Chapter V

GROSS VIOLATION OF HUMAN RIGHTS:
SOME CASE STUDIES

Notwithstanding the coming into force of human rights Covenants and instituting of reporting and monitoring procedures by the Economic and Social Council, violation of human rights continues unabated; indeed gross violations abounds in every part of the world. Over the years some cases of gross violation have been raised in various bodies of the United Nations. In this chapter an attempt is made to examine the response of the world body and the extent to which the United Nations was able to influence the developments and in obtaining respect for human rights.

THE RIGHT OF SELF-DETERMINATION OF PEOPLES

One of the first set of situations brought to the attention of the General Assembly were in the context of the right of self-determination of peoples — a concept which has played an important role in post-War international relations and in escalating the process of decolonization. In such cases

1. Many controversies have been raised in UN debates on the principle of self-determination. Such as, what is the meaning and content or scope of the principle of self-determination in the law of United Nations? Which are the situations or peoples/nations where this principle is applicable? Whether self-determination is only a principle or legal right? For a detailed analysis of these and related questions see, A.P. Vijapur, "The United Nations and the Right of Self-determination of Peoples", Indian Journal of Politics (Aligarh), Vol.18, No.1, 1984, pp.67-81.

the issue of violation of human rights was invariably combined with threat to international peace and security. The question of Algeria in the 1950's and that of Angola in the 1960's and Indo-Pak conflict (the question of the right of self-determination of peoples which now constitutes Bangladesh) and the right of Palestinians to self-determination are typical examples of such cases.

The situation in Algeria was first brought to the United Nations by the delegate of Saudi Arabia. In his letter of 5 January 1955 (UN Doc.S/3344), he drew the attention of the Security Council to the grave situation in Algeria, which, his government believed, was likely to endanger international peace and security. The memorandum submitted in that regard drew attention to the gross violation of human rights situation there and alleged that the French government was attempting to obligerate the national, cultural and religious characteristics of Algerians by means of ruthless military operation to liquidate the nationalist uprising against the French colonial rule.

When the Security Council did not take note of Saudi memorandum, and the situation in Algeria deteriorated, the question was brought to the General Assembly (under Article 11 and 14 of the Charter) by 14 Afro-Asian states. Their letter of 26 July 1955 (UN Doc.A/2924 & Add.I), in this regard, to the Secretary General said that the French authorities in Algeria were suppressing the movement of Algerian people to self-determination, and the situation was a potential threat to peace.
The French delegate opposed the consideration of the question on the ground of Art. 2(7) and declared that he could not accept any intervention by the Assembly and would consider as null and void any recommendation which the Assembly might make on the matter. Some of the Western Powers (Australia, Israel, Netherlands, Portugal, Spain, the UK, the USA and New Zealand) supported the French stand. After consideration of this request, the General Committee decided not to recommend the inclusion of the item on agenda. However, the Plenary of General Assembly decided to place the item on the agenda by the majority of a single vote. In plenary also, the French delegation not only opposed the consideration of the question on the ground of Art. 2(7), but withdrew itself from the Assembly in opposition. In such situation, the Assembly decided through Reso. 909 (X) not to proceed further with the question. So, the question was not discussed.

In 1956, two letters (S/3589 and S/3609) from Afro-Asian states requested an early meeting of the Security Council, as in their view, the Algerian situation was a threat to peace.

2. GAOR, 10th Sess., Gen.Ctte., 103rd mtg., p. 7 (para 2).
3. UN Doc. A/2980.
4. GAOR, 10th Sess., Plen., 530th mtg., p. 196 (paras 219 and 223).
and security. This situation, according to them, was the result of infringement of the basic right of self-determination of Algerian people. As usual, France objected to the discussion of the issue on the ground of Art.2(7) and said that Algeria was constitutionally a part of metropolitan France. Subsequently, the Council decided not to place the item on the agenda. The failure of the Council to include the matter in its agenda at this stage might have been due to the weight given to the French argument, and also undoubtedly for reasons not based on Art.2(7). However, it should be noted that two conflicting viewpoints prevailed in the debates of Assembly and the Security Council. Some claimed that Art.2(7) was an overriding provision, applying to all aspects of the Charter including that of self-determination. On the other hand, certain members felt that a principle which was enumerated in the Charter could not fall essentially within the domestic jurisdiction. Interestingly, the representative of Lebanon reminded France that (speaking in 1937 at the League of Nations) Professor Rene Cassin, an eminent French jurist, had held that any matter of human interest concerned the League directly, and that nothing which affected mankind

5. SCOR, 11th year, 730th mtg., para 85.

6. It should be noted that both in the Assembly and the Council Western states commanded a majority.

7. Ibid., para 61; GAOR, 10th Sess., Plen., 529th mtg., Paras 154-57.

8. GAOR, Ibid., paras 175-77.
could be regarded as being outside the sphere of its action. \(^9\) Even the *Statistical Yearbook* (a UN publication) had put Algeria under the category of Non-Self Governing Territories (NSGTs). \(^10\) Some members believed that it was not Art.2(7) of the Charter but Articles 2(4); 20; 11; 14; 34 and 35 which were applicable to the Algerian case. \(^11\) The French Constitution, by Articles 1, 3, 60, 66, 67, 72, 73 and 80 clearly showed (according to the Indian representative) that Algeria was not an integral part of metropolitan France. \(^12\)

Interestingly, at the 11th Session of the Assembly, when a requisition (through Doc.A/3197) came from the Afro-Asian states for the inclusion of Algerian question on agenda, the French delegate, though challenged the competence of the Assembly, did not object to the item being included on the agenda. However, he made it clear that it should not be interpreted to mean that France was accepting UN "intervention" in this matter which she held to be essentially within its "domestic jurisdiction". His intention was to reply publicly to "the campaign of denigration" launched by some states against France. He also complained that there was foreign interference in the Algerian question, and

\(^9\) Ibid., para 178.
\(^10\) Ibid., 525th mtg., para 143 (Saudi Arabia).
\(^11\) Ibid., Paras 3-16 (Egypt).
\(^12\) Ibid., 530th mtg., paras 119-35.
asserted that only France was entitled to decide what political system it desired to apply in Algeria.\textsuperscript{13}

Rebutting the French arguments, the Afro-Asian states contended that Algeria was a clear case of colony which, under the Charter was entitled to self-determination, and hence the United Nations was competent to discuss the matter. They believed that Algeria was a sovereign country before the French went there, having diplomatic relations with Denmark, the Netherlands, Spain, the UK and the US. (It should be noted that except Denmark, all the other states had supported the French contention at the Assembly's 10th session). Its once sovereign status was also confirmed by the fact that it was among the first countries to recognize the United States in 1795 and to enter into treaty relations with it in the 19th century. Algeria never transferred its sovereignty to France.\textsuperscript{14} It was also pointed out that France itself concluded 57 international agreements with Algeria between 1619 and 1830.\textsuperscript{15} Algeria, having different language, religion, race, culture, history and geography could not form an integral part of France.\textsuperscript{16}

\textsuperscript{13} Ibid., 11th Sess., First Cottee., 830th mtg., para 1. One should ask the French delegate as to how the foreign interference in Algeria could be considered a matter of domestic jurisdiction. When more than two Powers are involved in a conflict, the matter becomes, \textit{ipso facto} and \textit{ipso jure}, one of international jurisdiction.

\textsuperscript{14} Ibid., 831st mtg., paras 57 and 61 (Syria).

\textsuperscript{15} Ibid., 916th mtg., para 3 (Saudi Arabia).

\textsuperscript{16} Ibid., 837th mtg., para 33 (Sudan): Ibid., Gen.Cottee., 103rd mtg., para 14 (Egypt).
At the end of the discussion, three draft resolutions were introduced in the First Committee (A/C. 1/L.165; A/C.1/L.166 and AC/C.1/L.167). The first draft provided that the Assembly should request the French Government to recognize the Algerian right to self-determination and to accept the aid of the Secretary-General in conducting negotiations. The second one called for an equitable solution in conformity with the Principles of the Charter and the last one merely expressed the hope that a peaceful and democratic solution on the question would be found. When put to vote, the first draft failed to pass; however the other two were voted for and recommended for the Assembly's consideration at Plenary, which adopted a compromise resolution [Resol. 1012(XI)]\(^1\) with the concurrence of the sponsors of the last two drafts. This resolution merely expressed the hope that a "peaceful, democratic and just solution will be found", in conformity with the Principles of the UN Charter.

The question came up again before the 12th session. Here also, the French delegation did not object to its discussion, although, it maintained its earlier stand on UN competence and claimed that the matter fell within French jurisdiction. It is interesting to note that (despite French stand on the issue of domestic jurisdiction) the French representative reviewed at

\(^{17}\) Ibid., Plen., 654th mtg., para 3.
length social and political reforms carried out by successive French administrations in Algeria. This time, he took a somewhat flexible approach and said that his government was willing to invite observers from democratic countries to witness the elections in Algeria.

Many Afro-Asian states spoke in favour of UN competence. They held that since Algeria's present position affected the diplomatic and other relations between and among states, the subject became one of international concern. Arab states rejected the French argument that Algerian liberation movement was the result of external intervention. As a matter of fact it was, they asserted, the result of French policy. The Syrian delegate believed that the Algerian movement was the result of the people becoming conscious of their national identity and existence. The Saudi delegate remarked that the war in Algeria has led to genocide, which in turn endangered world peace and security, besides violating human rights. Such circumstances, he held, warranted UN intervention. He demanded an unconditional recognition of the independence of Algeria as a basis for the settlement of the Algerian question. Others suggested that in order to bring the war to an end, negotiations on the basis of the UN Charter (which solemnly recognizes the principle of self-determination of peoples) were necessary.

19. Ibid., para 14 (Syria), para 32 (Tunisia), 916th mtg., paras 4 and 10 (Saudi Arabia); 920th mtg., para 25 (Pakistan), Ibid., Annexes 17, Agenda item 59, p. 3 (Morocco).
It should be noted that the first committee rejected a draft resolution (A/C.1/L.194 as amended by A/C.1/L.196) which provided that Algeria was entitled to self-determination and called upon the parties to engage in "effective discussion" to resolve the conflict. However, the General Assembly passed a resolution [1184 (XII)] which merely expressed concern over the Algerian situation; and hoped that a solution would be reached, in conformity with the Purposes and Principles of the UN Charter.

In 1958, Gen. de Gaulle, after coming to power, proposed that rebels should lay down their arms unconditionally and come to the negotiating table. This was unacceptable to Algerian nationalist leaders, who in turn established the Provisional Government of the Algerian Republic (PGAR). The positions of both the parties were hardened. Then de Gaulle softened his policy and proposed to give the right of self-determination to the Algerians, as perceived by France and subject to the French People's approval (through a proposed referendum). His government was ready to grant provisional self-determination. This was also rejected by the Algerian nationalist leaders.

Though France opposed the inclusion of the item on the agenda of the Assembly's 13th session in 1958 (in view of its above proposals), the General Committee voted for the inclusion of the item and referred the matter to the First Committee. During discussion in the First Committee of the Assembly's 13th session, the Afro-Asian delegations proposed a draft resolution
(A/C.1/L.232) which called for "Algerian's right to independence" — a stronger term than self-determination. It seems the aim of this draft was to gain recognition for the Provisional Government of Algeria. This was a departure from earlier drafts on this question which had called only for self-determination. This departure was, in part, to counter France's proposal for provisional self-determination for the Algerians. This drastic move of Afro-Asian states could not muster the required majority for its adoption. Similarly, in the Assembly also this draft failed (by a single vote) to get adopted. Thus, the year 1958 passed without any recommendation by the Assembly on the question.

But behind the failure of the Assembly to pass a resolution favouring the right of self-determination for Algeria, an interesting trend was taking shape. The voting records showed that the Algerian cause was gaining increasing support; e.g. the United States, which earlier opposed Afro-Asian draft resolutions, this time changed its position from opposition to abstention on the new draft. While analysing the voting trends between 1955 and 1958, one writer found that the number of supporters for Algerian self-determination increased by 15 percent in this period.20

The UN inaction continued in 1959 also, i.e. at the Assembly's 14th session. But some progress was made by the

parties to the conflict to solve the problem. By the time the Assembly's session convened, de-Gaulle government had already introduced a referendum that would give the Algerians the right to choose (1) independence for the part of Algeria that voted to "secede", (2) out and out identification with France; and (3) a government of Algerians by Algerians backed by French help and in close relationship with it.21 The referendum was scheduled to take place after four years and had to be endorsed by the French people. France thought that with the introduction of its self-determination proposals to resolve Algerian problem, the UN "intervention" in the matter would be uncalled for.

As France was making progress on its side, in its own way, the Algerian nationalists too were gaining success. By 1959, the PGAR had been recognized by 15 countries. International conferences of the Third World were giving their support to the Algerian nationalists. The PGAR was now acting as a recognized government and was entering into international agreements — e.g., it had signed an arms agreement with the Peoples Republic of China.

The referendum proposed by the French Government was the centre of debate in the Assembly's First Committee. Due to the French proposals, many states now decided to abstain from any

resolution, thinking that it may put France in a position of pressure. Other countries, such as Portugal and Spain went a step further to oppose any resolution on the grounds of Art. 2(7). The Afro-Asian states, realising that the French proposals had had some influence on the delegates, introduced a moderately worded draft resolution (A/C.1/L.246 Add.1) which did not demand (like the draft resolution of 13th session) the independence of Algerian people. It only referred to the term "self-determination". Though the draft was adopted by the First Committee, there were less chances of its adoption in the plenary. To ensure its adoption at the Assembly, the Pakistan delegate introduced an amendment (A/L.276) which deleted a clause (to which there was some opposition) characterising the present situation in Algeria a threat to international peace. Despite the Pakistani amendment, the moderately-worded resolution, which had called for holding talks to arrive at a peaceful solution on the basis of the right of self-determination, failed to be carried. Thus, for the second consecutive year, the United Nations failed to act on the question.

At the 15th session, the Assembly was able to resume action on the question, when it formally recognized through Resol.1573(XV) the right of the Algerian people to self-determination. South Africa and Portugal were among those who,

22. See A/C.1/PV.1076, especially Iceland, Denmark and Italy.
along with France, voted against the draft resolution, while, Belgium, the UK and the US abstained. This resolution not only referred to Art.1(2) of the Charter, but stated that the situation in Algeria was a threat to international peace -- a position which would grant the Security Council exemption from a reservation of domestic jurisdiction, and which introduced for the Assembly a strong element of "international concern".

There was no opposition to a similar resolution at the 16th session of the Assembly, which called upon the parties to resume negotiations in order to implement the right of the Algerian people to self-determination and independence. Interestingly, this resolution did not mention that the situation constituted a threat to international peace, rather it merely referred to the Assembly's recently adopted Declaration on Granting Independence to All Colonial Countries and Peoples Resolution 1514 (XV). It should be noted that unlike the earlier resolution 1573 (XV), the resolution adopted at the 16th session Resolution, 1724 (XVI) was clearly addressed to the parties involved in the situation -- both France and Algerian people.

At the 17th session, Algeria was admitted to the United Nations, having attained its independence in September 1962.

The crisis in Angola was brought to the Security Council by Liberia and 26 Afro-Asian States through their letter dated
20 February 1961 (S/4738) and 10 March 1961 (S/4762) respectively. In those letters an urgent meeting of the Council was requested to deal with the crisis. Portugal objected to it saying that Angola was legally and constitutionally part of Metropolitan Portugal, and was not a NSGT, and that therefore the matter was within its domestic jurisdiction under Art. 2(7). It maintained that Art. 73 of the Charter (under which Portugal is supposed to send information regarding its NSGTs) is inapplicable to its "Overseas Provinces", and said Portugal did not want to leave Africa at any cost. 

