Chapter-V

HUMAN RIGHTS ENFORCEMENT MACHINERY
UNDER INTERNATIONAL HUMAN RIGHTS LAW

5.1. Introduction

There cannot be an International Protection of Human Rights unless there is strong and effective machinery for its implementation. Implementation is the key to make the system of International protection of Human Rights effective\(^1\). But the protection of Human Rights in international level is a difficult problem because of a variety of reasons. Firstly, the International Court of Justice is open to states only\(^2\). It implies that individuals have no access to the court. Thus it has always refused to entertain the petitions and requests which have often been addressed to it by individuals. Secondly, the jurisdiction of the International Court of Justice depends upon the consent of the states involved and this has been done by a few states to disputes involving Human Rights. Thirdly, even if the International court in a few cases is able to render judgements against the State, which violates Human Rights, there is no International Police to enforce the decisions of the court. No doubt, the Security Council has been empowered to enforce the decisions of the court against a party in a case which has failed to perform the obligations under the judgement of the court, if the matter is brought before it by the aggrieved party\(^3\). But it is regarded as a political body and its recommendations are sometimes motivated by political considerations. If the barrier of veto is not crossed, the Council becomes incompetent to take any decision against the state which has failed to comply with the decision of the court. Fourthly, although the International law of Human Rights, many states still regard that enforcement of Human Rights is an interventionist act. Consequently the implementation of International Human Rights law, depends largely on voluntary compliance by the states. Security Council, of course can take collective action


\(^{2}\) Statute of the International Court of Justice under Para 1 of Article 34 lays down that “only states may be parties in cases before the court”.

\(^{3}\) Article 94, Para 2 of the charter of the United Nations.
against a state if it decides that violations of Human Rights by a state is likely to endanger International peace and security.

The above limitations on the implementation of Human Rights at International level makes it clear that the most effective way to implement Human Rights vests within the legal systems of the different states. Domestic law of a state is required to provide an effective system of remedies for violations of International Human Rights obligations. International Human Rights law has not become that strong so as to enforce and implement Human Rights violations committed by a state. However, a variety of International bodies have been monitoring and dealing with the cases of violations of Human Rights. A number of committees, working groups and special rapporteurs have been setup to monitor the violations of Human Rights. Monitoring Mechanism may broadly be divided into three categories which are as follows:

(a) **Human Rights Enforcement Machinery under the UN Charter:**

These machinery are directly created under the mandate of United Nations Charter such as General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice and the Secretariat and other U.N. Bodies Primarily concerned with the Human Rights which were established by the United Nations organs for the better enforcement of Human Rights and fundamental freedoms.

(b) **Human Rights Enforcement Machinery under the various Human Rights Treaties**

There are various Human Rights treaties which have setup committees to perform the task of monitoring State parties compliance with their obligations which are as follows:
1. The Human Rights Committee (HRC) established under the International Covenant on Civil and Political Rights (ICCPR)

2. The Committee on Economic, Social and Cultural Rights (CESCR)

3. The Committee on Elimination of Discrimination Against Women (CEDAW) established under the Convention on the Elimination of all forms of Discrimination against Women

4. The Committee Against Torture (CAT), established under the Convention Against Torture and other Cruel, inhuman or degrading treatment or punishment.

5. The Committee on the Rights of the Child (CRC) established under the convention on the Rights of the Child.

6. The Committee on the Elimination of Racial Discrimination (CERD) established under the convention on the Elimination of All forms of Racial Discrimination.

7. The Committee on the Protection of all Migrant Workers and Members of their Families (CMW) established under the convention on the protection of All Migrant Workers and members of their Families.

8. The Committee on the Rights of Persons with Disabilities established under the convention on the Rights of persons with Disabilities.

(c) Regional Human Rights Enforcement Machinery

At the regional level, Human Rights protection systems developed independent of the United Nations system. They are as follows.

1. The European Human Rights System

2. The Inter-American Human Rights System

3. The African Human Rights System

4. The Arab Commission on Human Rights
5.2 Human Rights Enforcement machinery under the U.N. Charter

The Provisions of the U.N. Charter empowered the organs of the United Nations to adopt measures and create machinery for realising its objectives including those relating to Human Rights and fundamental freedoms. The charter makes provisions enabling different organs of United Nations to do so.

5.2.1 General Assembly

The General Assembly was established in 1945 under the charter of the United Nations. It is one of the six principal organs of the U.N and the only one in which all member Nations has equal representation. Each member of the General Assembly shall have one vote. The General Assembly shall consist of all the members of the United Nations.

Primary functions

The General Assembly is essentially a deliberative, supervisory and reviewing organ of the United Nations. Article 10 of the U.N. Charter gives the General Assembly two primary functions. It authorizes the Assembly to discuss any question or any matter within the scope of the present charter except provided in Article 12 and may make recommendations to the members of the United Nations or to the Security Council or to both on such questions or matters. This is the basis claim to be the pre-eminent global deliberative body. It also authorizes the Assembly to discuss and make recommendations regarding the powers and functions of any organs provided for in the present charter. Article 10 is thus the basis of the Assembly’s place as the centre of the whole U.N. System.

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4 Article 7 of the U.N Charter
5 Article 18 of the U.N. Charter
6 Article 9 of the U.N. Charter
One of the main committees of the General Assembly is Social, Humanitarian and Cultural Committee (Third Committee); normally matters relating to Human Rights are referred to third committee. An important part of the committee’s work focuses on the examination of Human Rights questions including reports of the special procedures of the newly established Human Rights Council. The Committee also discusses the advancement of women, the protection of children, indigenous issues, the treatment of refugees, the promotion of fundamental freedoms through the elimination of racism and racial discrimination and the promotion of the right to self determination. The committee also addresses important social development questions such as issues related to youth, family, ageing, persons with disabilities, crime prevention, criminal justice and drug control. At the sixty-third session (2008) of the General Assembly, the third committee considered 67 draft resolutions, more than half of which were submitted under the Human Rights agenda item alone. These included a number of so called country-specific resolutions on Human Rights situations.

Under Article 13 (1) (b) of the charter, the General Assembly has two principal obligations in matters of Human Rights (1) to initiate studies and to make recommendations for the purpose of assisting in the realisation of Human Rights and fundamental freedoms for all without distinction as to the race, sex, language or religion; and (2) promoting International co-operation in the economic, social, cultural, educational and health fields.

