting system instituted by the CCPR when it is the product of the heterogeneous community enshrined in the United Nations some of whose members were in complete disagreement on the fundamental question of instituting any system of international control at all. Seen in this perspective, the reporting system is a reasonable compromise. 69

In conclusion, it can be said that the Covenant provides for a Committee which may properly be described as a body to assist states with the promotion of human rights rather than a true monitoring body or a watchdog of human rights. Its task is to study the conditions of human rights within its States Parties and to assist them with the promotion of these rights. Statutorily, it is empowered to make general comments to all the

(\text{previous fn. cont.\ldots})


States Parties. However, in practice, it has become clear that the Committee is severely handicapped in dealing with States unwilling to co-operate with it. The repeated claims of state sovereignty and the protests against interference by the Committee made by several States Parties suggest that all Parties haven't yet embraced the idea that accepting the Covenant entails externally stimulated domestic change. Thus, it can be appropriately remarked that the implementation of the Covenant is possible only progressively.70

(b) Inter-state Communications (Complaints) and Conciliation Procedure

The other procedure provided for in the CCPR, i.e. "State-to-state" complaints of human rights, is optional in nature, and not an effective procedure of implementation. Under this procedure, human rights violations are first raised at state-to-state level, without involving international Organization, for mutual adjustment of the dispute. If this procedure fails then the matter is brought to the forum of the Human Rights Committee, which acts as a mediator and conciliator between the Parties concerned. Even when the good offices and conciliation efforts of the Committee fails to

70. This is a conclusion of Farrokh Jhabvala. See his article "The Practice of the Covenant's Human Rights Committee, 1976-82: Review of State Party Reports", Human Rights Quarterly (Baltimore, Maryland), vol.6, no.1, 1984, p.95.
bring an amicable solution to the inter-state dispute, the
Covenant does not authorize the Committee to reach a "decision",
or take "action". What it can do is just express an "opinion"
(as it frequently happens with the United Nations on other
matters too) on the issue. This procedure is not mandatory
as in the case of the European Convention on Human Rights,
which makes the procedure obligatory for all contracting
Parties (Article 24). Thus, it is feared that the procedure
may not yield any positive results. This fear becomes more
convincing especially when we see that by 6 August 1984, 17
States of the 80 States Parties to the Covenant had accepted
this procedure.71 Though the number is disappointing, it
does indicate some progress, at least to the extent that the
procedure has entered into force. Those who have accepted it
are mostly the Parties to the European Convention, who will
have to first exhaust procedures of conciliation of any such
dispute at the regional level.

This procedure is outlined under Articles 41 and 42
of the Covenant. Under Article 41, a state party "may at any
time declare ... that it recognizes the competence of the
Committee to receive and consider communications to the effect

71. These states are: Austria, Canada, Denmark, Finland,
FRG, Iceland, Italy, Luxembourg, Netherlands, New Zealand,
Norway, Peru, Senegal, Sri Lanka, Sweden and the United Kingdom.
On 6 August 1984, Ecuador became 17th nation to recognize the
competence of HRC under Art.41. See Journal of the United
Nations, 8 August 1984, p.5.
that a State Party claims that another State Party which also has declared that it recognizes the competence of the Committee is not fulfilling its obligations under the present Covenant. The communication is to be sent to the allegedly delinquent State (i.e. receiving State) which is required to send to the complainant State within 3 months an explanation or any other statement in writing, clarifying the matter, which should include, to the extent possible and pertinent reference to domestic procedures and remedies taken or available. If the matter is not settled to the satisfaction of both the States, within six months after the receipt by the receiving State of the initial communication, either State has the right to refer the matter to the Committee. The Committee shall deal with the matter only after it has ascertained all available domestic remedies that have been evoked and exhausted unless the application of the remedies is unreasonably prolonged. The Committee is to "examine" such communications in closed-door meetings. The States Parties have the right to be present in such meetings. The Committee is not empowered to make any decision or act as a judicial body. It can only make available its good offices to the Parties concerned with a view to achieving a friendly solution of the matter. If the effort of the Committee fails to bring any amicable solution, the Committee will prepare a "failure report" confining to the statement of facts. Such a report has to be submitted within 12 months of
the initial receipt of communications by the receiving State. The article provides that, that report has to be communicated to the States Parties concerned.