Inspite of this objection, the Security Council considered the question of Angola. Many delegates spoke in favour of UN jurisdiction, as it was said that Angola was a clear case of worst colonialism. The delegate of the UAR said that before 1951 Portugal considered all countries under its administration as its colonies but after 1951 they were considered as its integral parts. This is an inconsistent stand taken by Portugal. It was also argued that events in Angola threatened international peace and security. Moreover, the Assembly had already decided in the 15th session (by resolution 1542) that territories under Portuguese administration were in fact non-self-governing within the meaning of Chapter XI

23. See SCOR, 945th mtg., para 156.
24. Ibid., 946th mtg., para 5 (Ceylone).
25. Ibid., 943rd mtg., para 39.
of the Charter and that the well-being of these territories was a matter of UN concern. At the end of the discussion a draft resolution [UN Doc. S/4769] was introduced jointly by Ceylon, Liberia and the UAR, which characterized the situation in Angola as endangering the maintenance of international peace and security; and requested the Portuguese Government to act in accordance with the 1960 Declaration on Decolonization [G.A. Res. 1514 (XV)] and called for the appointment of a Committee of Inquiry to examine the situation and to report. Though this draft resolution failed to get adopted, was supported by the USA and the USSR.

Again, the Assembly discussed the Angolan case in its 15th session. The arguments for and against UN action were similar to those advanced in the Security Council debate. It was pointed out that Portugal's decision of 1951 to call its colonies as integral part of Portugal was like calling rose by another name, but it could not destroy the scent of the colonial rose.26 This unilateral declaration by Portugal was against the UN Charter.27 Since the Angolan case was the classic illustration of the struggle of the African peoples against colonialism and beyond domestic jurisdiction purview of Portugal, an immediate liberation of Angola was the only solution.28 Whereas,

27. Ibid., 991st mtg., para. 3 (Iran).
28. Ibid., 992nd mtg., paras 19, 36 and 39 (Guinea). See also 996th mtg., paras 33 and 34; and 991st mtg., para. 83.
the Portuguese delegate, while objecting to the discussion of the subject on the ground of Art. 2(7), argued that the Security Council had already decided that it was not a legitimate subject for debate. However, the Assembly adopted a resolution i.e. 1603 (XV), which stated that alien domination is a denial of fundamental human rights in view of the Declaration on Decolonization. It noted that the continuance of the situation in Angola was likely to endanger the maintenance of international peace and security. It also decided to appoint a Sub-Committee to enquire and report on the situation in Angola.

Ignoring the Assembly resolution, Portugal stepped up its military repression of the Angolan people, engaged in mass killings, arrests and bombardment of villages. In view of the fast deteriorating situation the Afro-Asian states alongwith Yugoslavia requested an urgent meeting of the Security Council under Art. 34 of the Charter. A draft resolution, introduced on behalf of them, deeply deplored the large-scale killings and repressive measures adopted by Portugal against Angolan people which caused a serious threat to international peace. It called upon Portugal "to desist forthwith from repressive measures", and to extend every facility to the Sub-Committee for investigation. Interestingly, this draft was adopted by the Council (resolution S/4835), though it was similar to the one which was earlier rejected by the Council in March.

The Sub-Committee's report (S/4993 or A/4978 dated 20 November 1961) confirmed that the denial of human rights, abuse of authority and "high-handedness" by local officials, forced labour, excessive taxation, inadequacy of economic and social development, inadequate educational and medical facilities had resulted in a national movement in Angola. The negative attitude of Portugal towards the UN recommendations had worsened the situation in Angola. Though all these charges were denied by the Portuguese representative, the General Assembly at its 16th session, adopted a resolution (i.e. 1742 (SVI)) by which it affirmed the inalienable right of the Angolan people to self-determination and urged Portugal to "desist forthwith" from repressive measures against them. It is interesting to note that this resolution was adopted by a massive vote, i.e. 99 to 2 (South Africa and Spain) with 1 abstention (France). However, it is regretting to note that the Assembly rejected (by 26-43-32) an alternative draft, which would ask the Security Council to consider sanctions.

At the 17th session a draft proposal came up (A/L.415 and Add.1), which condemned "the colonial war pursued by Portugal against the Angolan people", and urged Portugal; (a) to release without further delay all political prisoners; (b) lift ban on political parties; and (c) undertake extensive economic, social and political reforms that would ensure the creation of freely elected and representative political institutions and transfer
of power to the people of Angola. It also requested all member states to stop arms supply or military assistance to Portugal. The notable feature of this draft which was finally adopted as Resolution 1819 (XVII) of 18 December 1962 was that it asked the Security Council "to take appropriate measures, including sanctions to secure Portugal's compliance with this resolution". The Portuguese delegate bitterly criticized the draft resolution saying that the request made to the Council for adopting sanctions if Portugal failed to comply with the resolution "pertained to a domain which the Organization could not enter without a full realization that it was touching upon the very fundamentals on which it was based". 30 He was indirectly referring to domestic jurisdiction principle.

In July and December 1963, the Security Council considered the situation in Angola. It devoted 10 meetings in July. During discussion, it was demanded that the Council should set a time limit to carry out past UN resolutions. 31 The representative of Ghana expected that maximum action which could be taken against Portugal would be to "ostracize" it from the family of nations until it acted in good faith to respect UN decisions. 32

31. A statement made by Foreign Minister of Sierra Leone, see UN Review (New York), vol.10, Nos. 8-9, 1963, p.15.
32. UN Review, ibid., p.17.
Despite the suggestions for strong measures, a "mild" resolution was adopted on 31 July 1963, which inter alia, rejected the Portuguese position that its "overseas territories" were an integral part of metropolitan Portugal and deprecated the repeated violations" by Portugal of the Charter. It urged Portugal to implement UN resolutions, and said its refusal to do so was "seriously disturbing peace and security in Africa". The immediate recognition of the right of self-determination was urged, and a request was made to all UN members to refrain from any kind of assistance to Portugal which helped it to carry on repressive measures against the people of Portuguese territories. The Council adopted another resolution, in view of the non-compliance of its earlier decisions by Portugal, to urge Portugal to recognize, among other things, the right of self-determination of peoples of the territories under its administration. To increase the weight of the resolution, it was unanimously adopted (with one abstention by France).

In the subsequent years, the question of self-determination of Angola, was dealt with by many UN organs as a part of the broader question of the administration of Portuguese territories. 33

In November 1965, the Security Council again affirmed by Resolution 218 (1965) of 23 November 1965 that the situation resulting from the policies of Portugal, both as regards the African population of its colonies and the neighbouring states, was seriously disturbing international peace and security. It urgently called upon Portugal to give immediate effect in its colonies to the principle of self-determination as referred to in 1960 Declaration on Decolonisation. Deploiring the failure of Portugal to comply with previous UN resolutions on Portuguese colonies, it urgently demanded that it carry out the measures that had been recommended.

In the general debate of the Assembly's 20th session, the representative of Senegal, proposed the expulsion of Portugal from the United Nations for its attitude on its NSGTs. He said, Portugal's attitude was not only an insult to Africa; but it was an insult to the United Nations and a blatant defiance of all human conscience. Portugal, he contended, has already been expelled from a number of international bodies. He did not understand why the UN members were hesitating to apply a penalty duly provided for in the UN Charter.34 Despite such harsh proposals, the Assembly adopted a moderate and conciliatory resolution i.e. 2105 (XX) by which it merely condemned the colonial policy of Portugal and its persistent refusal to carry

34. GAOR, 20th Sess., Plen., 1334th mtg., para. 128.
out the measures thereby recommended. It also asked the military allies of Portugal in NATO to stop arms supply/sale to Portugal.

Beginning in 1966, the Assembly appealed by resolution 2189 (XX) of 13 December 1966) to all states to give the Peoples of Portuguese territories the moral and material support necessary for the restoration of their inalienable rights. In 1969, it widened its appeal for support to include the Specialized Agencies and other organs with the UN system and called on them, in co-operation with the Organization of African Unity, to increase their moral, material and financial assistance to the peoples of the territories.

Since 1966, the Assembly was repeatedly condemning the activities of the financial interests operating in those territories, which obstructed the struggle of the peoples for self-determination and independence and which strengthened Portugal's military efforts. Because of the growing involvement of foreign economic interests, the Assembly, in 1970, requested all States to end all practices which exploited the territories and their people and to discourage their nationals and companies from entering into any activities or arrangements which would strengthen Portugal's domination and impede independence.

Following the change of Government on 25 April 1974, Portugal began to seek a political solution to its colonial wars in Africa. During a visit by the Secretary General, Kurt Waldheim, to Lisbon in August, the new regime of Portugal formally reaffirme
its Charter obligations regarding all its NSGTs and acknowledged the right of self-determination, including independence in accordance with the Assembly resolution 1542 for its "overseas territories". It pledged full support for the territorial unity and integrity of each territory and opposed any secessionist attempts or attempts to dismember any part of any territory.

Thus began the dissolution of the oldest and last of the European colonial empires. Along with other Portuguese colonies, Angola achieved independence on 11 November 1975 and was admitted to the United Nations on 1 December 1976.

Bangladesh is the first successful case to claim self-determination outside the classical type of colonial domination. Here the right of self-determination was asserted by seceding from the parent country, Pakistan, a member of the United Nations. Though international law had no legal norms to govern the legitimacy of a struggle such as that of Bangladesh, it did not prevent the emergence of a new nation on such ground. (Earlier such an effort by a secessionist Biafra, the eastern region of Nigeria, had failed.). This has changed the entire thinking on the concept of self-determination.

Though there were many genuine grounds for UN concern action (or for any member state to bring the matter to UN forums) to solve the problem of East Pakistan, no effort was made to do so. Firstly, the demand by Bengalis of regional autonomy and power to provincial government, and long standing grievances/
tensions between two parts of Pakistan, had not only led to the gruesome events of mass killings of Bengalis by military, massive violation of human rights, and the denial of representative government, but had led to war and tension in the subcontinent. Secondly, the situation in East Pakistan had created a massive refugee problem, which was the largest and worst of its kind during the present century. During and after the war many refugees had crossed Indian borders. By December 1970 the number of refugees rose to 10 million — the largest in human history. One estimate says that the refugees were more in number than the combined population of some 25 member states of the United Nations. The representative of the USSR gave another interesting statistics — that 88 member states had a population of less than 10 million. The inflow of 10 million refugees into India not only violated the domestic jurisdiction of that country but also created severe economic, and political compulsions and posed a threat to its Security. The UN organs found the job of relief measures to the refugees a gigantic task, which was largest of its kind in human history. These factors did not prompt any state to bring the question to UN forums.

35. In the national election of December 1970, for National Assembly, Sheikh Mujibur Rehman's Awami League had secured a clear majority and Mujib would have become the Prime Minister of Pakistan, but the military authorities of West Pakistan did not convene National Assembly, to deny him of Prime Ministership.

Thirdly, an early warning of the explosive situation in East Pakistan came from U Thant, the UN Secretary General. On 20 July 1971, he had submitted a memorandum to the President of the Security Council, in which he, by emphasising the inter-mixing of humanitarian, economic and political problems involved in the Bangladesh crisis, he held that the situation had not only become a potential threat to peace and security but presented a "challenge to the United Nations as a whole which must be met. Other situations of this kind may well occur in the future. If the Organization faces up to such a situation now, it may be able to develop the new skill and new strength required to face future situation of this kind". (He had launched, on his own initiative, a programme of humanitarian assistance). His memorandum drew attention, inter alia, to the conflict between the principle of territorial integrity and self-determination of peoples. He indicated that mere relief operations are not enough. Despite this early warning, no action was taken by the Security Council until 4th December 1971 when the war between India and Pakistan had already broken out.

There was another occasion for the UN concern. On 20 July 1971, twenty two NGOs submitted a written communication to the UN Sub-Commission on the Prevention of discrimination and Protection of Minorities, calling upon that organ to examine at its August session "all available information regarding the allegations of the violation of Human Rights and fundamental
freedoms in East Pakistan" and "to recommend the Commission on Human Rights measures which might be taken to protect the human rights ... of the people of East Pakistan". It was recommended that such measures should include the establishment of a special committee (of investigation) under 1503 procedure of ECOSOC to review the situation.37 It should be noted that the Sub-Commission was the most appropriate body to consider this communication and investigate the situation under ECOSOC procedures on communication. It seems all the members of this body (though independent experts) were apparently influenced by their government's positions. The only member to speak in favour of considering the events in East Pakistan was Mr. Branimir Jankovic of Yugoslavia.38

Since Pakistan was a party to the International Convention on the Elimination of All forms of Racial Discrimination and the crisis in East Pakistan was a clear violation of many provisions of this Convention, the Committee on the Elimination of Racial Discrimination (CERD) did not take any action on the situation. The CERD, which met twice between March and December 1971, while reviewing the report of Pakistan at its April session,


decided that the report was inadequate and requested Pakistan government to submit additional information. Pakistan failed to submit the supplementary report requested by the Committee. The Committee, however, did not make any mention of this omission in its report to the General Assembly. Likewise, no member state which was Party to the Racial Convention (at that time 65 States were Parties) submitted a complaint to CERD that Pakistan was not respecting the provisions of the Convention, though under the Convention every State Party was empowered to do so. 39

The Secretary-General, again in September 1971, referred to the situation in East Pakistan in his Annual Report (on the work of the United Nations) to the General Assembly. He pointed out that he had undertaken relief and humanitarian measures to avert the situation and designated the UN High Commissioner for refugees to carry out this work. 40 Neither this, nor any other factor explained above, provoked any member state to formally bring the matter to the General Assembly or the Security Council. May be that the member states considered the issue to be a matter of domestic jurisdiction of Pakistan. However, some half-hearted references to the situation were made in UN debates.

39. For a brief outline of this procedure see Chapter IV of this thesis, pp. 195-97.

40. See, for this report, GAOR, 26th Sess., Suppl.No.1A (A/8401/Add.1).
The first such reference made was at a meeting of the ECOSOC, where charges of the gross violations of human rights were brought against Pakistan. The question was raised in the Social Committee of ECOSOC in July 1971. The Council merely decided, without debate, after taking note of the report of UN High Commissioner for refugees (UNCHR) that the report of UNCHR be referred to the Assembly. It discussed only the humanitarian aspect of the situation. In September 1971, Indian representative raised the matter in the Special Committee on Colonialism. Krishna Menon, the former Defence Minister of India, also spoke before the Committee as the representative of the World Peace Council. He appealed to the Committee to consider the situation in East Pakistan which he considered as a case of one country oppressing another. He asserted that the people of Bangladesh had the same right of independence as do any other people. The Committee concluded that since the General Assembly had not classified East Pakistan as a colonial territory, it was not authorized to discuss the situation.

In the general debate of the 26th session of the Assembly, in September, the representatives of about 40 countries mentioned East Pakistan situation. The Guyanese delegate proclaimed, while referring to the situation, that the gross violations of human rights, wherever they occurred in the world, were the legitimate matters of international concern and ceased to be essentially
within the domestic jurisdiction. The representative of Sierra Leone suggested that an observer team be sent to East Pakistan. Subsequently, the Third Committee considered the humanitarian aspects of the situation. Though the Committee is not supposed to discuss the political aspects of the matter, there were many indirect references to these aspects by certain delegates. For instance, the representative of New Zealand noted that, the heart of the problem was the desire of the people of East Pakistan for greater control over their own affairs, which can be solved only by negotiations between the Government of Pakistan and the democratically elected representatives of East Pakistan. Unless such negotiations begin, the influx of refugees will continue and war becomes inevitable. While stressing the need of such negotiations, he said the United Nations and other governments might be able to help if they were called upon to do so.