The recommendations which the General Assembly makes on matters of Human Rights are technically not legally binding on states. However in evaluating the authority of recommendations of the Assembly one has to bear in mind that in Article 55 and 56 of the charter, all members have pledged themselves to take joint and separate action in co-operation with the organization to promote universal respect for and observance of Human Rights and fundamental freedoms.

An Original contribution of the UN General Assembly has been the proclamation of solemn, standard setting declaration in matters of Human Rights adopted by Assembly
resolution and not given the form of an International treaty. These include the Universal Declaration of Human Rights of 1948 and a variety of others. The General Assembly may establish such subsidiary organs, as it deems necessary for the performance of its functions. Among the organs so established are several which are concerned with Human Rights issues such as decolonization, Apartheid and assistance to vulnerable groups of people. Through such bodies, the Assembly’s work proceeds continuously throughout the year. These bodies may be discussed as follows.

5.2.1(a) The International Law Commission

It was established by General Assembly resolution 174 (II) 174 of 21st November 1947 has for its object the promotion of the progressive development of International law and its codification. Over the years, the commission has participated actively in the preparation of a number of International instruments in the field of Human Rights including the convention of the prevention and punishment of the crime of Genocide, the statute of the office of the United Nations High Commissioner for Refugees, the convention relating to the status of Refugees, the convention relating to the status of stateless persons, the convention on the reduction of statelessness, the protocol relating to status of Refugees and the Declaration on territorial asylum.

The members of the commission sit in their personal capacity and not as representatives of their Governments. It may happen that General Assembly invited the Commission to deal with particular legal problems. This was the case when the Assembly, in its resolution 36/106 of 10th December, 1981, invited the commission to resume its work with a view to elaborating the draft code of offences against the peace and security of mankind, the full text of which had been submitted by commission to the Assembly in 1954. The Commission submitted reports to the Assembly in 1950 on the formulation of Nuremberg principles in 1951, on the question of defining “aggression” in 1951 and 1954, on the draft code of offence against peace and security of mankind.
5.2.1 (b) The Special committee on Decolonization

It was established by the General Assembly in its resolution 1654 (XVI) of 27th November, 1961 with the purpose of monitoring implementation of the Declaration on the Granting of independence to colonial countries and peoples. The basic function of the declaration, states that all peoples have a right to self – determination.

It reviews the political, economic, and social situations in each of the remaining non – self – governing territories on the United Nations list. Each year the secretariat prepares for the committee working papers on the developments in these territories. During its annual sessions the committee hears petitions from the territories, who speak about the concerns and aspirations of their people. The Committee also holds annual seminars in the pacific or in the Caribbean regions in order to understand better the conditions in the remaining Non-Self-Governing Territories and to make it easier for their representatives to communicate with the committee and with each other. Taking into account all the available information the special committee recommends and the General Assembly adopts resolutions aimed at protecting the interests of peoples of Non-Self - Governing territories. The principles of the charter of the United Nations, together with the provisions of the Declaration on the Granting of independence to colonial countries and peoples, continue to guide the International community towards a better world where the fundamental rights and freedoms of nations big and small equally respected7.

5.2.1 (c) The Special Committee Against Apartheid

In its resolution 1761 (XVII) of 6th November, 1962 the General Assembly established the special committee on the policies of Apartheid of the Government of Republic of South Africa with the mandate “to keep the racial policies of the Government of South Africa under review when the Assembly is not in session” and “to report either to the Assembly or to the Security Council or to both as may be appropriate, from time to time”.

7 The official website of The special committee on Decolonization http://www.un.org/ga/committees
5.2.1(d) United Nations Council for Namibia

The United Nations Council for south West Africa was established by the General Assembly resolution 2248 (S-V) of 19 May, 1967. When the name of south West Africa was changed to Namibia by the General Assembly through its resolution 2372 (XXII) of 12th June, 1968, this Council was renamed as the United Nations Council for Namibia. The purpose of its establishment was administration of Namibia until the achievement of its independence. Along with the Council, a United Nations commissioner was also appointed by the General Assembly to look after such executive and administrative task as were entrusted to it by the Council.

The United Nations Council for Namibia was made responsible to bring about the implementation of United Nations resolutions on Namibia, to represent Namibia in International organisations and conferences, to provide material assistance to Namibians and to disseminate information. The General Assembly reiterated in its resolutions “that Namibia was the direct responsibility of the United Nations until genuine self – determination and national independence were achieved in the territory and for the reason, confirmed the mandate given to the United Nations Council for Namibia as the Legal Administering Authority for Namibia until that time”. However, Namibia proclaimed independence on 21 March, 1990. Since then the United Nations Council for Namibia ceased to exist.8

5.2.1 (e) Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories.

It was established by United Nations General Assembly Resolution 2443 (XXIII) of 19th December 1968 in order to monitor respect for and implementation of Human Rights in occupied Territories. The Special committee reports to the General Assembly

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8 The elections for the Namibia’s constituent Assembly were held in November 1989 under United Nations supervision. The constitution of Namibia was ratified by the Assembly on 9 February, 1990.
on matters related to Israeli settlements, the applicability of the fourth Geneva Convention and the Palestinian right of return. The Committee comprises representatives of three member states appointed by the present General Assembly⁹.

5.2.1 (f) Committee on the Exercise of the Inalienable Rights of The Palestinian People

This committee was established in 1975 by resolution 3376 of the United Nations General Assembly. The committee oversee the programme of implementation to enable the Palestinian people to exercise their inalienable right to self determination without external interference, national independence and sovereignty and to return to their homes and property. The Committee reports to the Assembly annually. As the mandate for the committee expanded, the UN established the division for Palestinian Rights as its secretariat. The Bureau consists of the Chairman of the committee, two Vice Chairmen and the Rapporteur.

5.2.1 (g) The United Nations High commissioner for Refugees (UN HCR)

The Office of the UNHCR was established on January 1951 by the General Assembly¹⁰. It is an important organ of the United Nations set up to solve the problems of refugees, displaced persons, stateless persons and returnees, in accordance with the provisions of the charter and the provisions of Article 14 of the Universal Declaration of Human Rights. The High commissioner is elected by the General Assembly¹¹ on the nomination of the secretary General and is responsible to the Assembly.