If the procedure outlined in Art. 41 fails to bring an acceptable solution, Article 42 of the Covenant provides for the appointment of the Conciliation Commission to resolve the conflict. This Article states that if any matter referred to the Committee in accordance with Art. 41 is not resolved to the satisfaction of both the Parties, the Committee may in exercise of its powers, appoint an ad hoc Conciliation Commission may make available its good offices to the Parties concerned. Such a Commission shall consist of five persons acceptable to the States Parties concerned. In the absence of an agreement within three months as to its composition, the members of the Commission, about whom there is no agreement, shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members. The members of the Commission shall serve in their "personal capacity". They should not be nationals of the States Parties to the conflict concerned, or of a State not party to the Covenant, or a State Party which has not made a declaration (under Art. 41 recognizing the competence of the Committee). The Commission shall elect its own Chairman and adopt its own rules of procedure.

The ad hoc Commission is to consider the matter fully and is to submit a report to the Chairman of the Committee
within a period of twelve months. If it is unable to complete its consideration within the time-limit, its report shall be confined to a statement of the status of its consideration of the matter. If the good offices of the Commission fail to achieve an acceptable solution, it should submit the "failure report" containing its findings on all questions of fact relevant to the issues between the States Parties concerned, and its "views" on the possibilities of an amicable solution to the matter.

It should be noted that this procedure entered into force on 25 March 1979 after ten States Parties deposited their declarations under Art.41 (By September 1983, thirteen States had deposited their declarations). Whether this procedure will play an important role in protecting human rights remains to be seen. As a matter of fact, till October 1982, this procedure has not been used. However, we can go a step further and say that the acceptance of this procedure, in itself, is a great advancement in terms of Art.2(7).

**Optional Protocol : Individual Petitions**

Traditionally, international law dealt with the relations between states, and the individual had no place therein. In

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72. These states are: Austria, Canada, Denmark, Finland, FRG, Iceland, Italy, Netherlands, New Zealand, Norway, Senegal, Sri Lanka, Sweden, and the United Kingdom.

73. This is because no state has yet taken advantage of this procedure, see UN Press Release HR/2323/p.4(12 October 1982).
the same way, "states" had assumed the responsibility of respecting the observance of "individual" human rights through various international treaties. It is regrettable that such human rights and freedoms were often championed in the past by the states which were themselves the frequent offenders. Since the Second World War a comprehensive set of human rights norms have been evolved, through Conventions/Covenants, which has made inroads into the body of traditional international law, whereby an individual is granted a "recognized status" in the modern law of nations. He has been given a right to petition the United Nations regarding any alleged violation of his freedoms, recognized in the "International Bill of Rights". Since the inception of the United Nations, the Commission on Human Rights and the Secretary-General have been receiving thousands of communications from individuals. As a result of this new development, it can be said that the individual has become the central concern of modern international law. At present, apart from the Optional Protocol to CCPR and the International Convention on Racial Discrimination, only the European Convention provides for the right of individual petition.

To make ratification and accession of CCPR easier and faster by member states, it was decided by the Third Committee of the General Assembly that the right of individual petition be included in a separate protocol. If this provision had been included in the Covenant itself, very likely Covenant would not have entered into force by now, as majority of states are against the United Nations conferring on individuals this privilege. The fact that by 1 January 1985 only 34 out of 80 States Parties to the CCPR, have accepted the Optional Protocol, confirms this truth.

Article 1 to 6 of the Protocol sets forth the procedure of individual petition. A State Party to the Covenant that becomes a Party to the Protocol recognizes the competence of the Human Rights Committee to receive and consider communications from individuals, subject to its jurisdiction who claim to be victims of violations by the State Party of any of the rights contained in the Covenant. Such communications may be submitted by individuals whose rights under the Covenant have been violated. They are considered inadmissible if they are anonymous, abusive, or are

75. These states are: Barbados, Bolivia, Canada, Comron, Central African Republic, Colombia, Congo, Costa Rica, Denmark, Dominican Republic, Ecuador, Finland, France, Iceland, Italy, Jamaica, Luxembourg, Madagascar, Mauritius, Netherlands, Nicaragua, Norway, Panama, Peru, Portugal, Senegal, Suriname, Sweden, Trinidad and Tobago, Uruguay, Venezuela, Zaire and Zambia. See UN Press Release, HR/2616, 30 July 1984.
under examination by another international procedure. No communication is also considered unless the complainant has exhausted all available domestic remedies. However, the rule of local exhaustion is inapplicable where the application of remedies is unreasonably prolonged. The Committee brings all those communications to the attention of the States Parties concerned who are alleged to be violating any provisions contained in the Covenant and they are required to submit to the Committee within six months written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by them. The discussions of the Committee are based on all written information made available by the individual and by the State Party concerned and they are held in closed sessions. Later it is required to include a summary of its activities under the protocol in its annual reports to the Assembly.