New Zealand and the Netherlands submitted a draft resolution (Doc.A/C.3/L.1885) which included both a paragraph on Pakistan’s internal political situation and one on India-Pakistan affairs.

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42. Ibid.

relations. The draft appealed to Pakistan "to create conditions which would restore the climate of confidence indispensable for the promotion of voluntary repatriation" and appealed to India "to continue to promote an atmosphere of good-neighbourliness which would diminish tensions in the area and encourage the refugees to return to their homes". Even these indirect suggestions were too strong for most states. Somalian delegate "questioned the advisability" of including these paragraphs "since they were controversial and might divert the Committee's attention from the main objective, which was essentially humanitarian." Since Pakistan too objected to these paragraphs, both these paragraphs were deleted from the adopted resolution (i.e. 2700 of 5 December 1971) of the General Assembly. It merely urged, in general terms, all member states to intensify, in accordance with UN Purposes and Principles, their efforts to bring about conditions necessary for the speedy and voluntary repatriation of the refugees to their homes.

The Security Council discussed the matter only on 4th December 1971 when a full-scale war between India and Pakistan had broken out a day earlier. In the Council, on every draft resolution, the Soviet representative used veto on the grounds that they failed to stress the need for a political settlement.

44. A/C.3/SR.1879, p.3.
in East Pakistan. He criticized the Council members for viewing the situation as purely an India-Pakistan conflict. He insisted that the Council must consider the origin of conflict, i.e., Pakistan's use of repression. In his view, if the Pakistan's military administration had not interrupted the talks with the lawful representatives of the Pakistan's people, the Council and the world community would not have to be dealing with consideration of the question of the domestic crisis in East Pakistan.\(^{45}\) During the discussion, India and the Soviet Union introduced a proposal which called upon the Council to invite the representative of Bangladesh before the Security Council. Since Pakistan insisted that the matter pertained to the internal crisis of Pakistan and was outside the Security Council's concern,\(^{46}\) the Council opposed the proposal which sought to invite the representative of Bangladesh to the Council. After the Soviet vetoes of two draft resolutions calling for immediate cease-fire and withdrawal of troops, the Council referred the matter to the General Assembly under the "Uniting for Peace" resolution.

On 7 December 1971, the General Assembly adopted, after discussion, a resolution calling for an immediate cease-fire

\(^{45}\) UN Doc.S/PV.1606, pp.133-35.

\(^{46}\) Ibid., p.51.
and withdrawal of troops (GA Resolution 2793 (XXVI)).

The overwhelming vote indicated the disapproval of the secession of Bangladesh from Pakistan by most states, as many of them were anxious to discourage dissident minorities in their own state from adopting the same course.

When the war came to an end on 16 December, by unilateral DECLARATION of cease-fire by India on the surrender of Pakistan troops, the Security Council adopted a resolution (i.e. 309 of 21 December 1971) demanding "a durable cease-fire and secession of all hostilities and ... withdrawal, as soon as practicable of all armed forces to their respective territories..."

Although the United Nations has been concerned with the problem of Palestine, since its inception, the concrete actions/recommendations in respect of human rights of the Palestinian people came from the Assembly only in the 1970's. The Assembly in 1969 recognized through GA resolution 2335B (xxiv) the existence of a Palestinian people and subsequently declared and reaffirmed their right to self-determination.

Though the Assembly's resolutions — 2649 and 2672 B (1970); 2787 and 2792 D (1971); 2963 C-E(1972) and 3069 D (1973) — reaffirm the right of self-determination of the people of Palestine. Resolution 3236 (of 22 November 1974) is the first one which clearly spelled out the human rights of the Palestinian people. It defines, in the operative paras, the inalienable rights of the Palestinian people as follows:

right to self-determination without external interference, right to national independence, right to sovereignty, right to return, right to regain all those rights by all means and the right to be represented as a principal party in the establishment of a just and durable peace in the Middle East.

An important implication of this resolution is that it legitimizes armed struggle by the Palestinian people against the occupying Power to liberate their homeland.

During its thirtieth session, the Assembly initiated concrete measures in respect of the right of the Palestinian people. It requested the Security Council (through resolution 3375) to take necessary action enabling the Palestinian people to exercise its rights. It also established (by its resolution 3376) the Committee on the Exercise of the Inalienable Rights of the Palestinian people and entrusted it the task of formulating a programme of implementation of its resolution 3236 (1974) and thereby enabling the Palestinians.
to exercise its rights specified in that resolution. The Committee was set up specifically to work towards a just solution of the Palestinian problem.

The Committee submitted its report to the General Assembly on 21 July 1976 [UN Doc. A/31/35], making recommendations on the modalities for the implementation of the exercise of the inalienable rights of all the Palestinian people to their homeland. In stage one, the Security Council resolution 237 (1967) was to be implemented. The Palestinians displaced as a result of the 1967 war were to return to Palestine with the help of the International Committee of Red Cross and the UN Relief and Works Agency. Stage two was to be carried out through the implementation of the Assembly resolution 194 (1948) pertaining to the rights of the refugees of return or compensation. The Palestine Liberation Organization (PLO) as the interim representative of the new Palestinian entity, as well as, other concerned states were to be associated with this operation. The following guidelines were laid down by the Committee for the establishment of an independent Palestinian entity. (i) The Security Council should establish a time-table for the complete withdrawal of Israel from the territories occupied in the 1967 war. (ii) The Security Council should provide temporary peacekeeping forces to facilitate the process of Israeli withdrawals.
(iii) The United Nations should take over all evacuated territories to be handed over to the PLO (iv) Upon the establishment of an independent Palestinian entity, the United Nations in co-operation with the states involved and the Palestinian people, should make necessary arrangements for the full implementation of the inalienable rights of the Palestinian people.

Pursuant to the Assembly resolution 3375, the Security Council, in 1976, debated the issue of political rights for the Palestinian people. The draft resolution (S/11940) introduced by six non-aligned countries expressly affirmed the inalienable rights of the Palestinian people as proclaimed by the General Assembly. It stated that for a just and lasting peace, Israel withdraw "from all the Arab territories occupied since June 1967". The Council failed to adopt this draft as the US vetoed it. Again in June 1976 and in October 1977, it discussed and rejected similar proposals due to US veto.

During 1978, the Commission on Human Rights also adopted two resolutions. In its resolution 2 of 14 February 1978, entitled "The Right of Peoples to self-determination and its application to Peoples Under Colonial or Alien Domination or Foreign Occupation" affirmed the inalienable rights of the Palestinian people to self-determination without external interference and the establishment of a fully
independent and sovereign state in Palestine. It further affirmed their right to return to their homes from which they have been uprooted and displaced. It called for a return of all Palestinian refugees as a component of their right to self-determination and recognized their right to fight for their rights by all means. In resolution 3 of the same day, the Commission reaffirmed the inalienable rights of the Palestinian people to self-determination, national independence, territorial integrity, national unity and sovereignty without external interference. 48

In December 1978, the Assembly in its resolution 33/29 called for a comprehensive settlement of the Middle East problem, in which the Palestinian people attained all its inalienable national rights. It demanded Israel's withdrawal "from all the occupied Palestine and other Arab territories". By resolution 33/28 AC it asked the Committee on the Exercise of the Inalienable Rights of the Palestinian people to keep the situation under review; urged the Security Council to take a decision on the Committee's recommendations and asked the Secretary-General to ensure that the Special Unit of Palestinian Rights continue to discharge the tasks assigned to it. It emphasized the need for "full attainment and exercise of the inalienable rights of the Palestinian people, including

the right to return and the right to national independence and sovereignty in Palestine with the participation of the PLO.

At the request of the Chairman of the Committee on the Exercise of Inalienable Rights of the Palestinian people, the Security Council met on 30 April 1980 to consider the question of continuing violation by Israel of the inalienable rights of the Palestinian people as well as the recommendations of the Committee endorsed by the Assembly. However, the draft resolution introduced by Tunisia reaffirming the rights of the Palestinians to exercise their inalienable national right of self-determination, including the right to establish an independent state in Palestine, the right to return to their homes, could not be adopted because of the veto cast by the United States.

The General Assembly, in its resolution 35/169 on 15 December 1980, deplored that the Palestinian problem was still unresolved. It reaffirmed that the goal of attainment of just and lasting peace in the Middle East could not be realized without ensuring the inalienable rights of return and the right of self-determination, national independence and sovereignty in Palestine for the Palestinian people.

On the basis of the above discussion, it can be said that though the world community and the Organization did not
remain indifferent towards problems of the Palestinian people and their rights, so far nothing concrete has come out from the UN measures/initiatives, and the UN resolutions have turned out to be nothing more than documents waiting for implementation.

APARTHEID AND OTHER DISCRIMINATORY PRACTICES IN SOUTH AFRICA

No other issue has engaged the United Nations, almost from its inception, as long as that of South Africa and its policy of apartheid. The fact that from 1946 to 1978 the General Assembly and the Security Council adopted more than 400 resolutions concerning the racial policy of South Africa, reveals that the United Nations has internationalised human rights issues in South Africa and rejected the thesis that human rights are matters of domestic jurisdiction. These statistics do not include the resolutions and decisions of subsidiary organs of the United Nations or the Specialized Agencies, nor do they include literally thousands of condemnations which have emanated from international organizations in every conceivable form.

Two questions of violation of human rights in South Africa have come before UN forums. The first one was brought to the very first session of the General Assembly in 1946 by the Government of India in the form of a complaint about the treatment of the people of Indian (later, it was re-titled
as Indo-Pakistan origin) origin in South Africa, and the second one entitled "Race Conflict in the Union of South Africa Resulting from the Policy of Apartheid" was brought to the Assembly in 1952 by 13 Arab and Asian states, basing their action on the argument that the gross violation of human rights in South Africa not only constituted a breach of Charter obligations but also constituted a threat to international peace and security under Chapter VII of the Charter. This charge made against South Africa in 1952 remains valid to this day. Since both the questions arose from the racial policies of South Africa leading to apartheid, they were merged in 1962 into one, and a new title was given i.e. "The Policies of Apartheid". This question still remains on the agenda of every Assembly session. Despite the objection of South Africa that these questions pertain to the domain of its domestic jurisdiction in accordance with Art. 2(7), the Assembly not only has persistently established its competence to discuss these questions but made a large number of recommendations, probably the largest number addressed to a single country on a single issue. The Assembly has rejected the suggestion of South Africa that the issue of jurisdiction be referred to the International Court of Justice for Advisory Opinion.

(i) The Involvement (Decisions and Sanctions)

The nature of actions recommended in the Assembly resolutions are of a different variety. The resolutions adopted
between 1946 to 1960 were comparatively bland and worded in a less condemnatory tone than those adopted after 1960.

Regarding the first question in the early years, the Assembly while merely asking both the parties to the conflict — India and the Union of South Africa — to enter into negotiations to resolve the conflict, condemned the racial discrimination pursued by South Africa as incompatible with the Purposes and Principles of the Charter and of the provisions of the Universal Declaration of Human Rights. It proposed in 1952 the establishment of a UN Good Offices Commission \( \text{Resolution 615 (VII)} \). As regards the second question, the Assembly, while referring to the UN Purposes to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms, recalled its previous resolutions on the question of racial discrimination, established a Commission of three members to study the racial situation in South Africa, and urged it to observe the pledge contained in Article 56 of the Charter, and asked it to bring its policies into conformity with the obligations it has assumed under the Charter \( \text{Resolution 616 A and B (1952)} \). Later on, the Assembly condemned South Africa for non-co-operating with the Commission and also asked the Commission to study the situation under Article 14 of the Charter \( \text{Resolution 721} \).
It criticized the Union Government for adopting new laws and regulations which in the Commission's view were incompatible with the obligations of that Government under the Charter. Thus, the Assembly regretted South Africa's continued refusal to respect UN resolutions asking for the reversal of its policies of apartheid, and also recommended that the Government take note of Commission's reports and urged it to observe obligations contained in Art. 56 of the Charter.

Till 1960, the General Assembly's resolutions called upon South Africa to observe Art. 56 of the Charter and the obligations to which it gives rise, together with the obligations under the Charter to promote the observance of human rights in particular, by resolutions 1178 (XII); 1248(XIII) and 1375 (XIV). It was only from 1961 onwards that the Assembly, whose concern became more intense, went further and decided that South Africa had been in wilful breach of its obligations under Art. 56 and had ignored the Universal Declaration; it reminded the Government of that country of the requirement in Art. 2(2) that "all members shall fulfill in good faith the obligations assumed by them under the Charter", and called upon it to bring its conduct in "conformity with its obligations". Moreover, for the first time,
states were "requested to consider taking separate and collective action ... to bring about the abandonment of these policies [Resolution 1598 (XV) of 13 April 1961]." The resolution passed at the 16th session [i.e. 1663 (XVI)] was more or less similar, though couched in stronger language. It urged states to take action to bring about the abandonment of South African policies, and noted that its policies were inconsistent with the pledges of members under Art. 56 of the Charter.

The change in tone of these last two resolutions reflected two things. One is that the situation in South Africa was deteriorating after the Sharpeville shootings in 1960.\(^{48a}\) And the other one was that the UN membership from the African continent increased during the early 1960's.

Concerning the Sharpeville incidents, the Security Council had declared that the situation was one "that has led to international friction and, if continued, might endanger international peace and security [Resolution 134 of 1 April 1960 (S/4300)]."

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\(^{48a}\) On 21 March 1961 a tragic incident occurred in Sharpeville, when the police fired from their armoured vehicles on the large number of black crowds who were peacefully demonstrating and protesting against the pass laws imposed by South African government, while the jet fighter planes flew overhead to scatter and frighten them. The demonstrators had come near government offices without their passes simply to get arrested. It was reported that, in the Sharpeville shootings, more than 100 people were killed and around 200 persons injured. (This figure was later confirmed by the reports and files of the police. In a similar incident in 1976, in Soweto, the police fired on the black school children who were demonstrating against the policy of Apartheid, in which more than 50 innocent school children were killed mercilessly and innumerable of them were wounded.
At the 17th session, the Assembly requested (through Resolution 1761) member states to break off diplomatic relations with South Africa, to close their ports to South African ships, to forbid their own ships to use Union ports, to boycott South African goods and to refrain from exporting goods to that country, including arms and ammunition. At the same time, the resolution requested the Security Council to take appropriate measures, including sanctions, and, if necessary, to consider the expulsion of South Africa from the United Nations under Article 6 of the Charter. In response to this resolution, the Security Council called upon all states "to cease forthwith sale and shipment of arms, ammunition of all types and military vehicles to South Africa" (Resolution 181 (1963) - S/5386). Later, being convinced that the situation in South Africa was "seriously disturbing international peace and security", the Council asked South Africa to cease repressive measures (which were contrary to the Charter and South Africa's international obligations) and release all those detained for having opposed apartheid (S.C. Resolution 182(1963) - S/5471). The Assembly, at its 18th session, asked the Secretary-General to provide relief and assistance to families of all persons persecuted by the South African government for their opposition to apartheid policies.