The work of UNHCR is humanitarian, Social and non-political. Its basic tasks are to provide International protection to the refugees within the High commissioners mandate and to seek permanent solutions to their problems by facilitating their voluntary

⁹ http://www.un.org/ga/committees
¹⁰ General Assembly resolution 428 (V) Dated December 14, 1950
¹¹ Antonio Mancela de oliveira guterrs of Portugal was appointed the High commissioner of the office of the UNHCR for a five year term, beginning from January 15, 2005
repatriation or their assimilation within new national communities. The UNHCR initially focused its efforts on aiding refugees and displaced persons in Europe after World War II, but in later decades the effort was shifted to resettling refugees who were victims of war, political turmoil or natural disasters in Africa and parts of Asia and Latin America. UNHCR has been an active office for the cause of refugees. Many states in many parts of the world are under considerable pressure from the public and private groups to treat refugees in accordance with Human Rights norms.

5.2.1 (h) The U.N. High Commissioner for Human Rights (OHCHR)

In a landmark decision on 20th December, 1993, the General Assembly created the position of U.N. High commissioner for Human Rights by passing a resolution. It can be reckoned as a turning point in UN action in the Human Rights. The High Commissioner will be appointed by the Secretary–General for a four year term subject to the approval by the General Assembly. The High Commissioner will report, annually to the Commission on Human Rights and through the Economic and Social Council to the General Assembly with a branch office in New York. The High commissioners principal location will be in Geneva. Under the direction and authority of the secretary General of the U.N, the High commissioner will “promote and protect the effective enjoyment by all the civil, cultural, economic, political and social Rights” and will play an important role in removing the current obstacles and in meeting the challenges to the full realization of all Human Rights and will prevent violations throughout the world.

The Office of the High Commissioner for Human Rights works to offer the best expertise and support to the different Human Rights monitoring mechanisms in the United Nations system such as U.N. Charter based bodies including the Human Rights Council and bodies created under the International Human Rights treaties and made up of independent experts mandated to monitor State parties in compliance with their treaty obligations. Most of these bodies receive secretariat support from the Human Rights Council and treaties Division of the office of the High commissioner for Human Rights.

12 General Assembly resolution 48/141 of December 20, 1993.
The Office of the United Nations High commissioner for Human Rights represents the world commitment to universal ideals of human dignity.

The United Nations High Commissioner for Human Rights, in 1994 established a Human Rights Hotline, a 24 hour facsimile line that will allow the office of the High Commissioner for Human Rights in Geneva to monitor and react rapidly to Human Rights emergencies. The Hot line is available to victims of Human Rights violations, their relatives and Non-Governmental Organisations. The Hot line is valuable to those wishing to establish urgent, potentially life saving contact with the special procedures branch of the office of the High Commissioner for Human Rights.

The priorities of the office are set out in two key strategic documents. The OHCHR plan of action and its strategic management plan 2010-2011. These priorities include greater country engagement, working closely with our partners at the country and local levels, in order to ensure that International Human Rights standards are implemented on the ground, a stronger leadership role for the High Commissioner and closer partnership’s with civil society and United Nations agencies.

5.2.1 (i) The Universal Periodic Review (UPR)

The UPR was created through the U.N. General Assembly on 15th March 2006 by resolution 60/251, which established the Human Rights Council itself. It is a cooperative process which by 2011, will have reviewed the Human Rights records of every country. Currently no other universal mechanism of this kind exists. The UPR is one of the key elements of the new Council which reminds states of their responsibility to fully respect and implement all Human Rights and Fundamental freedoms. The ultimate aim of this new mechanism is to improve the Human Rights situations in all countries and address Human Rights violations wherever they occur.  

The Universal Periodic Review has great potential to promote and protect Human Rights in the darkest corners of the world. The U.P.R is a unique body which involves a review of the Human Rights records of all 192 U.N member states once every four years. It is a state – driven process under the auspices of the Human Rights Council, which provides the opportunity for each state to declare what actions they have taken to improve the Human Rights situations in their countries and to fulfil their Human Rights obligations. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their Human Rights situations are assessed\textsuperscript{14}.

\textbf{5.2.1 (j) The United Nations Children’s Fund [UNICEF]}

It was created by the United Nations General Assembly on December 11, 1946 to provide emergency Food and health care to children in countries that had been devastated by the world war-II. In 1953, UNICEF became a permanent part of the United Nations system and its name was shortened from the original United Nations International children Emergency fund but it has continued to be known by the popular acronym based on this old name, Head quartered in New York City. UNICEF provides long term Humanitarian and developmental assistance to children and mothers in developing countries.

The General Assembly has performed important functions in the social, economic and cultural fields and in the fields of Human Rights. Besides this, uniting for peace resolution, 1950 conferred upon the Assembly important powers relating to the maintenance of International peace and Security\textsuperscript{15}.

\textsuperscript{14}http://www.un.org/ga

\textsuperscript{15} The Objective of the resolution was to improve the machinery of the United Nations for preserving peace. Josef L. Kunz has also pointed out “It was an attempt to transfer the sanctioning competence from the Security Council to General Assembly in order to evade veto and to revise the task of the United Nations to maintain and restore International peace and Security.
5.2.2. Security Council

Security Council is one of the principal organs of the United Nations. It is primarily concerned with maintenance of International peace and security. But it also deals with the Human Right problems. Security Council comprises of 15 members out of which 5 permanent and 10 are non-permanent members. China, Russia, America, France and Britain are the permanent members. Non permanent members are elected by the General Assembly for a term of 2 years. Each member state is entitled to send one representative in the Council.

Chapter VII of the U.N. Charter specifies the action to be taken with respect to threats to the peace, breaches of the peace or acts of aggression. Article 39 of the U.N. Charter provides “The Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations or decide what members shall be taken in accordance with Article s 41 and 42, to maintain or restore International peace and security.

In discharging its duties, the Security Council is required under Articles 24 to act in accordance with the purpose and principles of the United Nations. One of these purposes as set out in Article I paragraph 3 is “To achieve International co-operation in solving International problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respects for Human Rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”

It is provided under Article 34 of the U.N. Charter that the Security Council may investigate any dispute or any situation which might lead to International friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of International peace and security.