The Committee's rules of procedure also deal with the transmission of communications. Besides repeating the procedures outlined in the Protocol, these rules provide


for further details of the working mechanism of the individual petition system. The Secretary-General is made the channel of communications; he maintains a register and prepares a list of communications together with a brief summary of their contents, for circulation to the members of Committee. On the member's request the full text of any communication is promptly provided by him. He is also authorized to request from the authors of communications any necessary clarification, particularly as regards the exhaustion of local remedies.

Though the Committee examines these petitions in closed sessions, may issue *communicues* to the Press and general public about its activities. The Committee may establish working groups of not more than five members to examine and make recommendations to the Committee about the admissibility of communications. The Committee or the working group may request additional information relevant to the question of admissibility; a communication may not be declared admissible, unless the state concerned has received a copy of it and has had an opportunity to comment. Further, the rules provide that once a decision is taken that a communication is admissible, the State concerned and the individual are informed; and the State Party is obliged to submit written explanations and statements within 6 months which are communicated to the author of the communication for his comments. The Committee then finally considers the substance of the case in the light of all the written information made available to it by the petitioner and the State Party concerned, and formulates its
"views". These views are then communicated to both the State concerned and the individual.

In these rules of procedure, there are two additions to what is specified in the Protocol regarding the admissibility of communications \[\text{Rule 94(1)}\]. First, the Committee is empowered to appoint working groups to make recommendations about admissibility. Second, dissenting opinions of the members are permitted \[\text{Rule 94(3)}\]. Lengthy dissenting opinions are not possible, however, a member may request that a summary of his individual opinion be appended to the "views" of the Committee when they are communicated to the individual and to the State Party concerned. This is a useful addition, according to one writer,\(^78\) which may strengthen the quasi-judicial character of the Human Rights Committee when exercising its functions under the Protocol and may contribute to the development of its jurisprudence.

In 1979, the Committee for the first time, forwarded its "views" to the State Party concerned and to the individual \[\text{Art.5(4)}\] and made public what in effect was, its "judgement" on a private communication under the Protocol. The Committee had received a "communication" from an Uruguayan citizen alleging mistreatment of herself and three members of her family.

Each had been charged with "subversive association" or "assistance to subversive association", and was allegedly detained without trial, held incommunicado, and tortured. The Committee brought the communication to the attention of the Government of Uruguay. That Government objected to the admissibility of the claim on the grounds that domestic remedies had not been exhausted and that the alleged violations against the principal complainant had occurred before the Covenant entered into force for Uruguay. The Committee agreed that acts occurring before the Covenant's entry into force were beyond its jurisdiction. As regards violations alleged to have occurred after that date, however, the Committee found that no further domestic remedy remained. It also decided that the "close family connection" permitted the author of the communication to act on behalf of the victims. When, after six months, the Government of Uruguay failed to give a satisfactory explanation of its actions, the Committee formulated its "views" on the basis of the facts as alleged. It expressed the view that the facts disclosed several violations of the Covenant provisions, especially contained in Article 7; 9(1 to 4); 10(1); 14 and 25, and it noted that the Government of Uruguay was obligated to "take immediate steps to ensure strict observance of the provisions of the Covenant" and to provide effective remedies to the victims. 79

Since the Committee started its work under the Protocol at its second session in 1977, 147 communications have been placed before it for consideration (124 of these came between 2nd and 16th session, 23 came between 17th and 19th sessions). By the end of 29 July 1983 (i.e. till 19th session), out of 147 communications, 49 were concluded by "views" under Art.5(4) of the Protocol; 64 were concluded in another manner (inadmissible, discontinued, suspended or withdrawn); and 22 were pending at pre-admissibility stage. During the first seven years (i.e. till 29 July 1983), some 305 formal decisions were adopted. 80