Nowadays, the Assembly resolutions are no longer mere requests. At its 20th session, the situation in South Africa
was declared to be a threat to international peace and security demanding action under Chapter VII of the Charter, i.e. by imposing economic sanctions \[\text{Resolution 2054 (XX)}\]. Gradually, the General Assembly, while broadening its recommendations to link with the right of self-determination, recognized the legitimacy of the struggle of "the oppressed peoples of South Africa for the exercise of their inalienable right of self-determination" and urged all states and Organization to give their greater moral, material and political assistance to the "South African Liberation Movement" \[\text{Resolution 2396 (XXIII)}\]. This resolution also urged the states which were encouraging South Africa to desist from collaboration with the regime. In 1971, it condemned, by resolution 2787 (XXVI), the NATO Powers for contributing "to the creation in South Africa of a military-industrial complex aimed at suppressing the struggle of peoples for their self-determination and at interfering in the affairs of independent African states".

By another resolution \[\text{2786 (XXVI)}\], the Assembly, in 1971, declared that the policies of apartheid of South Africa were a negation of the Purposes and Principles of the Charter and a "crime against humanity". It reaffirmed through Resolution 3151 G (XXVIII) the recognition of the legitimacy of the struggle of the people of South Africa to eliminate by all means at their disposal apartheid and racial discrimination and to attain majority rule in the country as a whole on universal suffrage (in effect, treating
South Africa as a NSGT). Many Assembly resolutions condemned the establishment of "Bantustans" in so-called African Reserves as "fraudulent violation of the Principle of self-determination and prejudicial to the territorial integrity of the state and the unity of its people..." It urged all states to terminate all military, economic and technical and other co-operation with South Africa, and requested all states and organizations to suspend cultural, educational and other exchanges with the racist regime and with organizations in South Africa which practised apartheid.

There have been in the 1970's, suggestions from some members that South Africa should be expelled or suspended from the United Nations. The Assembly resolution 2505 (XXIV) welcomed the Manifesto on Southern Africa (S/7754) which inter alia, urged the exclusion of South Africa from the Organization. Later, in 1974, when the Credentials Committee of the Assembly rejected South Africa's credentials on the ground that the white minority regime, because of its policy of apartheid, could not represent the 80 percent of the country's black population, the Security Council extensively discussed the question of South Africa's membership in the United Nations. 49

However, the resolution which sought to expel South Africa was finally defeated by three vetoes cast by the U.S., U.K., and France. This was the first time in the history of the United Nations that three vetoes were cast.

By November 1977 the Western Powers had dramatically altered their position and supported the passage of Security Council resolution 418. This resolution condemned the South African use of violence against black dissidents and the "defiant continuance" of the apartheid system and called for the strengthening of the 1963 arms embargo. The most significant feature of this resolution is that it considered the South African policies and acts as constituting a threat to international peace and security under Chapter VII of the Charter. However, a careful reading of this resolution reveals that though it termed export of arms to South Africa a threat to the peace and invoked mandatory arms embargo, it did not declare explicitly that the internal situation of South Africa constituted a threat to peace.

Despite the adoption of numerous high-sounding resolutions by the Assembly, and the establishment of a precarious arms embargo, the United Nations was unable to take any further action against South Africa. The great Powers not being unanimously agreed on the existence of a threat to international peace and security, the Security Council could not authorize action under Chapter VII of the Charter. However, in recent
days, many states have continued to urge the Security Council to impose more comprehensive sanctions against South Africa. Following such demands, the Council in April 1981 discussed the question of comprehensive sanctions, but it could not adopt a resolution for effective sanctions because of vetoes by the US, UK and France. Noting seriously the failure of the Council to impose comprehensive sanctions, the General Assembly in September 1981 voted 117-0-25 to isolate South Africa, politically, militarily, and economically. This resolution specifically urged the Council to impose comprehensive sanctions under Chapter VII.

(ii) Positions taken by different States on South African Questions

Right from the first session, the South African delegation opposed the UN consideration/action on the policies of apartheid and discriminatory practices on the grounds of Art.2(7). It repeatedly and vehemently denied that the Assembly was competent to deal with the question as it concerned the treatment of South African nationals by its own Government — a matter which it maintained fell exclusively within its

domestic jurisdiction. To South Africa, it was an instance of foreign propaganda carried on with the intention of exploiting domestic issues. It held that asking the United Nations to discuss the question was nothing but inviting UN "intervention" in matters within domestic jurisdiction, i.e. in the relation between a state and its citizens. The Charter provided no basis whatsoever for discussion or recommendation on such a subject. The discussion was also said to be against Art. 2(1) of the Charter which laid down the principle of "sovereign equality" as a basis of UN Membership. The Charter contained no such provisions which can override the provision of "sovereign equality" of states or encroach upon its rights.

In the initial years, although the Government of South Africa admitted that the people of Indian origin had been subjected to discriminatory measures, it denied that it had violated any of the human rights obligations under the Charter. In fact, it considered that the Charter did not impose any specific obligations in the matter and that there was no internationally recognized formulation of human rights. The

51. GAOR, 1st Sess., Part II, Joint Cottee., p.3.
53. Ibid., 1st Sess., Part II, Joint Cottee., pp.3-4; see also 2nd Sess., 1st Cottee., pp.473-76.
Charter did not define human rights, rather, it left them as uncertain, vague and nebulous concepts so that member states could not be said to have undertaken any obligations in respect of them. When the Assembly in 1948 adopted the Universal Declaration, as a first step towards evolving internationally recognized formulation of human rights, South Africa denied that it imposed any obligations with regard to human rights. It denied that the Declaration warranted "intervention" by the United Nations in matters which would otherwise fall essentially within the domestic jurisdiction of states. Even after the adoption of two Covenants on Human Rights in 1966 -- besides adopting many other instruments concerning specific human rights -- South Africa, till this day, maintains that human rights are matters of domestic jurisdiction, and argues that Art. 2(7) overrode all other provisions of the Charter, including Articles 55 and 56. However, in this context, it is interesting to note that at the UNCIO, Field-Marshial Smuts (the then Prime Minister of South Africa) had proposed that the Charter should contain in the Preamble itself "a declaration of human rights and of the common faith which has sustained the Allied Peoples in their bitter and prolonged struggle for the vindication

of those rights and that faith."

It was contended, regarding the question of race-conflict, resulting from South Africa's policy of Apartheid, that it did not involve a threat to international peace and security. There could be threat to international peace and security (in the South African view) only when the territorial integrity and political independence of another state was threatened.

There were many Western States which not only sympathised with the sentiments of South Africa and its absolute interpretations of domestic jurisdiction provision, but also (in the initial years) wholeheartedly supported it. The New Zealand delegate denied that the South African situation posed any threat to international peace. He maintained that any action likely to disturb friendly relations between nations was not in itself a threat to the peace, nor did the existence of international tension in itself constitute a threat to peace. The French representative observed that under Art.2(7) the competence of the United Nations "was merely attributive and not presumptive". Therefore, he concluded, the provision "had absolute validity and barred any discussion of the question". However, he conceded that, this did not mean that the United

55. UNCIO, Docs., vol.1, p.425.

56. GAOR, 7th Sess., Ad Hoc Pol-Cottee., pp.73-74.
Nations lacked all competence in the field of human rights. The Assembly could address recommendations of a general character to all member states "even if those recommendations might affect their domestic affairs". He considered it as an improper interference when a state was designated by name. He also thought that the stipulation in Art.2(7) that "nothing contained in the present Charter shall authorise the United Nations to intervene" clearly defended domestic jurisdiction from other Articles of the Charter and declared that France "did not assume the right to sit itself as a judge and condemn the internal policy of a foreign government". 57

Among the Scandinavian countries, Sweden's arguments were nearer to those advanced by South Africa. Its representative considered that the Assembly had no right to request alteration in the domestic law of a member state. It was also thought that it had no authority even to discuss the matter. Although the Swedish delegate did not object to the naming of countries, he thought that the United Nations had no right to recommend to a state to take specific action; he concluded, "the General Assembly could only point the road.

57. Ibid., 8th Sess., p.197 and 14th Sess., 146th mtg., p.93. See also ibid., 7th Sess., Plen. mtgs., pp.61-62 (UK); ibid., Ad Hoc Pol. Cottie., p.73 (New Zealand); ibid., p.84 (Australia) and ibid., 10th Sess., pp.36-37 (Belgium).
without issuing directives". But by 1958, Sweden changed its stand and thought that the Organization not only had the right but the duty to discuss racial discrimination practised in South Africa and recommend action.

The line taken by the United States, the UK and the Scandinavian countries was less insistent on the sanctity of domestic jurisdiction. The Norwegian representative thought that "leaving all aspects aside, the repercussions which ... the apartheid policy ... had had on world public opinion and on the relations between States had put the matter outside the realm of purely domestic problems." The US representative thought that discussion did not contravene Art. 2(7) and that the United Nations had an obligation "to be concerned with national policies in so far as they affect the world community". In 1961, the United Kingdom also joined this moderate school of Western thought and justified the change of its stand, saying that "while the importance attached by the United Kingdom to Article 2 paragraph 7 of the Charter remained undiminished, ... it considered apartheid as

61. Ibid., 17th mtg., p.90 and SCOR, 15 year, 851st mtg., p.4.
becoming now so exceptional as to be sui generis. It was unique, as it involved the deliberate adoption, retention and development of policies based entirely on racial discrimination" and the problem was now thought to cause "grave international repercussions". 62

Thus, it can be said that gradually a change in legal thinking was taking place among Western states. They were, in the sixties, prepared to concede that the situation in South Africa was leading to "international friction" or that its continuance was "likely to endanger international peace and security", but they did not concede that it was a threat to the peace within the meaning of Chapter VII of the Charter. 63 The British delegate argued that the further isolation of South Africa would reduce the possibility of exercising influence it for the better, and that the imposition of sanctions might be the final step towards destroying liberal opinion there. 64 And the Canadian representative thought that "perhaps the best argument" against sanctions was that they would "run counter to the principle established by the Charter that sanctions were intended solely for the purpose of preventing or putting an end to international


63. See statements of the British representative, SCOR, 18th year, 1054th mtg., pp.18-20; (U.S.) 1052nd mtg., p.14.

hostilities."65 The West had always preferred to rely on the force of conscience and moral public opinion.66 Italy looked for a morally effective means to solve a problem which was (in its view) essentially moral.67

The imposition of effective sanctions against South Africa could have some impact on South Africa and make it reconsider its policy of racial discrimination. But, so far, the Security Council has not adopted such a course, because two of the great Powers — the U.K. and the USA— vetoed any such move.

Those who strongly argued for UN action against South Africa included, besides India, the Socialist states and what are now categorized as the Third World. All of these states considered that Art.2(7) did not bar the discussion of racial discriminations and possible action to be recommended thereby against South Africa. The representative of Chile strongly criticized (what he called) "the unlimited and irregular use of the "little veto" provided for in Art.2(7)" to prevent UN action on questions relating to human rights, solutions to which, in his view, "constitute the philosophical and moral

65. Ibid., 15th Sess., 243rd mtg., p.79.
basis of the Organization. Some delegations argued that the question does not fall under South Africa's domestic jurisdiction, and even went a step further to characterize it as a threat to international peace and security as early as 1952. The Egyptian delegate said: "It was the duty of the United Nations and of the Member States to condemn any policy of racial discrimination, for such a policy must necessarily lead to disturbances and was therefore likely to endanger international peace." And the Philippine representative observed: "Men often deplored the fact that history repeated itself, but the tragedy was that history taught them nothing. They had condemned the disastrous effect of the Hitler heresy, but seven years later [i.e. in 1952] they dared to maintain that the United Nations could not discuss a question of racial discrimination because the Charter forbade it." At the very first General Assembly session (1946), the Mexican representative contended that to consider that the matter falls within South Africa's domestic jurisdiction, which prevented UN action or discussion, was nothing but a dangerous play of words and a sophism to speak of interference

70. Ibid., 8th Sess., Ad Hoc Pol.Cottee., p.80.
when the only thing that was involved was legitimate collective action by the Assembly which is based strictly on the Charter and introduced no implied obligation contrary to Art. 2(7).71 Argentina disposed of the South African claim to domestic jurisdiction in a more radical manner, declaring it to be inadmissible "where the majority of the people did not exercise sovereign rights".72 The Indian delegate viewed any contention that the question was essentially within domestic jurisdiction as a distortion of the meaning of the Charter.73 The Panamanian delegate observed that although human rights could be exercised and violated within the frontiers of a state, the promotion and protection of human rights and freedoms was "a matter essentially within the jurisdiction of international law, essentially within the sphere of the action of the United Nations."74

Some of the Third World countries thought that apartheid was simply a species of colonialism.75 Its elimination was considered to be a moral duty above law. The Pakistan representative thought that the issue was "in essence a purely moral one".76 And the representative of Saudi Arabia dismissed the
South African plea of domestic jurisdiction with an assertion that "the exigencies of moral law could not be sacrificed to legal questions". However, it was considered that for the solution of a moral problem, only moral pressure was insufficient. That was the reason why the Third World countries gave a call for sanctions. Ghana sought "to obstructize South Africa from the community of civilized nations". Algeria declared that "the people of South Africa had no choice but to resort to armed struggle".

The Socialist States were at the forefront to support the UN action. It was only the Soviet Union, among Great Powers, which asserted the existence of threat to peace arising out of racial discrimination of South Africa. The Soviet delegate argued that "to question the international nature of the issue, as the US representative had done, was tantamount to supporting and defending the policy of discrimination against the non-white population". The Polish representative argued that a UN duty to settle the matter was "manifest" in Article 1,55 and 56 of the Charter. Once, accusingly, he

77. Ibid., 7th Sess., pp.95-96.
79. Ibid., 24th Sess., 648th mtg., p.25.
80. Ibid., 8th Sess., Ad Hoc Pol-Cottee., p.216.
81. Ibid., 10th Sess., p.37.
said: "The South African delegation evidently considered Art. 2(7) as the Magna Carta authorizing [it] ... racial, national, or religious discrimination and as a screen behind which the most terrible persecution could take place." 82

At another occasion, he declared that the question was "not whether the United Nations had the right to discuss the problem but whether it could possibly keep silent about it". The international significance of the issue lay in the fact that racialism was "a venomous and contagious disease, whose gains or losses anywhere affected all humanity." 83 Bulgaria thought that South Africa had to be compelled to reappraise its policy of apartheid because "there was an imminent danger that the race-conflict would soon become acute, thus threatening world peace and security." 84 And the Romanian representative invoked an analogy from the 1930's. Spotting an "inner link" between official racial policy and aggressive designs, he declared that the United Nations "must not misinterpret the principle of non-intervention as the League of Nations had." 85

82. Ibid., 3rd Sess., Part II, Plen. mtgs., p.428.


85. Ibid., 13th Sess., 90th mtg., p.25 and 14th Sess., 145th mtg., p.91.
(iii) **The UN Impact**

There has been a great cumulative effect of UN resolutions and condemnations of South Africa's policy of apartheid. The first reaction to the ever increasing concern of the international community with apartheid came from South Africa itself. In response to the UNESCO's programme adopted in 1956 which, inter alia, would launch studies of race and race relations, South Africa withdrew from the Organization. In 1963, South Africa ceased to pay its budgetary assessment to the World Health Organization (WHO). In 1964, the Universal Postal Union (UPU) became the first inter-governmental organization to expel South Africa from membership for maintaining its policy of apartheid. From 1964 to date the UPU had adopted an annual resolution excluding South African participation in deliberations of the Union. Exactly ten years later, in 1974, the General Assembly refused to accept the credentials of South African delegation and consequently since then, it is not allowed to participate in the deliberations of the General Assembly.