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16 Article 7 of the United Nations Charter
17 Article 24 of the U.N. Charter
18 Article 23 of the U.N. Charter
As history attests, many International disputes are precipitated by violations of Human Rights and thus non observance of Human Rights may constitute a threat to International Peace and Security. Support for this can be drawn not only from history but also from the United Nations Charter. Indeed in terms of the charter, Article 1 (2) the purpose of developing friendly relations between nations is firmly based on mutual respect for the principle of equality and is second only to the maintenance of International peace and security in the stated purposes of the organization. Where Human Rights are contributing to friction between states the Security Council may take action to restore the peace under the terms of the charter. This is the most obvious situation in which the Security Council will involve itself in Human Rights.

The Security Council, when dealing with disputes or situations likely to endanger the maintenance of International peace and Security and when taking action under chapter VII of the U.N. Charter has repeatedly made pronouncements for the Promotion and protection of Human Rights.

5.2.3. The Economic and Social Council [ECOSOC]

The Economic and Social Council is under the authority of the General Assembly. It is the principal organ of the United Nations. Its primary concern lies with the promotion of economic and social progress, better standards of human welfare and observance of Human Rights and fundamental freedoms. In fact it has very wide term of reference which includes:

1. It may make or initiate studies and reports with respect to International, Social, Economic, Cultural, Educational, health and related matters and may make recommendations with respect to any such matters to the General Assembly, to the members of the United Nations and to the specialized agencies concerned.

19 Article 7 of the U.N. Charter
20 Article 62 (1) of the U.N. Charter
2. It may make recommendations for the purpose of promoting respect for, and observance of, Human Rights and fundamental freedoms for all.\textsuperscript{21}

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence\textsuperscript{22}.

4. It may also call, in accordance with the rules prescribed by the United Nations, International conferences on matters falling within its competence\textsuperscript{23}.

5. It may also co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the members of the United Nations\textsuperscript{24}. However as a matter of practice, the Council has addressed its recommendations to non-member states, to subsidiary bodies of the General Assembly, to International Conferences, to Inter-Governmental and Non-Governmental Organizations, to people and to individuals in addition to the General Assembly and Specialized Agencies.

6. The Council may also furnish information to the Security Council and shall assist the Security Council upon its request\textsuperscript{25}.

7. Article 68 of the U.N. Charter requires the Council to setup commissions in the economic and social fields and for the promotion of Human Rights.

The Council meets during two ordinary sessions per year. In addition an organizational session is held early in the year and some times resumed are held prior to or even during the General Assembly. The Council would therefore appear to hold considerable potential as an organ for responding urgently to situations of violations. The annual Human Rights agenda might even be more rational and effective if Human Rights questions which are now considered at the second regular session.

\textsuperscript{21} Article 62(2) of the U.N. Charter
\textsuperscript{22} Article 62(3) of the U.N Charter
\textsuperscript{23} Article 62(4) of the U.N. Charter
\textsuperscript{24} Article 63(2) of the U.N Charter
\textsuperscript{25} Article 65 of the U.N. Charter
5.2.3.1. Subsidiary organs of Economic and Social Council relations to Human Rights

As a general rule ECOSOC does its substantive work through subsidiary organs and on the basis of reports submitted to it by these organs. In the Human Rights field three commissions have been established by the Economic and Social in accordance with mandate under Article 68 of U.N. Character, such as

a) U.N. Commission on Human Rights (until 2006)/ Human Rights Council (since 2006).
b) The Commission on the Status of Women.
c) The Commission on Crime Prevention and Criminal Justice

5.2.3.1(a) U.N. Commission on Human Rights (until 2006)/Human Rights Council (since 2006)

The Commission on Human Rights was established by the Economic and Social Council on 16th, February 194626. This commission was the nearest approach to permanent machinery for the supervision of the problem of protection of Human Rights27. The commission as determined by its terms of reference was directed to prepare recommendations and reports on the following items28:

I) An International Bill of Rights;
II) International Declarations or conventions on Civil Liberties, the status of women, freedom of information and similar matters;
III) The protection of minorities;

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26 The establishment of a commission on Human Rights was recommended in 1945 by the preparatory commission of the United Nations in order to deal with those Human Rights issues which could not be resolved during the original drafting of the U.N. Charter
28 The ECOSOC Resolution 9 (II) of 21 June 1946
IV) The prevention of discrimination on the basis of race, sex, Language or religion;

V) Any other matter concerning Human Rights; and

VI) To assist the Economic and Social Council in co-ordinating the activities concerning Human Rights.  

The commission’s terms of reference were extensive under them it could deal with any matter concerning Human Rights. The commission made studies and recommendations either on its own initiative or at the request of General Assembly or by the Economic and Social Council. The members of the commission were elected for a three year’s term and meet annually for a period of five or six weeks. All the decisions of the commission are made by a majority of the members present and voting. The commission submits a report on each session to the Economic and Social Council. Originally the commission consisted of 18 members. The membership was increased to 21 in 1962 and 32 in 1966. Subsequently, the membership was further increased to 43 and then finally to 53.

In order to assist in its work, the commission has established a number of subsidiary bodies, such as the sub-commission on prevention of discrimination and protection of minorities or the sub-commission on the promotion and protection of Human Rights. The Adhoc committee on periodic reports, the Adhoc working Group of Experts on Human Rights in Southern Africa and other working Groups charged with particular tasks. The sub-commission on the promotion and protection of Human Rights is the main subsidiary organ of the commission on Human Rights. This sub-commission initiated work in the field of prevention of discrimination and protection is guaranteed to the racial, national, religious, and linguistic minorities. It performs any other functions

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30 The name of the sub-commission on prevention of discrimination and protection of minorities has been changed to sub-commission on the promotion and protection of Human Rights by a decision of the Economic and Social Council taken on July 27, 1999.
entrusted to it by the Economic and Social Council or the commission on Human Rights\textsuperscript{31}.