However, it should be noted that a number of problems are associated with the procedure contained in Optional Protocol. The procedure is very "cautious" in its approach and "mild" in dealing with the individual communications. It does not give Human Rights Committee the right to pass "judgements" and recommend any action. The Committee can only express its "views", which are included in its annual reports to the General Assembly( and communicated to the petitioner and the State concerned). There are no provisions, either in the Protocol or in the Rules of Procedure for "follow-up" action on those "views" (i.e. either on the part of State Party or

the Committee). When the chairman of the Committee raised the question of reconsideration of the Committee's decisions to secure the implementation of its "views" as a measure of follow-up action, a lengthy debate followed in the Committee's 17th session. Two conflicting views prevailed in the discussions.81 One view, which was of minority, maintained that nothing in the Covenant and the Protocol empowered the Committee to reconsider its views on communications or to ensure their implementation. Since the Committee was not given explicit power by the States Parties and did not have any inherent powers, it had no competence to initiate the review of a case already concluded. If the individual is not satisfied with the Committee's views and claims to have new facts, nothing prevents him in Protocol to submit a further communication. Only the question then would be one of admissibility of the new communication. And the Committee was a sui generis body, with no powers and that the implementation of its views was left to the good-will of the States Parties concerned. It was also contended that, in the absence of any clear legal mandate, the question of monitoring the implementation of its views was contrary to Art.2(7) of the Charter. Whereas, the majority opinion pointed out that the Committee could not afford to let its work degenerate into an exercise of futility. To meet the letter and spirit of the Covenant and Protocol, it was believed that, the Committee has certain possibilities for recommending certain action, which is

81. For summary of these views, see Ibid., pp.93-94.
not expressly prohibited. Since the rules of procedure allowed review of a decision on admissibility, the reconsideration of a communication is possible. This reconsideration should be possible only as an exceptional principle (not a rule) in view of new evidences. Regarding the monitoring of its views or decisions, it was argued that whereas the Committee had no executive powers enabling it to enforce its views, it could nevertheless do something to bring an end to continued violations, or a redress, of the victims rights after transmission of its views to the State concerned. Moreover, it was clear from the Preamble of the Protocol and Art. 2(3) of the Covenant that the State Parties intended the Covenant to be implemented.

Apart from this, the Protocol does not provide either for judicial sanctions comparable to those available to the European Court of Human Rights or for the appointment of an ad hoc investigation committee as in the procedure under ECOSOC resolution 1503, or for the appointment of an ad hoc Conciliation Commission as provided for in respect of inter-state communications under Article 42 of the Covenant.\footnote{Nowak, n.68, p.162.}

Despite these limitations, unquestionably, the procedure constitutes a tremendous advance in the promotion of human rights, as it introduces an international accountability and a remedy/redressal of individual grievances about the violation of his
rights. It is for the first time, that such a system of monitoring is introduced in the history of nations. Though it is accepted by less than half of the total Parties to the Covenant, is a significant and historic development. It is thus clear from this development that the concept of domestic jurisdiction is shrinking day by day. However, it should be noted that the success of this procedure largely depends on the co-operation of States Parties.

SUMMARY OBSERVATIONS

Notwithstanding the consistent opposition (based on the ground of domestic jurisdiction clause of Art.2(7) of the Charter) by some member states, the ECOSOC established a periodic reporting system on the state of human rights and their observance in member states. Articles 55 and 56 of the Charter and the provisions of the Universal Declaration were cited in juridical explanation of the adoption of such procedures. The purpose of periodic reporting was to get an assessment of the developments of, and the progress made in the field of, human rights in different parts of the world (especially in member states of the United Nations). The study and analyses of these reports, by the ECOSOC, would enable it to formulate "comments", "conclusions" and "recommendations" of a general nature. Seen in retrospective, that no such procedure existed prior to the United Nations (and it was established despite strong opposition based on Art.2(7)) is not only a great development in the field
of promotion and protection of human rights, but also is a great advancement over Art.2(7). Though the ECOSOC cannot take action on those states, it can, at least, have a human rights picture of the world.

One of the great achievements of the United Nations in the field of human rights is the establishment of communications procedures by the ECOSOC. The celebrated resolution 1503 of ECOSOC is by far the most dynamic procedure on communications which deals with the gross violation of human rights. From the day 1503 procedure became operational, the Commission on Human Rights and its Sub-Commission have examined thousands of communications -- coming from all sources -- and recommended action of various kinds. Over the years, the procedure has also improved. Since 1978, the Commission is making public the names of the countries against whom discussion or action was initiated under 1503 procedure, thereby reducing, to some extent, the confidentiality that surrounded it. Therefore, it may be inferred that the ECOSOC procedures on communication are an advancement over the petition system provided in the Optional Protocol to the CCPR. Unlike the provisions of the Optional Protocol, they are universally applicable to all, UN and sometimes non-UN members (as the situations of South Vietnam and South Korea were discussed in 1974 and 1976 respectively by the Commission).