Similarly in 1960, as a result of a prolonged and bitter discussion of South Africa's racial policies at the Commonwealth Prime Minister's Conference South Africa withdrew from the Commonwealth of Nations.

South Africa's continued pursuit of the policy of racial discrimination amounts to the violation of not only the
UN human rights standards, but international law itself. It seems violation of international law has become a way of life for the South African government. To forestall the escalation of internal conflict and generally to promote human dignity, the Security Council action is both appropriate and necessary. The Council should impose effective and comprehensive mandatory sanctions against South Africa.

Throughout the last 40 years, that have passed since the opening of the First General Assembly in January 1946, the Republic of South Africa has found itself under constant and, at times, near-unanimous condemnation at the United Nations for its policies of apartheid. Placing of the items concerning these policies on every agenda of the Assembly, despite South Africa's protests, has meant in fact that the whole structure of South Africa's political, social and economic life has been under continuous international review. The domestic jurisdiction clause of the Charter has afforded South Africa little respite.

VIOLATION OF HUMAN RIGHTS IN BULGARIA, HUNGARY AND ROMANIA

At the request of Australia and Bolivia (A/1548), the question of the observance of human rights in Bulgaria and Hungary came before the third session of the Assembly. 86 It

86. The two countries had originally submitted separate requests, see ibid., 3rd Sess., Part II Annexures. A/820, and A/821, pp. 31 and 32.
was contended that certain measures adopted by these states, particularly the criminal proceedings instituted against Cardinal Mindszenty and other church and religious leaders, amounted to the violation of the Charter provisions of human rights and also the provisions contained in the Peace Treaties signed by these two states. They were allegedly to have denied civil, political and religious liberties to their respective citizens. These charges were not only denied by Bulgaria and Hungary but also by other socialist states. Though these two states were not members of the United Nations at that time, they were invited to participate in the Assembly without vote, which was declined by both the governments. For declining to participate in the discussion, they gave the reason that the matters sought to be discussed concerned their domestic jurisdiction and hence the Assembly was not competent to discuss them.

The Soviet Union and its East European allies strongly opposed the consideration of the question on the ground that the matters fell exclusively under the jurisdiction of Bulgaria and Hungary, under Art. 2(7). The Soviet representative questioned the Assembly's competence to discuss the matter. To discuss the matter, he said, was to induce the United Nations to interfere in the domestic jurisdiction of these countries and it was "in flagrant contradiction with the fundamental principles of the Charter, and in particular with
Art.2(7)". Violation of Art.2(7) could paralyze the United Nations and turn it into a "blind instrument of one or two Great Powers", as had happened during the time of the League of Nations. Articles 1(3) and 55(d) had no bearing on the right of states to apply their national laws to citizens who had betrayed their country. Those Articles proclaimed respect for human rights and fundamental freedom of the citizens, but not the protection of criminals and traitors, like those convicted in these States. He also denied that the matter could be discussed under Article 10 of the Charter, as the Bulgarian and Hungarian trial "had no connection with matters falling within the purview of the Charter". He characterized the suggestion of the United States representative that the United Nations should consider the application of Peace Treaties with Hungary and Bulgaria as "a blatant attempt to violate not only Art.2(7) but also Art.107 of the Charter."87

While supporting the Soviet contention, the Belgian delegate held that Art.2(7) "absolutely forbade the United Nations to intervene in matters which were essentially within domestic jurisdiction of any State, whether or not it was a Member of the United Nations"; and this prohibition applied as much to the Assembly as to other UN organs. Further, he noted that, in the present case, the Peace Treaties did not

empower the United Nations to intervene; that was the right of the contracting parties only. However, he conceded that, the Assembly was entitled to discuss the question for other reasons.88 The Czechoslovak representative, in the following session, argued that Bulgaria and Hungary were not "bound themselves internationally to secure and observe human rights" under their respective Peace Treaties. Besides, he said, Art. 55(c) referred only to "universal" respect for, and observance of, human rights and fundamental freedoms, and so the provision could not be made applicable to a few countries only. It was argued that Art.55 was not applicable in this case even without reference to domestic jurisdiction clause of the Charter. He also denied that the role provided for in the Peace Treaties to the UN Secretary General in the arbitration procedure meant that the Organization was entitled to act in this case.89 The Polish representative contended that Art.55 did not apply in case of questions coming under the domestic jurisdiction of the various states and that the word "promote" in this article did not mean "impose", as some members seemed to believe. Such an interpretation was "clearly impossible".90 Opposing the inclusion of the question


in the agenda, the Yugoslav representative advanced an interesting argument: "The General Assembly would assume the character of a court of appeal empowered to review the decisions of national courts, thus changing entirely the principles on which the United Nations Charter rests". He added, "State sovereignty would be abolished. The Organization would become a kind of super-state and the General Assembly, which was a political body, would become the highest judicial body". 91 The statement of Polish representative was the most critical of all. He said: "If a court sentence against church leaders by judicial tribunals in Bulgaria and Hungary did not come under Art.2(7), the General Assembly would be able to examine any question it liked, and it only remained to tear up the Charter". 92

Moreover, apart from the question of competence, it was denied that there was any violation of human rights in Bulgaria and Hungary in terms of the Charter. It was asserted that those who were alleged to have been persecuted and punished by these states, including Cardinal Mindszenty and other church leaders, had been sentenced for political crimes, amounting to treason against the state. It was contended that in taking the actions, these countries were in fact carrying out the terms of the Peace Treaties obligating them

91. Ibid., Plen. Mtgs., p.21.

to ban the existence and activities of "Fascist type" organizations which had as their aim the denial of democratic rights to the peoples of the respective countries. 93

Opposing the above contentions, many states argued that Art. 2(7) was not applicable in the present case. It was argued that if the Charter had prevented all intervention by the United Nations, including in cases of the violations of human rights, it should have specifically inserted an article preventing such intervention. In the absence of such a provision, it was held that, Art. 2(7) should be read and interpreted in the light of all other provisions of the Charter, which constituted a coherent whole. 94 To invoke Art. 2(7) in order to sidetrack their responsibility to respect and observe human rights, would lead to ludicrous results and in effect make many other provisions of the Charter inapplicable. 95

The French representative considered that the Assembly was competent to discuss the matters, as, in his view, the United Nations was "the guardian of the fundamental freedoms of humanity which were enumerated and defined in the Universal Declaration of Human Rights," and also added that "the

93. These views were held by: (The USSR) ibid., pp. 28-30 and ibid., Ad Hoc Pol. Cott., pp. 139-43; (Poland) ibid., Gen. Cott., pp. 13-14; (Yugoslavia) ibid., Plen. mtgs., p. 255; (Ukraine) ibid., Ad Hoc Pol. Cott., pp. 116-9.

94. Ibid., Part II, Gen. Cott., p. 25.

question was an exceptional one in view of the fact that the Peace Treaties themselves provided for a specific role to the UN Secretary-General in the arbitration procedure laid down in the treaties.96 The Australian delegate maintained that the Assembly was fully competent, under Art. 10, to consider whether the human rights, in a specific case, had been respected or observed either by a member or a non-member states, since Article 10 was essentially universal in scope and application. He further added: "There was no question or problems, which came within the scope of the Charter and which concerned its aims, its Principles or any one of its provisions, which could not be discussed by the Assembly. If any question could be covered by an Article of the Charter, that question could no longer be held to be a matter essentially within the domestic jurisdiction of a State". Also that whether a state in which human rights had been violated was or was not a member of the Organization was "entirely irrelevant". In accordance with Art.103 of the Charter, it can be said that the provisions of a treaty between different countries did not affect the jurisdiction of the United Nations.97 The Cuban representative maintained that "collective intervention" by the United Nations "acting

96. Ibid., Part II., Ad Hoc Pol.Cottee., pp.87-88 and 152.

on behalf of world public opinion" was not the same as "intervention" by one state in the domestic jurisdiction of another.98 Other representatives also justified the competence of the Assembly on the strength of one or more of the following provisions of the Charter; the Preamble, Arts. 1(3), 11, 12 (1,b), 14, 2(pars 5 and 6), 34, 35, 56, 62(2) and 76.99

Some of the member states justified UN action on the ground that the question involved the violation of international obligations in respect of human rights and treaty obligations. The Chinese (Formose) representative said since the Peace Treaties were registered with the Secretariat of the United Nations, the matter, beyond any doubt, came under international jurisdiction and became one of the international character. And that the treaties themselves had laid down a procedure for the settlement, did not in any way prevent the Assembly from discussing it by virtue of the provisions of the Charter. Furthermore, a discussion in the United Nations did not rule out the possibility of recourse to the procedure provided for in the treaties.100 In favour of UN action/jurisdiction, the British delegate cited an example of the Permanent Court of International Justice's consideration of

98. Ibid., Ad Hoc, Pol.Cottee., p.121.
99. See also (Chile) ibid., Gen.Cottee., p.18; (Panama) ibid., p.21 (Cuba), ibid., Ad Hoc,p.102 (China), ibid., Ad Hoc Pol.Cottee.,pp.76-77; (New Zealand) ibid., p.102(China) ibid.,p.131; (Lebanon) ibid., pp.136-37; (El Salvador) ibid., Plen.mtgs.,p.260.
100.Ibid., Part II, Gen.Cottee., p.33.
the case relating to the nationality decrees in Tunis and Morocco. 101

Thirdly, some states considered that the question not only involved the violation of the terms of Peace Treaties, violated the UN Charter and the Universal Declaration, but also the Declaration by the United Nations of 1 January 1942 and the Yalta Declaration of 11 February 1945. 102 Charles Malik of Lebanon asserted that there was "abundant evidence" that Bulgaria and Hungary had violated specific provisions of the Universal Declaration, like Articles 5, 10, 11, 18 and 19. 103 Australia charged that the actions of these two states such as disturbing the privacy of citizens, arresting church leaders without warrants and persecuting them for their opinions amounts to the violation of human rights. It was also alleged that the Church was accused of conspiring against the state. In fact, the Church leaders were merely insisting upon their right to speak in accordance with their conscience. Their all activities, apart from formal worship, including those of a charitable nature, were being prohibited and, it was held that, the judicial process against them were manoeuvred in such a way as not to allow people of defend their liberties effectively. 104

101. Ibid., p.19.
103. Ibid., Plen. mtgs., pp.268-69.
After a thorough discussion, the Assembly adopted a resolution \( L^{i.e.\ 272\ (III)} \) of 30 April 1949 which referred to the human rights provisions of the Charter especially those of Article 1(3) and also those provided for in the Peace Treaties. The Assembly also decided to retain the item on the agenda of the fourth session.

When the question came up again at the fourth session, the Assembly agreed to an Australian proposal to add the name of Romania to the earlier item. The Ad hoc Political Committee of the Assembly invited Romania to participate in discussions without vote, which was declined, as did Bulgaria and Hungary, for the same reasons given by those countries \( \text{(Doc.\ A/AC.31/L.4)} \). At this session also, there were arguments over UN jurisdiction from both sides, which were similar to those advanced at the earlier session. Those who favoured exercise of UN jurisdiction even went to the extent of saying that the violation of human rights constituted an act of aggression.\(^{105}\) The representatives of New Zealand and Chile considered that the violation of human rights represented a threat to international peace and security.\(^{106}\) Despite the opposition from the Soviet Union and its East European allies, the Assembly adopted a resolution

\(^{105}\) Ibid., 4th Sess., \textit{Ad Hoc Pol.Cottee.}, p.47(Lebanon).

\(^{106}\) Ibid., (New Zealand), p.30(Chile), p.56.
L 294(IV) of 22 October 1949, which noted in its Preamble that the United Nations "pursuant to Art. 55 of the Charter" shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion, while condemning the lack of co-operation of the States concerned, it requested an Advisory Opinion of the International Court of Justice on the provisions for the settlement of disputes in the Peace Treaties.

The Court in its Advisory Opinion of 30 March 1950 overruled the jurisdictional objections raised by the Parties -- Bulgaria, Hungary and Romania. The Court asserted that since the request was concerned with the interpretation of the terms of treaties, which, being a question of international law, could not be considered as one of the domestic jurisdiction of a state. The Court held that there existed a dispute between certain signatories to the Peace Treaties and these three countries regarding the implementation of the treaties relating to the observance of human rights and asserted that these states were obliged to carry out the terms of their respective treaties.

At the fifth session of the General Assembly, when the question last came up for discussion, the Assembly condemned (through resolution 385 (V) of 3 November 1950), while taking
note of the Advisory Opinion of the Court, "the wilful refusal" of these governments to fulfill their obligations under the provisions of the Peace Treaties to appoint representatives on the treaty commissions and indicated that the conduct of the Governments had been deliberate breaches of the provisions of the treaties relating to human rights in those states. It also noted that these countries were "callously indifferent" to world public opinion on the matter and asked all Members to submit to the United Nations, for distribution among other members, the evidence they had on the question.

CHILEAN COMPLAINT AGAINST THE SOVIET UNION

In December 1948, the representative of Chile, under Article 14 of the Charter, brought a question entitled: "The Violation by the U.S.S.R. of fundamental Human Rights, traditional diplomatic practices and other Principles of the Charter" for the consideration of the Assembly. This question came up for discussion in the Sixth Committee, where the representative of Chile complained that the Soviet Union was repeatedly violating fundamental human rights by adopting laws to prevent the Soviet wives of foreign nationals from leaving their country in order to join their husbands in other
countries. He even gave the example of his own daughter-in-law, a Soviet citizen, who was not allowed to leave her country, though he himself had applied for an exit permit to Soviet government, when he was Chilean Ambassador at Moscow. The Soviet Government he said, by not allowing the Soviet wives of foreign nationals to leave the country, had violated human rights obligations of the Charter, specially those contained in the Preamble, Articles 1(3), 55 and 56 of the Charter and the provisions of the draft Universal Declaration of Human Rights (which was then under discussion by the Assembly). The Soviet Union, he continued, had even violated the obligations contained in the ECOSOC resolution 115 (VII)D of 23 August 1948. (This resolution had deplored legislative or administrative provisions which deny to a woman the right to leave her country of origin and reside with her husband in any other.). He argued that the question of the promotion of human rights was outside the domain of domestic jurisdiction. This, he said, was evident from Articles 10 and 14 of the Charter by which the Assembly became competent to deal with the question. He refuted the Soviet contention that allowing freely its married women citizens to emigrate to other countries represented a threat to its national security. He characterized the Soviet justification as a "feudalistic idea of sovereignty". 107

The representatives of Egypt, France, UK, Uruguay and USA, were among those who supported the Chilean delegation. They considered that the matter did not come within Soviet domestic jurisdiction under Art. 2(7).