The commission as per its reference, makes studies prepares recommendations and drafts International instruments concerning Human Rights. It also undertakes special tasks assigned to it by the General Assembly on the Economic and Social Council, including the investigation of allegations concerning violations of Human Rights and the handling of communications relating to such violations. It also cooperates closely with all other United Nations bodies having competence in the field of Human Rights. This U.N. commission on Human Rights receives a large number of complaints. The Economic and social Council on May 27, 1970 adopted a procedure to allow the commission to deal with communications from individuals alleging violations of Human Rights and fundamental freedoms. The procedure commonly called the 1503 procedure enables the commission to examine complaints concerning situations which appear to reveal a consistent pattern of gross and reliable attested violation of Human Rights\textsuperscript{32}. The complaint may be made by individuals and Non-Governmental organizations,\textsuperscript{33} either to the office of the U.N. High commissioner for Human Rights in Geneva or to the United Nations. The commission after the receipt of the communication sends it to the government concerned and summarizes it in a monthly confidential list. The Government is given 12 months time to reply. The commission considers the situations in closed session. When a large number of individual cases from a particular country seem to show a wide spread pattern of abuse. The Commission may decide to examine the situation in that country.

The U.N. Commission on Human Rights has played an active role in investigating alleged violation of Human Rights. The Principal functions performed by the commission had been the preparation of the texts of the Universal Declaration of Human Rights, the

\textsuperscript{31}The Sub-committee on prevention of discrimination and protection of Minorities was established by the commission on Human Rights at its first session held from January 27\textsuperscript{th} to 10\textsuperscript{th} February, 1947.
\textsuperscript{32}The Economic and Social Council resolutions 728 F(XXVIII), 1235 (XLII) and 1503 (XLVIII)
\textsuperscript{33}Certain conditions must be met for a complaint to be considered. It should be submitted within a reasonable time following the exhaustion of available national remedies; an effort should be made not to duplicate complaints already considered by the procedure; the complaint should not contain abusive language and should not be politically motivated or run counter to the principles of the United Nations.
convention on the political rights of women, drafts, covenants on Human Rights Supplementing the universal declaration. The Commission has set up an elaborate machinery and procedures, country oriented or thematic to monitor compliance by states with International Human Rights law and to investigate alleged violations of Human Rights. It is done mainly by dispatching fact-funding missions to countries in all parts of the world whether they are rich or poor developing or developed countries. It has been pointed out by Thomas Buergenthal and Dinah Shelton that although the commission can be selective in its approach and its meetings often highly charged politically, it has contributed to developing new techniques to address Human Rights violation. It has also been a major forum for revealing Human Rights abuses and “mobilizing same” to bring about redress.  

The U.N commission on Human Rights was often criticized for its system of election. It was not elected by all the members of the General Assembly. The General Assembly decided to replace U.N. Human Rights commission by Human Rights Council vide its resolution 60/251 of 15th March 2006. Accordingly the commission concluded the sixty-second (last session) on March 26, 2006 after 60 years of work for the promotion and protection of Human Rights.

**Human Rights Council (since 2006)**

As noted above in its resolution 60/251 of 15 March, 2006 The General Assembly in its 60th plenary session decided to replace the U.N. Commission on Human Rights by Human Rights Council, aiming to strengthen the world body’s machinery to promote and protect Human Rights and fundamental freedoms. Accordingly the new Human Rights Council came into existence with the main purpose of addressing situations of Human Rights violations and make recommendations on them. The Human Rights Council based in Geneva and it is the subsidiary organ of the General Assembly.

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34 Thomas Buergenthal and Dinah Shelton, protecting Human Rights in the Americas, cases & Materials 1995 P.22
35 The Council was established by vote of 170 in favour to 4 against with 3 abstentions, while Israel, Manshall, Islands, Palau and United States voted against the resolution, Balarus, Iran and Venezuela abstained from voting
In electing the Council’s first members, the 191 member Assembly followed a procedure that significantly differed from that of the often – criticized U.N. Commission on Human Rights which was abolished on March 26, 2006.

In accordance with the General Assembly mandate\textsuperscript{36} 13 of the 47 seats on the Human Rights Council would belong to the African group, 13 seats to the Asian group, 6 seats to the Eastern European group, 8 seats to the Latin American and Caribbean group, and 7 seats to the western European and other state groups. The establishment of the Human Rights Council in the place of criticized commission on Human Rights implies a deep responsibility towards all persons, organizations and government that expect to be a guarantee for a major enforcement of Human Rights around the world. This new Human Rights Council will be permanent and directly subsidiary to the General Assembly, which will enable it to deeply analyze Human Rights violations in any and all countries. The H.R.C’s work shall be guided by the principles of university, impartiality, objectivity non-selectivity and International dialogue and co-operation\textsuperscript{37} and it shall have to report in time to all bodies and agencies like Security Council may prevent or stop gross and systematic violations of Human Rights.

**Role and Functions of the Human Rights Council**

The Human Rights Council would be a subsidiary body of the General Assembly. This would make it directly accountable to the full membership of the United Nations. During its term of Membership, the General Assembly would have the right to suspend the rights and privileges of any Council member that it decides has persistently committed gross and systematic violations of Human Rights.

The HRC will hold no fewer than three sessions per year including a main session and for a total period of not less than two weeks. The commission met in one annual six-week session and to hold special sessions when necessary through a request by a member

\textsuperscript{36} The General Assembly resolution 60/251, March 15, 2006
\textsuperscript{37} General Assembly n.20, Article 4
of the Council with the support of 1/3 of the membership of the Council. By the terms of Resolution 60/251, the members of the Human Rights Council were to be elected directly and individually by secret ballot by the majority of the Assembly’s members. With the membership of 192 member states 97 votes constituted the majority in the Assembly. As per the mandate of Resolution 60/251 when electing members of the Council, member states were to take into account the contribution of the candidates to the promotion and protection of Human Rights and their voluntary pledges and commitments made thereto.

The Human Rights Council shall consist of 47 members. According to the Resolution 60/251 membership in the Council shall be open to all member states of the United Nations. The HRC members will serve for a three-year period and will not be eligible for immediate re-election after two consecutive terms. The members are elected on the basis of equitable geographical distribution.

The challenges for the elected members, as pioneers should include the adoption of a new agenda and working methods that would reflect the importance of the realization of the right to development as well as moral Human Rights issues, such as the eradication of poverty and under development. The newly elected members should also formulate the structures to ensure a strong Council that would be transparent and non-selective, thus avoiding the pitfalls of the much criticized commission on Human Rights. Notwithstanding that criticism, the group expected the Council, to take note of the positive elements, particularly in the field of norm development and standard setting.