It is also worth noting that, under the authorization of
ECOSOC, the Commission and the Sub-Commission had already begun from 1967 a regular consideration of an agenda item entitled "Question of Violation of Human Rights in all countries". Under this item various situations of human rights, prevailing in any part of the world, were discussed by these bodies. Undoubtedly, such a public debate would desist member states from indulging in consistent or gross violation of human rights, because no country would like to have an international publicity of their disregard towards human rights. Moreover, the coming into force of human rights Covenants and the Racial Convention — having their own measures of implementation — have added additional obligations in this respect. In the light of the existence of different procedures to monitor and seek observance of human rights, it is difficult for a state to escape from international accountability.

Though the Convention on Racial Discrimination was the first instrument to have introduced a system of implementation machinery and was considered as more effective than that set by the CCPR, the experience gained during their functioning reveals that CCPR has a better record in certain respects. Two observations are made here. Firstly, under the CCPR, the States Parties are more willing and co-operative in submitting their reports than the States Parties under the Racial Convention. The 1983 report of CERD indicates that some of the States Parties have received more than 10 to 15 reminders each on the first, second, third, fourth or fifth periodic report.
For instance, Togo submitted its initial report (which was done on 1 October 1973) on 21 March 1983 after receiving 15 reminders and on the same date submitted its second, third, fourth and fifth report after receiving 11, 7, 5 and 2 reminders respectively. Swaziland and Zambia too had taken more than 8 years to submit their initial reports. 83 Secondly, an interstate communication procedure contained in the Racial Convention entered into force only 3 December 1982 — almost 13 years after the Covenant had entered into force, whereas a similar procedure contained in CCPR became operational on 25 March 1979, i.e. within three years of the Covenant's entry into force. Seen in this perspective, the coming into force of the CCPR's interstate communication procedure (though it is so far not used) can be considered as a modest achievement.

Our analysis of the different procedures contained in CCPR testifies that the system of implementation machinery provided under it is a modest one, and has potentialities to become effective. Its role is of only persuasion, conciliation, fact-finding, good offices or what can better be termed as that of 'promotional' (rather than implementation in strict legal sense) nature and so on. It is not as far-reaching or effective

83. See, for a chart of reports due under the Racial Convention, A/38/18 (Report of CERD) GAOR, 38th Sess., Suppl. No.18(1983), pp.145-157. Togo's late and simultaneous submission of all the reports might have created problems for CERD in their consideration.
as in the case of European Convention on human rights. But, within the limitations of Art. 2(1) and Art. 2(7) of the UN Charter, the United Nations can still play a reasonably effective role, provided the existing machinery is used tactfully. One is prompted to agree with the view that the implementation machinery is "not the best, but probably the best obtainable", given the resistance of governments to any system which would be capable of exerting real power on them. 84 It should be remembered that until 1945 there did not even exist such "modest" international machinery for the protection of human rights. Hence, it can be said that, the present system is a highly significant development in the law of United Nations and the international system.

Despite these moderate successes, the UN procedures have been subject to academic criticisms. It has been remarked, in exaggeration, that no effective mechanism is provided either by the ECOSOC system or the Covenant procedures to implement the human rights norms. To make these procedures effective a number of corrective measures have been suggested. For instance, it is recommended that the confidentiality which surrounds the 1503 procedure should be reduced and the Commission on Human Rights and its Sub-Commission should hold extended sessions or special

sessions to consider promptly communications which are piling up every month or to study periodic reports from member states. Many other improvements also have been suggested.85

Moreover, the methods of implementation included in both the Covenants too have been commented upon. Firstly, the Covenant on Economic, Social and Cultural Rights provides for only a reporting procedure. Secondly, the procedure of inter-state communications included in the CCPR is optional, and no recourse to the International Court is provided for. The procedures available in the International Labour Organization and in the European system of implementation are much more stronger than the Covenant procedures. Thirdly, the CCPR also makes it clear that its provisions on implementation shall not prevent the States Parties "from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them". Fourthly, the Optional Protocol relating to communications from individuals prohibit the consideration by the Human Rights Committee of any communication which is "being examined under another procedure of international investigation or settlement". Whereas, the States Parties to the European Convention agreed that they will not submit, "by way of petition, a dispute arising out of the interpretation or application" of that

Convention to "a means of settlement" other than those provided therein. Finally, it should be regretted that, the regional procedures were not mentioned expressly in the relevant Articles of the Covenants, and only the Optional Protocol can be construed as clearly giving precedence to regional procedures.

Notwithstanding these comments, which to some extent justify the slow progress of the United Nations in the field of human rights, the UN role can be considered as one of the remarkable and pioneering efforts to establish a mechanism of international accountability and monitoring to promote and protect human rights in the world.