The representative of the Soviet Union, on the other hand, vehemently criticized the Chilean arguments and strongly opposed even the discussion of the question on the ground that it was a flagrant violation of the principle of non-intervention contained in Art. 2(7) of the Charter. It was argued that the domestic legislation of the USSR relating to marriage with foreigners of its citizens and the regulation of emigration laws of its nationals. He said, both of these matters were essentially within the domestic jurisdiction of the Soviet Union and the question had nothing to do with human rights.\textsuperscript{108} The representative of Byelorussia also spoke in favour of the Soviet contention.\textsuperscript{109} The USSR was supported by its East European allies, such as Czechoslovakia, Poland and Yugoslavia. All of them contended that the matters pertaining to the question of nationality were generally regarded by international law as falling within the exclusive jurisdiction of member states. Each state was free to grant


\textsuperscript{109} Ibid., 6th Cottee., p.762.
or refuse permission to its citizens to leave their native land in order to emigrate. Some of them maintained that bringing such questions to the UN forums represented an attempt to defame the Soviet Union for political reasons.\footnote{110}{See, \textit{Ibid.}, 6th Committee, p.749 (Czechoslovakia); pp.753-55 (Poland) and p.760 (Yugoslavia).}

The plenary meeting of the Assembly adopted a resolution \(285\) (III) of 25 April 1949 which was, in fact, recommended by the Sixth Committee. This resolution, \textit{inter alia}, referred not only to the provisions of human rights contained in the Preamble and Articles 1(3) and 55(C) of the Charter as well as to the ECOSOC resolution 154D(VII) and to the provisions of Article 13 and 16 of the Universal Declaration, and declared "that the measures which prevent or coerce the wives of citizens of other nationalities from leaving their country of origin with their husbands or in order to join them abroad, are not in conformity with the Charter ... and are likely to impair friendly relations among nations". The resolution recommended that the USSR Government "withdrew the measures of such a nature which have been adopted".

\section*{HUMAN RIGHTS IN TIBET}

In 1950, the question of Tibet was raised by El Salvador (UN Doc.\textit{A/1534}) in the form of an item entitled:
"Invasion of Tibet by Foreign Forces". Its representative submitted a draft resolution to condemn the act of unprovoked aggression against Tibet. The draft resolution authorized the Assembly to appoint a Committee to study the measures to be taken in this regard. However, the discussion on the question was postponed on the suggestion of India, Australia and the United Kingdom. The representative of the USSR objected to any discussion on the item on the ground of Art. 2(7), and said enough documents were available to prove that Tibet was a part of the People's Republic of China. 111

When in 1959 hostilities again broke out between the people of Tibet and the Chinese forces, leading to a large scale killing of Tibetans, the representatives of Malaya and Ireland proposed the inclusion of the item: "The question of Tibet" in the agenda of 14th session of the General Assembly. They contended that there existed prima facie evidence of an attempt by China "to destroy the traditional way of the Tibetan people and the religious and cultural authority long recognized to belong to them, as well as a systematic disregard for the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights." 112 The fact that the

112. UN Doc., A/4234.
item was titled "The question of Tibet" rather than the question of human rights in Tibet reveals that the proposers of the item wanted that the situation in Tibet should be discussed in its totality including the question of violation of human rights there. This became evident from the debates of the Assembly.

The item was discussed for two days in the plenary meetings. The representative of Malaya said his government condemned colonialism in any form, whether be it in West Irian, Algeria, Hungary or Tibet. And it was "pledged actively to support subject peoples and nations in their legitimate aspirations to self-determination and independence."113 The delegation of El Salvador contended that his government would support any step or resolution to restore the traditional autonomy of Tibet.114

During discussion the question of the status of Tibet was raised. Delegates raised the issue whether Tibet was a state or was it an integral part of China over which a claim of domestic jurisdiction was possible. The majority of states disagreed with the socialist bloc that Tibet was part of the Peoples' Republic of China (PRC). The representative


114. Ibid., 812th mtg., 29 September 1959, p.247.
of New Zealand, among others, argued that even if Tibet were not a sovereign state, there existed a background of separate identity against which to consider the evidence of suppression of fundamental human rights.\footnote{115} El Salvador and Malaya were bold enough to contend that it was immaterial for the United Nations whether Tibet enjoyed statehood; what was of greater concern to the United Nations was the matters of human rights. It was also pointed out that the Organization had taken up earlier many cases — such as those of Tunisia, Algeria, Indonesia and apartheid in South Africa — some of which were not independent states.\footnote{116} The U.S. representative also considered that Article 55 of the UN Charter provided the Assembly the competence to consider the matter, without bothering much on the status of Tibet.\footnote{117} The representatives of China and Ireland took liberal interpretation of Art. 2(7). Nationalist China said it always spoke in favour of the struggling people of Asia and Africa in their quest for freedom and independence. The sufferings of Tibetan people, under the Chinese Communists had far exceeded the worst treatment that any colonial or dependent people in Asia or Africa had experienced. The United Nations owed it to human decency and to the rudiments of civilization to raise its

\footnote{115. GAOR, 14th Sess., Plen., 826th mtg., pp. 444-45.}
\footnote{116. Ibid., 831st mtg., pp. 459-70.}
\footnote{117. Ibid., 832nd mtg., p. 489.}
voice against the Chinese atrocities committed in Tibet.\textsuperscript{118}

The position taken by certain countries like Spain and the United Kingdom was interesting. They thought that the status of Tibet was uncertain and that Art. 2(7) overrode Articles 55 and 56; however, they were not opposed to the inclusion of the item on the agenda and a discussion on it, but they thought that the Assembly should not pass a resolution on the matter. The British delegate supported the suggestion given by the Swedish delegate that the Assembly should only "express its concern" rather than do it through a resolution, while the status of Tibet was uncertain.\textsuperscript{119}

Malaya and Ireland argued that the United Nations had both a "moral obligation and a legal duty" to call for the restoration of religious and civil liberties of the Tibetan people which, they alleged, had been violated.\textsuperscript{120}

On the other hand, the Socialist countries, especially the Soviet Union, opposed the adoption of any resolution on Tibet, saying that it was illegal and a clear violation of the provisions of the Charter and especially Art. 2(7). The delegation of Belgium, while asking for the upholding of the

\textsuperscript{118} Ibid., 833rd mtg., p. 503. See for the views of Ireland, Ibid., 831st mtg., p. 472.

\textsuperscript{119} Ibid., 833rd mtg., pp. 505-6 (Spain) and 834th mtg., pp. 513-14 (UK).

\textsuperscript{120} GAOR, 14th Sess., 821st mtg., pp. 365-67 (Malaya), 831st mtg., pp. 473-74 (Ireland).
principles of the Organization, said, it was legally wrong to assert that in the application of the Charter, the principles of human rights took priority over all other Articles. Though the Charter sought to promote respect for fundamental rights, it did not authorize the United Nations to intervene in internal affairs of member states in the event that such rights were violated. It was evident from the text of the Charter and the proceedings of the San Francisco conference that the UN intervention in matters of domestic jurisdiction was prohibited irrespective of whether the violation of human rights was involved. Subsequently, all the East European allies of the Soviet Union voted against the resolution.\textsuperscript{121} However, the Assembly adopted a resolution \textit{i.e.} 1353 (XIV) of 21 October 1959 by which it called for the restoration of human rights to Tibet, as set out in the Charter of the United Nations. It also referred to the "distinctive cultural and religious heritage of the people of Tibet" and "the autonomy which they have traditionally enjoyed". It is interesting to note that India did not participate in voting as it considered that China had suzerainty over Tibet and the resolution could lead to nothing constructive.\textsuperscript{122}

\textsuperscript{121} Ibid., pp.448-50 (USSR), and p.486 (Belgium).
\textsuperscript{122} Ibid., pp.518 and 521.
Though the matter was placed on the agenda of the 15th Session, no resolution was passed by the Assembly due to extreme pressure of work. However, the matter was again brought to the 16th Session (1961) by the Federation of Malaya and Thailand. They pointed out in their explanatory memorandum $^{1}(A/4848)$ proposing the inclusion of item in the agenda, that since the passing of resolution 1353 of the Assembly, the situation in Tibet still remained a source of grave concern. They hoped that renewed consideration of the question by the United Nations would pave the way for the restoration of the religious and civil liberties of the Tibetan people. Consequently, during this session, a draft resolution ($A/L.376$) was submitted by El Salvador, Ireland, and Thailand. By this resolution, the General Assembly, inter alia, would: (i) reaffirm its conviction that respect for the principles of the UN Charter and the Universal Declaration was essential for the evolution of a peaceful world order based on the rule of law; (ii) solemnly renew its call for the cessation of practices depriving the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination; and (iii) express the hope that member states would make all possible efforts towards achieving the purposes of the present resolution. After a thorough discussion on this question, a draft resolution was adopted as a resolution 1723 (XVI) by a vote of 56 to 10 with 29 abstentions.
It is interesting to note that this resolution, in its text, referred twice to the right of self-determination of Tibetan people.

Those who spoke in favour of the draft resolution included, among others, the representatives of China, India, Ireland, Malaya, New Zealand, the United Kingdom and the United States. All these representatives pointed out that the situation in Tibet had not improved since the Assembly's call through resolution 1353 (XIV) for respecting human rights of the Tibetan people. In fact, it had become graver as the repression of the Tibetans continued. Consequently, it was remarked, around 45,000 Tibetans had taken refuge in India, Nepal, Sikkim (then an independent kingdom) and Bhutan. Many Tibetans were reportedly conscripted for forced labour, children were forcibly separated from their families and deported to China for indoctrination, and the religious institutions were destroyed. These incidents were confirmed by the publication of the reports conducted by the International Commission of Jurists. It was also pointed out that, according to the Assembly's Declaration on Decolonization, the subjection of peoples to alien rule constituted a denial of fundamental

123. Ibid., 16th Sess., Plen., 1084th mtg., pp.115-18 (Malaya); pp.1120-23 (USA); pp.1224-26 (China); pp.1127-28 (Ireland); 1085th mtg., pp.1130-32 (New Zealand); pp.1132-33 (Thailand); and p.1137 (UK); Ibid., Gen. Cots., 136th mtg. (A/BUR/SR.136, p.8) (India).
human rights. Hence, the Assembly was asked to take a similar stand on Tibet as it had taken on the issues involving colonialism, self-determination and fundamental human rights. The Indian delegate said: the United Nations cannot remain indifferent to an attempt at total extinction of the Tibetan race. To him, therefore, it was not only an item "which the Assembly could properly discuss but also it involved one of the most important issues confronting the United Nations, on the solution of which the future of the Organization itself would to a large extent depend".

The USSR and its allies opposed the Assembly's consideration of what they called an artificially created problem. Tibet, they held, had always been an integral part of the PRC, the Assembly's consideration of the question constituted interference in the internal affairs of China and was consequently a flagrant violation of the Charter. They said that it was the feudalists and reactionaries who had for centuries kept the people of Tibet in subjugation and poverty. Now, i.e., after the liquidation of the reactionaries in 1959, the people of Tibet had made enormous progress in economy, education and so on. The Albanian representative remarked that the "non-existing question" was raised at the instance of the United States. Hence, he asked Assembly not to waste time on such questions. 124

124. Ibid., 1085th mtg., pp.1134-36 (USSR); pp.1136-37 (Albania).
The sponsors of the item, however, maintained that the Assembly was fully justified in discussing the Tibetan question as it had in the past considered many such questions involving colonialism, self-determination and observance of human rights. Moreover, the Assembly had on many occasions considered competent to discuss questions despite objections raised on the ground of domestic jurisdiction. Violations of human rights on the scale which had occurred in Tibet could not be ignored by the United Nations. 125

The representative of France, while sympathising with the intentions of the draft resolution, abstained from voting, as, he thought, some of the provisions of the text did not have enough foundation in the Charter to dispel doubts which might arise about the Assembly's competence to deal with a matter falling within the domestic jurisdiction. 126

It was in the 20th session when the question of Tibet was last discussed in the Assembly. It was included in the agenda on the request of El Salvador, Nicaragua and the Philippines (See A/5931). During this Session also, the delegates took two different viewpoints. Those who spoke in favour of UN included, *inter alia*, the representatives of

125. Ibid., 1084th mtg., pp.1115-18 (Malaya); 1085th mtg., pp.1132-33 (Thailand).

126. Ibid., 1085th mtg., pp.1137-38.
Guatemala and the United States. They pointed out that the UN practice so far had proved that the Assembly could exercise jurisdiction over situations anywhere involving breach of specific provisions of human rights; the claim of "domestic jurisdiction as a reserved domain" was untenable in regard to issues of international concern, in particular those involving systematic suppression of human rights. It was, they held, both a legal right and moral duty to concern itself with the issue of fundamental human rights.\textsuperscript{127} The Australian representative contended that the forced imposition of social reforms in Tibet, which China had claimed to introduce, could not be said to be "peaceful and natural". They should have been introduced with Tibetan consent, not imposed from outside with the intention to absorb Tibet into their own different society.\textsuperscript{128}

Among the Socialist states, Poland and Romania, besides the Soviet Union, were among those who recognized what the Chinese had been trying to do in Tibet. It was to them "the realization of an unavoidable historical process, that of a breakdown of a feudal and enslaved society". Romania considered

\textsuperscript{127} A/PV.1401, p.42 (USA) and A/BUR/SR.124, p.15 (Guatemala). The United States not only referred to the violation of religious and civil rights of Tibetans, but also to the right of self-determination.

\textsuperscript{128} A/PV.1401, p.72.
that it was one of the greatest social changes that had
taken place in the history of China.\textsuperscript{129} Most of the supporters
of China not only considered Tibet as being an integral part
of China but had even remarked that the PRC not being a UN
member, nor a party to the Universal Declaration, was not
bound to abide by the resolutions of the Assembly or the
Universal Declaration. This argument was not convincing as
any violation of human rights provisions of the Charter was
a matter of UN concern. It should be noted that Article 55
referred to the promotion of "the universal respect for..."
(emphasis added), implying that the obligation extended beyond
UN membership. Likewise, the \textit{Universal} Declaration; though
having no binding force, was recognized to be declaratory of
generally accepted standards of behaviour for any state. The
universality of the principles of the Declaration had never
been disputed. Further, it could be said that China itself
was a signatory to the Bandung Declaration which re-affirmed
the fundamental principles of human rights set forth in the
UN Charter and the Universal Declaration.

At the end of the discussion, the Assembly, while
"gravely" concerning itself with the violation of human rights
in Tibet, noted that it had increased international tensions
and embittered relations between peoples. It "solemnly"

\textsuperscript{129} Ibid., pp.63-65 (Poland), pp.33-35 (Romania).
renewed its earlier call for the cessation of all practices which deprived the Tibetan people of their rights.

AUSTRO-ITALIAN DISPUTE OVER THE QUESTION OF "MINORITY-PROTECTION"

On 23 June 1960, the Foreign Minister of Austria asked that an item described as the "Problem of Minority in Italy" be included in the agenda of the General Assembly's 15th session. In an accompanying memorandum, Austria contended that the Paris Agreement signed by Austria and Italy on 5 September 1946 -- which provided for legislative and executive autonomy of the South Tyrolean population in order to protect the ethnic and cultural character of the Austrian population there -- had been interpreted and applied by Italy in a way that contradicted its purpose in essential respects. Accordingly, Austria asked the Assembly to consider the dispute in order to bring about a just settlement based on democratic principles by which the Austrian minority in Italy would be conceded a true autonomy so as to enjoy the self-determination and self-government it needed for the protection of its existence as a minority.

Since there was no opposition from Italy and its supporter, on the grounds of jurisdiction, the General Committee decided to recommend that the item be included in the agenda. On a proposal by Canada, the title was amended to read: "The Status of the German-speaking element in the Province of Bolzano (Bozen);
Implementation of the Paris Agreement of 5 September 1946. Subsequently, the Assembly after including the title on its agenda, referred the matter to the Special Political Committee.

After debate and discussion, on the recommendation of the Special Political Committee, the General Assembly adopted resolution 1497 (XV), which (i) urged the two parties concerned to resume negotiations to find a solution for all differences relating to the 1946 Paris agreement; (ii) and recommended that if the negotiations do not bring satisfactory results, within a reasonable time, both parties shall give favourable consideration to the possibility of seeking a solution to their differences by any of the means provided by the Charter including recourse to the International Court of Justice or any other peaceful means of their own choice.