The Council members should also support reforms of the Human Rights Machinery aimed at creating a strong efficient and less politicised organisation that would respond promptly in cases of Human Rights abuses in any part of the world. They should demonstrate the leadership in co-operating with the Council, abiding by the provisions of the resolution which called for a periodic review mechanism. The group

38 General Assembly resolution 60/251 of 15 March 2006 Article 8, the membership in the new Council is based on equitable geographical distribution and seats shall be distributed as follows among regional groups: African group 13; Asian Group 13; Eastern European Group 6; Latin American and Caribbean Group, 8; and western European and others Group 7.
was convinced that the Council would not be a “case of old wine in a new bottle”, but would fulfil the aspirations of the International community. The African group pledged to do its part to fulfil the objectives of the new Council in promoting and protecting Human Rights and ensuring that the body advanced the founding principles as enshrined in the Universal Declaration of Human Rights, 1948.

The members elected to the HRC shall uphold the highest standards in the promotion and protection of Human Rights, fully cooperate with the Council and be reviewed under the Universal Periodic Review Mechanism during their term of membership. It also envisages ‘A Universal Periodic Review’ based on objective and reliable information of the fulfilment by each state of its Human Rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all states”.

The new Human Rights Council is the best available option for making the United Nations as an effective Human Rights defender. According to U.N Secretary General, Kofi Annan, ‘The Council represents a great new chance for the U.N and for humanity to renew the struggle for Human Rights’39. The Council, like the previous commission maintains a system of special procedures that includes country and thematic mandates. Country mandates which last for one year and can be renewed, allow for special rapporteurs to examine and advice on Human Rights Situations in specific countries. Thematic mandates which last for three years and can also be renewed allow special rapporteurs to analyze major Human Rights phenomena globally. Similar to the commission, the special Rapporteurs serve in an independent, personal capacity and conduct in depth research and sight visits pertaining to their issue area or country. They can be nominated by U.N. member states, Regional Groups within the U.N. Human Rights system, International organisations, NGOs or individuals. A newly established “Consultative Group” nominates rapporteurs for country and thematic mandates. Based

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39 This statement was made by Kofi Annan on 19th June, 2006 in his address to the first session of the Human Rights Council
on the consultative groups input, to the Council president submits a list of candidates to the Council members, who then consider each appointment.\(^\text{40}\)

The Human Rights Council maintains a complaint procedure that allows individuals and groups to report Human Rights abuses in a confidential setting. The goal of the procedure is to objectively and efficiently facilitate dialogue and co-operation among the accused state, Council members and the complainant(s). A working group on communications and a working group on situations evaluate the complaints and bring them to the attention of the Council.\(^\text{41}\)

The Advisory Committee of the HRC replaces the Council's previous sub-commission on the promotion and protection of Human Rights. Similar to the sub-commission, the Advisory Committee is a subsidiary body of the Council and functions as a “think-tank” for Council members. The committee is composed of 18 experts nominated or endorsed by U.N. member states and elected by Council members through a secret ballot. Upon the Council’s request, the committee provides research-based advice that focuses on thematic Human Rights issues. The committee meets twice a year for a maximum of 10 days and can schedule meetings on an Adhoc basis with approval from Council members.\(^\text{42}\) The previous sub-commission came under criticism for duplicating the work of the Council and disregarding the Council’s guidance and direction. The sub-commission consists of 26 independent experts for Four-year terms, and held an annual four-week session in Geneva.\(^\text{43}\) The establishment of the U.N. Human Rights Council was part of a comprehensive U.N. reform effort by a former U.N. Secretary General Kofi Annan and members states. The Human Rights Council (HRC) is designated a subsidiary body of the General Assembly, whereas commission on Human Rights (CHR) was a


\(^{42}\) U.N. document, A/HRC/5/L.11, Report to the General Assembly on the fifth session of the Human Rights Council, June 18, 2007 pp. 15-18. The first meeting of the committee is scheduled from August 4 to 15 in Geneva, Switzerland

\(^{43}\) http://www.ohchr.org
subsidiary body of Economic and Social Council, This change enhances the standing of Human Rights within the U.N. frame work. In its new capacity, the Human Rights Council reports directly to the General Assembly of 192 members instead of to Economic and Social Council of 54 members. Since its establishment, the Council has faced considerable criticism from governments, NGOs, and other observers who contend that it does not effectively address Human Rights issues. Many contended that this apparent ineffectiveness stems form a number of political and organizational issues.

5.2.3.1(b) The Commission on the Status of women

The Commission on the status of women is a functional commission of the Economic and Social Council which was established in 1946, dedicated exclusively to Gender Equality and advancement of women. At present the commission consists of one representative from each of the 45 member states elected by the economic and social Council on the basis of equitable geographical distribution. The Functions of the commission are:

a) To prepare recommendations and reports to the ECOSOC on the promotion of women rights in political, economic, civil, social and educational fields; and
b) To make recommendations to the Council on urgent problems requiring immediate attention in the field of women’s rights with the object of implementing the principle that men and women shall have equal rights and develop proposals to give effect to such recommendations.

The Commission submits a report on each session to the Council. The Commission on the status of women is one of the commissions of the United Nations that do not limit participation to state only. For example NGO’s are also allowed to participate in the sessions of the commission on the status of women. The commission

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44 Economic and Social Council Resolution 11 (II) of 21st June, 1946
45 13 members are selected from African states, 11 from Asian states, 9 from Latin American and Caribbean states, 8 from western European and other states and 4 from Eastern European States.
46 Economic and social Council Resolution 48 (IV) of 29 March, 1947
mandate was expanded in 1987 by Economic and social Council resolution 1987/22 to include the functions of promoting the objectives of equality, development and peace, monitoring the implementation of measures for the advancement of women and reviewing and appraising progress made at the national, sub-regional, regional and global levels. Following the 1995 fourth world conference on women, the General Assembly mandated the commission to integrate into its programme a follow up process to the conference regularly reviewing the critical areas of concern in the Beijing platform for Action and to develop its catalytic role in mainstreaming a gender perspective in United Nations activities. The Economic and Social Council again modified the commissions terms of reference in 1996 in its resolution 1996/6, to include interalia, identifying emerging issues, trends and new approaches to issues affecting equality between women and men.

The Commission on the status of women has consistently promoted the advancement of women. It has been instrumental in expanding the recognition of women’s rights, in documenting the reality of women’s lives throughout the world, in shaping global policies on Gender Equality and Empowerment of Women in ensuring that the work of the UN in all areas incorporates a gender perspective. It continues to play a critical role by bringing together Governments, UN entities, NGO’s and other International and Regional Organizations to promote women’s rights and advance Gender Equality.

5.2.3.1(c) The Commission on Crime Prevention and Criminal Justice

It was created in 1992. It is a functional commission of the Economic and social Council of the United Nations. This commission consists of 40 members elected by the Economic and social Council. The commissions main functions are: to provide guidance to the United Nations in the field of crime prevention and criminal justice; develop, monitor and review the implementation of the United Nations crime prevention programme; facilitate and help to co-ordinate activities of the inter-regional and regional institutes on the prevention of crime and treatment of offenders; Mobilize the support of
member states; and of crime and the treatment of offenders. Its mandated priority areas are

(i) International action to combat national and international crime, including organized crime, economic crime and money laundering
(ii) Promoting the role of criminal law in protecting the environment
(iii) Crime prevention in urban areas, including juvenile crime and violence
(iv) Improving the efficiency and fairness of criminal justice administration systems

5.2.4. The Trusteeship Council

This Council was originally established to preside over the so called “dependent areas” with in the International Trusteeship system under Article 75 of the U.N. Charter. It is one of the principal organ of the United Nations. As per Article 76 of the U.N. Charter one of the basic objectives of the trusteeship system is to encourage respect for Human Rights and Fundamental Freedoms for all without distinction as to race, sex, language or religion. The goals and tasks of the Council largely fulfilled and it is therefore now mostly obsolete. Currently the trusteeship Council only meets if and when a scenario requires it.

5.2.5. The International Court of Justice [ICJ]

The International Court of Justice, the judicial branch of the United Nations is based in Hague, The Netherlands and was established in 1945 by the charter of the United Nations. All States that have signed the U.N. Charter are members of the I.C.J. Its jurisdiction extends to International conflicts, with the exception of political ones. Its responsibilities include giving opinions on concrete topics, ruling on cases and clarifying International legal norms.

47 Article 7 of the U.N. Charter, 1945
48 Ibid
The International Court of Justice has been instrumental in deciding some contentious cases involving such questions of Human Rights, as “the right of asylum, the rights of aliens, the Rights of the Child, the question of the continued existence of the mandate for South West Africa, the questions of seizure and holding as hostages of members of the United States diplomatic and consular staff in Iran and the respect of basic humanitarian principles.

The General Assembly and the Security Council have requested on various occasions for the advisory opinion of the International Court of Justice. The matters on which opinions sought were concerned with the International status of South West Africa and with Western Sahara, reservations concerning the convention on the prevention and punishment of the crime of Genocide, the consequences of the continued presence of South Africa in Namibia and the status of special reporters of the sub-commission on prevention of Discrimination and protection of Minorities.

Moreover, the number of International Instruments concerning the implementation of Human Rights provide for the submission of dispute relating to interpretation of the instrument or its implementation to the International Court of Justice. The International Court of Justice is indeed a sine qua non for the establishment of Rule

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49 Article 65 of the statute of the International Court of Justice contemplates (1) the court may give an advisory opinion on any legal questions at the request of whatever body may be authorized by or in accordance with charter of the U.N. to make such a request. (2) questions upon which the court is asked shall be laid before the court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

50 The Convention on the Prevention and punishment of the crime of Genocide, 1948 (Article IX); the convention for the suppression of the Traffic in persons and of the Exploitation or prostitution of others, 1949 (Article V); the convention on the political Rights of Women, 1952; the Slavery convention, 1926, as amended by the protocol, 1953 (Article 8); the convention relating to the status of stateless persons, 1954 (Article 34); the supplementary convention of the Abolition of Slavery, the Slavery Trade, and institutions and practices similar to Slavery, 1956 (Article 10); the UNESCO convention against Discrimination in Education, 1960 (Article 8); the convention on the reduction of stateless, 1961 (Article 14); the Convention on Consent of Marriage, minimum age for marriage and registration of marriage, 1962 (Article 8), the International convention on the Elimination of All forms of Racial Discrimination, 1965 (Article 22); the International Convention on the Suppression and Punishment of the Crime Apartheid, 1973 (Article XII); the Convention on the Elimination of all forms of Discrimination against Women, 1979 (Article 29), and the convention Against Torture and other Cruel, inhuman or Degrading Treatment or punishment, 1984 (Article 30).
of Law in inter-state relations\textsuperscript{51}. The International Court of Justice has been in the vanguard of the development of International law.

5.2.6. The Secretariat

The secretariat is one of the principal organs of the United Nations\textsuperscript{52}. The secretariat comprises of a secretary General and the staff as the organization may require. The Secretary General is appointed by the General Assembly Upon the recommendation of the secretary Council. He is designated as “The Chief Administrative Officer of the organization”\textsuperscript{53}. The Secretary General acts in that capacity in all meetings of the General Assembly Security Council, the Economic and social Council and the Trusteeship Council and performs such other functions as maybe entrusted to him by these organs. He also makes an annual report to the General Assembly on the work of the organization\textsuperscript{54}. The secretariat is in charge of carrying out programs designed by other branches of the United Nations, such as peace keeping missions, International dispute mediation and studying economic, cultural, Human Rights or social trends. It also handles administrative details, such as speech and documents translations, UN news and information releases and International conference co-ordinations.

The secretariat deals with the Human Rights questions through the division for the advancement of women of the centre for social Development and Humanitarian Affairs and the office of legal Affairs. The office of legal Affairs assists the International Law commission and legal committee of the General Assembly when they deal with in Human Rights question. Besides, there are other elements of the secretariat, such as the Department of Political and Security Council Affairs, the Department of Political Affairs, Trusteeship and Decolonization and the Department of Public Information, which assist different organs of United Nations in dealing with Human Rights questions.

\textsuperscript{52} Article 7 of the U.N Charter.
\textsuperscript{53} Article 97 of the U.N Charter.
\textsuperscript{54} Article 98 of the U.N Charter.
5.3 Human Rights Enforcement Machinery under the various Human Rights Treaties

Human Rights treaties have a monitoring body, composed of independent experts who examine the reports that signatory nations submit under the treaty. These communities are also in charge of issuing “concluding observations”, where they summarize their concerns about certain states and also give recommendations for the future. They are created by the treaty that they monitor.