The matter was again discussed in the 16th session of the Assembly. The Assembly adopted, on 23 September 1961, resolution 1661 (XVI) after the draft resolution was adopted by the Special Political Committee. The resolution, which was unanimously approved, by recalling resolution 1497, noted with satisfaction the negotiations that were taking place between the parties concerned and noted further that the dispute remains as yet unresolved and called for further efforts to find a solution in accordance with 1497 resolution.
Though Italy had rejected in 1961 the Austrian thesis that self-determination was the most satisfactory solution, negotiations between the parties continued. Eventually, in July 1970, Austria and Italy sent letters to the Secretary-General on the progress made and measures undertaken by the two governments in pursuance of Assembly resolutions. It should be noted that when the Italian parliament announced the programme of legislative measures concerning the status of the German-speaking population; and Austria declared that it would consider the dispute terminated as soon as those measures are implemented. Thus, the United Nation's good offices helped the settlement of minority problem in Italy. In this case, though the human rights provisions of the Charter, the Universal Declaration or the draft international Covenant on Civil and Political Rights (which had included in Art. 27 the right of minorities) were not in question (as the dispute concerned and implementation of a bilateral treaty), the UN organs played an important role to resolve the dispute.

VIOLATION OF HUMAN RIGHTS IN SOUTH VIETNAM

The General Assembly considered the item entitled "the Violation of Human Rights in South Vietnam" at its 18th session, which was brought by 16 member states through a letter (of 4 September 1963) addressed to the Secretary General. They had, in that letter, accused the Government of South Vietnam of interfering with the exercise of religion by the majority of its citizens who were Buddhists, in violation of Article 18 of
The Government had allegedly interfered in Hue with ceremonies in commemoration of the 2507th anniversary of Budha’s birthday in May 1963. Troops had fired on participants and nine persons had been killed. On 20th August, armed police had occupied the main shrine of Budhism in South Vietnam, the Xa Loi Pagoda in Saigon. On that occasion, hundreds of monks and nuns had been arrested and put in jail.

This was the second case of the violation of human rights, coming to the Assembly, which concerned a non-member state. When the item came up for discussion on 7th October, in the Assembly, the President informed the Assembly that the Government of South Vietnam has extended an invitation to representatives of several member states to visit Vietnam in order to find out for themselves the true situation regarding the relations between the Government and Vietnamese Budhist community. Eventually the General Assembly, at its 1234th meeting, indicated that it had no objection in accepting the proposal of the Government of South Vietnam and that the President of the Assembly should appoint a Mission composed of representatives of member states to visit South Vietnam.

130. For the text of the letter see GAOR, 18th Sess., Annexes, Agenda item 77, (A/5489). Also see explanatory memorandum, ibid., Doc.A/5489/Add.1.

in order to investigate the facts and to report to the Assembly. 132 Subsequently, the President appointed a Mission consisting of 7 member states to visit South Vietnam and asked it to ascertain the facts of the situation in that country as regards the relation between the Government and the Buddhist community. The chairman of the Commission on Human Rights was made the Chairman of the Mission and the Director of the Division of Human Rights its Principal Secretary. In discharging its functions, the Mission interviewed many government officials including the then President of the Republic. 133 At these meetings the position of the Government in the matter of its relations with the Buddhist community was outlined to the Mission.

In examining the witnesses, the Mission interviewed, among others, monks, nuns and Buddhist leaders in Pagodas, one prison and one hospital. All the witnesses were asked to identify themselves. The purpose of the visit of the Mission was explained to them. They were told that they were considered to be under oath and were being interviewed in the absence of any government official, and that anything they said would remain completely confidential.


The Mission received a total of 116 communications from individuals, groups of individuals and NGOs. Three of them contained requests by the petitioners to be allowed to appear before the Mission. All the petitioners were granted hearing. Three of the communications alleged difficulties encountered in getting in touch with the Mission. Fifty-four of them contained more or less detailed statements either alleging or denying discrimination against, or persecution of, the Buddhist community in South Vietnam. The allegations of discrimination were brought to the attention of the Government.

In the examination of petitions received, the Mission considered only the precise charges in relation to the Buddhist problem and not the more general expressions of political opinion not relevant to its terms of reference. It checked with the alleged author the authenticity of letters it had received indirectly from a religious leader.

By visiting places where incidents has occurred, primarily in order to interview witnesses, the Mission was able to form an idea of conditions at each spot visited.

The Mission reported that from its arrival in Vietnam on 20 October 1963 until the coup de'tat of 1 November of that year, which overthrew the Government of President Diem, that the Government had co-operated with the Mission. The authorities who took over the Government after 1 November 1963 spontaneously offered their assistance to the Mission.
All decisions of the Mission, including the adoption of its report were taken unanimously. The report (A/5630) was presented to the General Assembly and circulated to all members. It is unfortunate that the report was never discussed by the Assembly, instead, in view of the overthrow of the Government in a coup de' tat it decided, on 13 November 1963, not to continue the consideration of that item.

ALLEGED VIOLATION OF HUMAN RIGHTS IN NORTHERN IRELAND

On 17 August 1969, in a letter (S/9394)\textsuperscript{134} to the President of the Security Council, the Permanent Representative of Ireland, by invoking Art.35 of the Charter, requested an urgent meeting of the Council. The letter stated that the preceding week had witnessed the development of a situation in the Six Counties of Northern Ireland set off on 12 August by a parade in the city of Derry and stemming from the treatment that many inhabitants had suffered for almost 50 years. The situation, which the Royal Ulster Constabulary had been unable to control, had led to the intervention of British military forces. The letter also stated that the proposals of the Irish Government that the United Kingdom ask for the dispatch of a UN peace-keeping force to diffuse the situation was rejected. The British Government had also rejected the

\textsuperscript{134} SCOR, 24th yr., Suppl. for July-September, p.159.
Irish proposal for a joint British-Irish peace-keeping force. The letter went on to state that such proposals were suggested as Ireland could not remain silent and see the people of those countries suffer injury. It thought that the tensions created along the border between two areas might even result in serious disturbances in its own state.

The Security Council met on 20 August 1969 to consider the Irish request.

Speaking on the question of the adoption of agenda, the British representative opposed the inscription of the item on the agenda on the ground that the matter concerned British domestic jurisdiction. He contended that since Northern Ireland was an integral part of the United Kingdom, the events occurring there were an internal matter of Britain. The situation was under control, and there was no threat to international peace and security. Moreover, he added, public debate might aggravate the situation.135

The representative of Finland proposed that, without prejudging the question of jurisdiction, but as a matter of courtesy, the Security Council, before taking a decision on its agenda, invite the Minister for External Affairs of Ireland

to make a statement in explanation of his Government's request. 136 Since the British representative did not object to this proposal, the Minister for External Affairs of Ireland was invited to make a statement in the Council. He stated that the Council should not accept the contention that the question fell exclusively within the domestic jurisdiction of the United Kingdom under Art.2(7) of the Charter. Although the Northern part of Ireland was under the British control, it never conceded that Britain had the right to exercise its jurisdiction there, nor had it renounced the claim of the Irish nation to control the totality of Ireland. In other instance, he said, Art.2(7) had not been applied in the rigid manner now suggested. 137

The Minister explained that the breakdown of law and order and the plight of the minority in the area of the Six Counties had their origins in the fundamentally unjust partition of Ireland in 1920 as a British concession to an intrasigent minority within the Irish nation as a whole. The grave situation sparked by the provocative commemorative parade of 12 August, stemmed from the persistent denial of basic civil rights to the thwarted minority in the Six Counties by a regime that had been reluctant or unable to bring about basic reforms. The

136. Ibid., paras 16-17.
137. Ibid., paras 24-27.
calling of British troops was a confession that the situation could be handled satisfactorily by the British Government. The use of troops constituted a basic factor in the perpetuation of partition. The only lasting settlement was reunification. The differences, if any, between Irishmen should be left to be settled only by Irishmen. Obviously, an impartial UN peacekeeping force was required. The denial of civil rights and sufficient by itself to justify the Council's considering the Irish request. Due weightage should also be given to the desirability of obviating the risk of tensions in the North spreading and leading to friction between two Member States. 138

The Soviet representative supported the Irish request for a meeting. Also, he stated that the United Kingdom should take measures to end persecution of those fighting discrimination in Northern Ireland and create the necessary conditions for solving problems in conformity with the wishes of the people. 139

The British delegate said that on the constitutional question, there was no justification for the contention that the situation in Northern Ireland was an international matter. The civil rights movement in the North, he said, was directed

138. Ibid., paras 32-43, pp.3-5.
139. Ibid., paras 45-46, p.5.
not to the transfer of Northern Ireland from the United Kingdom but to internal reforms. The greater number of the demands had been accepted by his government. The principle of equality of treatment and freedom from discrimination for all citizens, irrespective of political views or religion, had been publicly affirmed on 19 August 1969 by both Northern Ireland and the United Kingdom. Both governments were determined to resolve all difficulties and to restore normalcy to Northern Ireland. The British troops were discharging their duties with absolute impartiality, no better peace-keeping force could be there. 140

The representative of Zambia noting that the dispatch of troops demonstrated the gravity of the situation, felt that in the light of the statements made during the meeting (S/PV.1503) it might be wise to postpone a decision on whether or not to adopt the agenda. Accordingly, the proposed adjournment, 141 which was adopted without objection and the Council did not take up the matter again in 1969.

In this case, the Soviet Union was the only state which supported the Republic of Ireland and the U.K.'s position was supported by the only state, i.e. Finland. The silence of

140. Ibid., paras 52 f - 56-57 & 61, pp.6-7.
141. Ibid., paras 67-68.
other members — specially the veto Powers and non-permanent members — lead us to conclude that everyone regarded the matter falling to be within the domestic jurisdiction of the United Kingdom.

The Permanent Representative of Ireland, on 5 September 1969, addressed a letter to the Secretary General requesting inclusion in the agenda of the 24th Session of the Assembly of an item entitled, "The Situation in the Northern Ireland". (A/7651 & Corr.1). An explanatory memorandum accompanying the request referred to the longstanding grievances of the large minority in the area of the North of Ireland under British jurisdiction and expressed the fear that, unless the causes of the existing unrest were speedily eliminated, the situation might lead to further violence with serious consequences both for the whole of Ireland and for the United Kingdom. It expressed the view that Articles 1, 13, 35, 55 and 50 of the Charter were particularly relevant to the situation, and that the Assembly should consider the situation so that discrimination in all its forms in that area might be established, and the danger of serious international friction between Ireland and the United Kingdom might be avoided.

The request for inclusion of the item was considered by the Assembly's General Committee on 17 September. The representative of Ireland was invited to participate in the
discussion. Following the discussion, the General Committee, decided, pursuant to a suggestion by Chile and Nigeria, to defer a decision on whether or not to recommend the inclusion of the item in the Assembly's agenda.

On 20 September, the Assembly took note of the General Committee's decision, which was not re-examined during the remainder of the session.

THE QUESTION OF HUMAN RIGHTS IN CHILE

Since the overthrow of the government of the President Allende in September 1973 and a military junta assumed power in Chile, there have been reports of massive violation of human rights, such as inhuman torture of political prisoners, arbitrary arrests (without showing reasons for such arrests), disappearances and so on. The Commission on Human Rights

142. Many workers and trade union leaders of a state-owned copper mining enterprise called CODELCO in the town of Chuquicamata, were arrested and charged with using labour conflict for political purposes, as they were boycotting the company canteens in protest against the failure of Chilean Government to give due consideration to their long outstanding wage claims. The military government had declared a "state of siege" in that town and in the whole province, where the Chuquicamata mines were situated, had banned holding of all meetings, demonstrations and gatherings of any kind. Restrictions were imposed on the freedom of association and the right of assembly by trade unions. Even the entry and departure of persons from the province was controlled by the Chilean police. Initially, the violation of human rights was concerned with only the labour conflict of mining workers, which had taken the form of a so-called "lunch-box-campaign", spread throughout the country.
discussed the situation in Chile in its 1974 session under the general agenda items "Question of the Violation of Human Rights and Fundamental Freedoms in all countries." On that occasion, concern was expressed, inter alia, about alleged summary executions and detention of persons who were held anonymously and in communicado, without specific charges being brought against them. Since Chile was member of the Commission at that time, its representative responded by arguing that this was an emergency situation, in which the exercise of certain rights had been temporarily suspended, that arrests were made solely for reasons of public safety and that in no case had torture been ordered. At the end of the debate, the Commission decided to send a telegram (through its Chairman) to the Chilean government pointing out its concern about the numerous reports (from a wide variety of sources) relating to the gross and massive violation of human rights in Chile in contradiction with the Universal Declaration, Human Rights Covenants (which Chile had ratified) and other human rights instruments. Consequently, the telegram was sent.

The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities also discussed the situation.

144. Ibid., paras 94-95.
145. For the text of telegram see, ibid., Chapter XIX, p.56.
in Chile, in its 1974 summer session, under a separate agenda item -- "the question of human rights of persons subjected to any form of detention or imprisonment". This agenda item had its origin in ECOSOC resolution 1503 (At its earlier session, the Sub-Commission, had discussed the confidential report of its Working Group on communications which included the question of political prisoners in Chile.). The Sub-Commission adopted a resolution on prisoners in Chile, in which an urgent appeal was made to the Government of Chile to respect the rights contained in the Universal Declaration, and the two Covenants on human rights (to which Chile was a Party), particularly those involving a threat to human life and liberty. It also requested through resolution 8 (XXVII) the Commission on Human Rights to study the reported violation of human rights involving the Specialized Agencies and the NGOs. This resolution was also endorsed by the General Assembly in its resolution 3219 (XXIX).

When the Commission met in 1975, it had before it an extensive documentation on the situation in Chile, from the ILO, UNESCO, the OAS and certain NGOs. In a discussion on

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Chilean situation, the observer, from Chile not only defended his Government against the allegations but also announced that his government would welcome an impartial fact-finding mission to Chile which could study the situation there. The Commission responded positively to that invitation and decided to establish an Ad Hoc Working Group of Five Members (who were to act in their personal capacity). It also decided to give the Group complete freedom to adopt its own methods of fact-finding. The Group's mandate was to enquire into the situation of human rights in Chile "on the basis of the visit to Chile and of oral and written evidence to be gathered from all relevant sources".

After adopting its Rules of Procedure, the Working Group started its investigation. Though the Chilean observer had promised that his government was ready to lend every assistance to UN fact-finding mission, it did not co-operate later. Just before its planned visit to Chile, on 4th July 1975, the Group was refused access. Then the Group heard 120 petitions/witnesses at Geneva, Caracas, Paris and New York. Half of them were not invited by the Group; they were heard at their own request. Most of them were Chileans, who had left Chile recently, such as religious leaders, medical practitioners, political leaders represented in the previous

148. Ibid., para. 102.
government, civil servants, army officers, university professors and students, attorneys, lawyers, artists, trade unionists and social workers. In accordance with its Rules of Procedure, the Working Group did not disclose their names and identity, as many of them feared for the safety of their relatives who were still in Chile. The Group also had before it written communications from the Governments of Chile, Bulgaria and Netherlands. 149

The initial report pointed out that the standards applied by the Group were those contained in the Universal Declaration and the two International Covenants. 150 In respect of arrest and detention, it mentioned that the standards applied, *inter alia*, were those of the Geneva Conventions relating to the Treatment of Prisoners of War and the Standard Minimum Rules for the Treatment of Prisoners. 151

With regard to the applicability of standards, it is interesting to note the remark made by one of the members of the Working Group, Felix Ermacora, in his article. Ermacora pointed out that the Group applied what it considered to be the customary law of the United Nations, even though according

149. All this is accounted in the initial progress report of the Working Group to the General Assembly (A/10285), paras 3–5.

150. Ibid., paras 106, 125, 130, 156 and 185.

151. Ibid., paras 13–25 and 130.
to strict treaty principles, the applicability of some of those norms might have been in dispute. The Covenant on Civil and Political Rights, to which Chile was a Party, had not even entered into force in 1975. Even if it had entered into force, it had its own implementation procedures. 152

The initial report's conclusions, which were more serious, were not favourable to the Government of Chile. It had documented the list of names of persons disappeared or tortured/ill-treated in detention. The Group had evidence that many of these persons were actually detained in comunicado or had been eliminated. 153

After its consideration of the Working Group's first report, the General Assembly adopted a resolution, i.e. 3448 (XXX) on 9 December 1975, in which it expressed "its profound distress at the constant flagrant violation of human rights, including the institutionalized practice of torture, cruel, inhuman or derogatory treatment or punishment, arbitrary arrest, detention and exile". It urged the Chilean government to take all necessary steps to restore and safeguard basic human rights and called it to respect the provisions of international instruments, to which Chile is a Party. It also deplored the


153. See A/10285, paras. 139, 192-93.
refusal of the Chilean authorities to allow the Working Group to visit Chile. 154

Following its initial report to the Assembly, the Working Group submitted four reports to the Commission on Human Rights, 155 which presented such an impressive body of evidence against the Chilean authorities, that no Ad Hoc bodies of the Assembly on similar situations had done so far. Compared to the reports of the Ad Hoc Working Group on South Africa, they contain much more evidence about cases of violation of human rights, while there is less emphasis on the political system as such. This is because, the Working Group on Chile had many advantages. Firstly, it was established on the invitation of Chile, and to some extent Chile co-operated with the Group and even allowed the Group to visit Chile (It also had meetings with the Group at UN Headquarters). Secondly, by the Commission's decision, which was also endorsed by the ECOSOC, the Group was given access to communications received under 1503 procedure. And finally, while co-operating with the Group, the Chilean government had even commented on certain cases of individuals that were brought to its notice by the Working Group. It even went to the extent of submitting to the Group list of

arrested persons at its own initiative. 156

Due to mounting pressure on the Chilean government, the Group was finally allowed to visit Chile in July 1978. 157 After reaching Santiago, the Group issued press statement. It received more than 300 requests from persons who wanted to be heard, but the Group could not comply to all of them. However, in its short visit (12-17 July) it met the President Pinochet, the government officials, judges, church leaders and three former Presidents. The Group held at Valparaiso a number of testimonies of relatives of missing persons. It even visited the notorious villa Grimaldi, which was said to be the torture and interrogation centre of the Chilean Security police. In its report the Group appreciated the co-operation shown by the Chilean government and stated that it had enjoyed the freedom to move around but it mentioned that the Group was refused permission to visit another alleged torture Centre Colonia Dignidad. 158

The 1978 report of the Working Group pointed out that the situation in Chile was improving and no large number of

157. See UN Doc. A/33/331, paras. 23-45.
158. Ibid., paras. 41-42.
prisoners were reported in that year. However, the report stated that arrests for political reasons continued to be received and that the Group had been informed of the names of 600 missing persons, which were not adequately investigated by the Chilean government. Therefore, the Group proposed, the establishment of an independent inquiry Commission, to go into this question, which was strongly opposed by the Chilean government. It called such a suggestion "unacceptable because foreign investigators would violate Chilean independence and sovereignty and they would obviously be in breach of the Principle of non-interference in the internal affairs of states".

Since Chilean government had opposed an independent Inquiry Commission in 1979, the Commission on Human Rights terminated the Working Group but appointed a Special Rapporteur

159. Speaking before the Commission on Human Rights, in March 1978, Felix Ermacora, a member of the Working Group, recalled that the Government of Chile had been slowly yielding to world public opinion, and as a result, unwarranted arrests, tortures, and other gross violations of human rights, had diminished in number. The "state of siege" had been replaced by the state of emergency. Cited in James Avery Joyce, World Labour Rights and their Protection (London, 1980), p.91.

160. See UN Doc. A/33/331, para. 779 (sub-para. 10,11 and 15). This suggestion was made in the light of an investigation by the Judge appointed by the Supreme Court of Chile, which had discovered 25 unidentified bodies in the mine near Lonquen. The discovery was the result of confession made to a Catholic priest.

(Mr.A. Diye of Senegal) with the same mandate as previously exercised by the Working Group and appointed two experts (Felix Ermacora and Waleed M. Sadi) to study the question of missing and disappeared persons in Chile. Since then the Special Rapporteur is functioning. His mandate is extended by the Commission annually. For instance, in 1985, the Commission decided (by resolution 47) to extend the mandate of the Rapporteur by one more year. Till now the special rapporteur has submitted six reports, which provide a glaring picture of human rights situation in Chile.

It should be noted that, besides the UN Inquiry Group, the Chilean government had also agreed, in 1974, to allow the ILO Fact-finding and Conciliation Commission on Freedom of Association to visit Chile. The reports of this Commission had concentrated merely on labour problems. It did not go into the details of the causes of events occurred on 11 September 1973, when a military junta took over the reigns of administration in Chile, by saying that it was outside its terms of reference. The reports of ILO Commission also reported in the massive violation of human rights.


164. These reports are: A/34/583 and A/34/583/Add.1 (E/CN.4/ 1363 and E/CN.4/1381); A/35/522 (E/CN.4/1428); A/36/594 (E/CN.4/ 1484); A/37/564; A/38/385 and Add.1 and A/39/631 (E/CN.4/1984/7).

165. Cited in Joyce, n.159, pp.79-81.
SUMMARY OBSERVATIONS

At the outset, it seems that many questions of the gross violation of human rights were brought to the UN forums during the early years of the Organization; since the 1960's, the number has been continually decreasing. There could be many reasons for this trend. (i) With the beginning of Cold War, during the United Nation's early period, many questions of human rights were brought to its fora. A few questions were raised by the Socialist bloc and some by the Western bloc. (ii) With the conclusion of the Second World War, the process of decolonization began. Most of the newly-independent Afro-Asian states brought a wide variety of questions, concerning violation of human rights and the right of self-determination of peoples, to be inscribed on the Assembly's agenda. India, for instance, can take the credit of being the first country to internationalize human rights matters by raising the question of racial discriminatory policies in South Africa.

Apart from these cases, the general trend, beginning in the sixties, has been of avoiding raising the issues of gross violation of human rights in a particular country. There could also be many reasons for this trend. Firstly, it can be said that as the Cold War turned out to be at low ebb, both the blocs adopted a cold approach towards human rights issues. Secondly, the newly-emerged states were concentrating more on the right of development than on individual human rights. Thirdly, there emerged gradually a consensus among member
states - not only between both the blocs but also within the Afro-Asian and the Non-aligned group - for not bringing any matters of human rights in UN fora. This could be just to discourage other nations from raising such issues in reprisal; as there is hardly any country not having skeletons in its human rights cupboards and that raising such issues would hardly serve any purpose and result in political vendetta.

Among the four cases of self-determination, studied in this chapter, two pertained to colonial system; i.e., Algeria and Angola. The bringing of these questions to the Assembly and the Security Council, and having discussion and adopting recommendations (resolutions) thereon was considered by the colonizing states — France and Portugal — as a violation of Art.2(7) of the Charter. By regarding these territories as "overseas provinces" of the metropolitan states, they asserted that the matter pertained to their domestic jurisdiction. Despite opposition from them and their Western allies, the UN bodies reaffirmed their competence to "discuss", "concern" and recommend actions on the issues. In Angolan case the Assembly had even appointed a Sub-Commission to inquire into the violation of human rights. However, it should be noted that these territories got independence not due to UN actions alone, but due to their organized freedom struggle and the changing international environment.

Bangladesh was the first successful case to achieve self-determination outside the colonial context and without
the active involvement of the United Nations. The UN response on the issue of the gross violation of human rights in East Pakistan was confined merely to the refugee problem. It was, in fact, the failure of member states that the question was not brought to the UN fora. However, it should be noted that by the mid 1960's most of the former colonies had already gained independence and it was widely accepted that the principle of self-determination was not to be applied in cases of the small section of the people (such as that of Biafra, in Nigeria, who unsuccessfully attempted to secede and claim the right of self-determination) who already constitute a part of the member state of the United Nations.

The fourth case of self-determination is the peculiar one, i.e., the Palestinians do not possess a land of their own. They are homeless. The UN efforts have so far not produced any results. Like the Namibian problem, it is one of the long-standing problems of contemporary international politics waiting for a just and lasting settlement.

Despite the universal condemnation and the adoption of innumerable UN resolutions on the policy of apartheid and other actions taken or recommended against South Africa, the situation of human rights there still remains very dark. The UN involvement/actions had little impact on the policies of South African government, except for the fact that an international public awareness against apartheid is created by the UN bodies. The UN’s active interest also helped create an awareness among South African blacks about their basic human
With regard to the complaint of an alleged violation of human rights in Bulgaria, Hungary and Romania, the UN members were divided on the question - whether the Organization is "competent" to discuss the complaint. In the Assembly, arguments for and against UN jurisdiction were advanced. As this was one of the earliest cases to come before the Organization against the countries of Eastern bloc (which was in minority in the early years of UN functioning), the issue which confronted the United Nations during this stage was whether the UN organs can "inscribe" the item on their agenda, discuss, debate and adopt recommendations on it or not. Despite strong opposition from socialist states on the ground of Art. 2(7), the Assembly not only succeeded to inscribe the item on the agenda for discussion and adopted recommendations, but also secured an advisory opinion of International Court on whether the matter of "interpretation" was within the domestic jurisdiction of Bulgaria, Hungary and Romania. Assembly's this action (despite the fact that Bulgaria, Hungary and Romania were not UN members at that time), seen in the perspective of its limited experience in dealing with such cases in the early years of its functioning and the still developing stage of the law of the United Nations, is a great achievement.

Much earlier than the above case had come the Chilean complaint against the Soviet Union regarding withholding of permission to Soviet female citizens to join their foreign husbands. The Assembly had already overruled objections challenging UN jurisdiction on the ground of Art. 2(7) and had
discussed and recommended actions on the issue. Similarly, in the late 1950's another question came against a socialist states i.e. the Peoples Republic of China for destroying the political and cultural rights of the Tibetians. Though the status of Tibet was not clear in international law, the United Nations discussed the question of human rights in Tibet and the Assembly resolutions had even referred to the right of self-determination of Tibetan people. The domestic jurisdiction plea raised by Socialist states could not prevent UN debate/ actions on the question.

Two inferences emerge from the study of South Vietnam case. Firstly, the sending of a fact-finding Mission to South Vietnam by the Assembly represents an important event in UN history, as it established a new precedent in the field of international protection of human rights. It was for the first time that an international Mission was sent to the territory of a sovereign state, not even a member of the United Nations, in order to investigate allegations concerning violations of human rights. Of course, the Mission visited South Vietnam, at the invitation of that Government, in accordance with the principle of consent in international law. Secondly, the report of the Mission was most objective in its findings. It merely restates the evidence found, gives the verbatim records of the hearings of witnesses but does not interpret these facts. The Mission never forgot that it was a fact-finding body; and the interpretation of facts, as found, was the job
of the General Assembly. One writer comments that its objectivity makes the Mission a model for any investigatory body that may be set up in future with the consent of the government concerned under ECOSCC resolution 1503. He also thinks that the Assembly's discussion of the report could have clarified an important point raised by the Mission, namely what standards be applied to the facts as they were found. The Mission itself had suggested the application of the UN Charter, the Universal Declaration and certain Assembly resolutions. The applicability of these criteria is doubtful under international law specially to a non-member of the United Nations. 165

As regards the study of Chilean situation, three observations can be made. First, the decision of the Chilean government to welcome a fact-finding mission to study the human rights situation there was the most significant one. It seems Chile, in the initial stage, did not regard UN investigation team as a violation of Art. 2(7); but later strongly opposed (in 1978) the proposal of the Working Group to establish an independent inquiry commission to go into the question of missing persons. This objection was based on Art. 2(7).

Second, the inquiry into the Chilean situation of human rights by Special Working Group is an important development in UN practice, because this is an investigation which is not aimed at a colonial situation of South Africa or Namibian type. This sets up an important precedent for investigating human rights situation in a member state. It was the second time in UN history that an investigating mission conducted

an on-the-spot inquiry (the earlier case being that of South Vietnam).

Finally, the publicity given to the reports of the Working Group and to its activities had undoubtedly a major impact on the Chilean government. The government was quite worried about its image abroad. Therefore, it not only continued to defend its policy in the Commission on Human Rights and the General Assembly and co-operated with the Working Group, but finally allowed the Group to visit Chile. Consequently, in its 1978 report, the Group reported that the situation in Chile was improving. Thus, it can be said that the external/UN body can bring a domestic change, however, little it is. This shows that the concept of domestic jurisdiction is slowly being eroded.

In the light of the analyses of various case-studies of the gross violation of human rights, some concluding remarks can be made.

The most striking development that is taking place in international law and organization is that the concept of "international concern" with human rights is continually expanding itself; as a result, the concept of domestic jurisdiction is naturally, logically and obviously being eroded. In the pre-UN period, how a state treated its own nationals was long regarded as an internal affair of the state concerned, beyond the reach of international law and organization. The very essence of the contemporary UN efforts to lay down the norms of human rights and to institute a machinery for their
implementation, however, is to shatter this traditional notion. The expansion of UN concern in the field of human rights is evident in UN practice and also from the case studies of human rights violations. In performing such functions as the gathering, processing and dissemination of information on human rights, it appears that Art.2(7) did not bar inscription on the agenda of the Assembly and debate on any question of human rights having an international impact, even if there was no consensus over the degree to which the UN bodies did, or should, regulate the matter. Elaborating further, it can be said that all those cases of human rights which were brought to the UN forums were not affected much by a limitation imposed by Art.2(7). In all those cases, the contentions advanced in favour of domestic jurisdiction were in effect, rejected by the Assembly and its competence to concern with such violations was upheld giving way for discussions and recommendations. Similarly, the other UN organs have ignored the plea of domestic jurisdiction in numerous cases relating to self-determination and treated some of the cases as causing threats to international peace and security.

The fact that very few cases of the violation of economic, social and cultural rights came to the United Nations leads to an inescapable conclusion that member states give second priority to the observance of economic, social and cultural rights (in comparison to the civil and political rights) of the individuals. However, they are much concerned and worried to claim the economic rights and duties of the "States" (and not of the individuals residing within them).
One of the realities in the present day world is that human rights are not only violated occasionally or sporadically, but in many countries systematically, intentionally and continuously. The most important reason why these incidents go unnoticed or uncontrolled and are not corrected by the international community is that majority of the member states are not willing to accept UN jurisdiction in the field of human rights, and submit their complaints to UN procedures for settlement. It can be said that the general inability to deal with severe violations of human rights is one of the principal weaknesses of the prevailing system of world order. The prevailing world order has a high tolerance for severe violations of human rights, especially if the harmful effects are confined within the territorial limits.