5.3.1 Human Rights Committee of the International Covenant on Civil and Political Rights

The International covenant on civil and political rights established the Human Rights Committee as the principal International organ of its implementation. The committee consists of eighteen individuals who are charged with carrying out the functions stipulated in the covenant and the First Optional Protocol there to. The rules of procedure of the Human Rights Committee reflect this provision. Rule 11 states that: “the members of the committee shall be the 18 persons elected in accordance with Articles 28 to 34 of the covenant”. The committee is composed of nationals of State parties to the covenant who must be persons of “high moral character” and “the recognized competence in the field of Human Rights”. Consideration must also be given to the usefulness of the participation of some persons having legal experience. Members of the committee are elected to serve in their personal capacity. Committee members are elected by secret ballot from a list of persons having the qualifications described in Article 28 and who have been nominated for that purpose by the states parties to the covenant. Each state party may nominate not more than two persons who must be

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56 Article 28(1) of the International Covenant on Civil and Political rights
58 Article 28(2) of the International Covenant on Civil and Political Rights
59 Article 28(3) of the International Covenant on Civil and Political Rights
60 Article 29(1) of the International Covenant on Civil and Political Rights
nationals of the nominating state\textsuperscript{61}. It is also provided that a person may be eligible for re-nomination\textsuperscript{62}. However the committee may not include more than one national of the same state\textsuperscript{63}. In the election of the committee, consideration must be given to the equitable geographical distribution of membership and representation of different forms of civilisation and of the principal legal systems\textsuperscript{64}. Once they have been elected, committee members serve for a renewable four-year term of office\textsuperscript{65}.

It is important to stress that committee members are not the representatives of the states of which they are nationals. The complete independence from Government of committee members is a matter of cardinal significance and “fundamental to the cardinal of the committee”. Any suspicion of partiality would have very serious implications for the successful discharge of its duties by the committee as a whole. Indeed, committee members are acutely conscious of the importance of independence and are very alert and sensitive to the issue. However, while the covenant provides that committee members should serve in their “Personal capacity”. It does not stipulate expressly that they must be independent of government or for any guarantees for this independence. Nevertheless, the committee very wisely has issued rather precise and detailed guidelines for the exercise of their functions by members of the Human Rights Committee\textsuperscript{66}. The Committee carries out the implementation of the Human Rights stipulated in the covenant in four different ways which are as follows:

a) The Reporting procedure;

b) Inter-State Communication system;

c) Conciliation procedure;

d) The Individual Communication procedure.

\textsuperscript{61} Article 29(2) of the International Covenant on Civil and Political Rights
\textsuperscript{62} Article 29(3) of the International Covenant on Civil and Political Rights
\textsuperscript{63} Article 31(1) of the International Covenant on Civil and Political Rights
\textsuperscript{64} Article 31(2) of the International covenant on civil and political rights
\textsuperscript{65} Article 32(1) of the International covenant on civil and political rights
(a) The Reporting Procedure

The Compulsory state reporting procedure, which is regulated in detail by Article 40 of the covenant is the principal control mechanism designed to ensure that a state party is complying with its obligations under the instrument. Article 40 of the civil covenant provides that State parties to the covenant undertake to submit reports on the measures that they have adopted which give effect to the rights recognized in the covenant and on the progress made in the enjoyment of these rights and on any factors and difficulties if any that may effect the implementation of the covenant. The State parties undertake to submit reports with in one year of the entry into force of the covenant for the state party concerned and thereafter whenever the committee so requests. Such reporting procedure under Article 40 of the civil covenant is considered as the dialogue between the committee and State parties concerned with the view to ensure the implementation of the rights recognized in the covenant.

All reports shall be submitted to the Secretary–General of the United Nations, who shall transmit them to the committee for consideration. Such reports shall indicate the factors and difficulties if any affecting the implementation of the present covenant. Article 40 (3) of the civil covenant authorizes the secretary – General of the united Nations, after consultation with the committee to transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

The committee studies the reports submitted by State parties and then transmits its report and such general comments as it considers appropriate, to the state parties. The committee may also transmit to the Economic and Social Council these comments along with the copies of the reports of the state parties. The State parties may submit to the

67 Article 40(2) of the International covenant on civil and political rights
68 Article 40 (1) of the International covenant on civil and political Rights
69 Rule 66 (1) of the Rules of procedure of the Human Rights Committee
70 Rule 67 (1) of the Rules of procedure of the Human Rights Committee
71 Article 40(4) of the International covenant on civil and political Rights
committee observations on any covenants that the committee made\textsuperscript{72}. It is important to stress that the state reporting system was envisaged as the principal means of enforcement of the covenant rights, as it is the only compulsory supervision machinery in the hands of the committee\textsuperscript{73}. Accordingly the responsibility of the Human Rights committee in this regard is very onerous one.

b) Inter-State Communication System

The Inter-State communication system is detailed in Article s 41-42 of the covenant and Rules 74-83 of the Rules of Procedure. The committee is competent to consider communications from a state party which “claims that another state party is not fulfilling its obligations under the covenant”\textsuperscript{74}. In such a case it must make available its good offices to the states parties concerned with a view to a friendly solution of the matter on the basis of respect for Human Rights and fundamental freedoms as recognized in the present covenant\textsuperscript{75}. This function of the committee can be exercised only if both states concerned have made a declaration under Article 41(1) recognizing the committees’ jurisdiction in this regard\textsuperscript{76}. This encapsulates the principle of “reciprocity of obligation”. If the matter is not resolved to the satisfaction of both states parties by a referral to the committee, then the matter may be further referred to an Adhoc conciliation commission, but only with the prior consent of both states concerned\textsuperscript{77}. Generally one can argue that these proceedings are undeniably complex, cumbersome, and elongated. The procedure is based entirely on the good will of states and may be terminated by either state party to the dispute before an Adhoc conciliation commission has been appointed. At the end of the day, even if both states parties agree to accept the competence of such a commission, the allegedly infracting state is still entirely free to

\textsuperscript{72} 40(5) of the International Covenant on civil and political Rights
\textsuperscript{74} Article 41(1) of the International covenant on civil and political rights
\textsuperscript{75} Article 41(1)(e) of the International covenant on civil and political Rights
\textsuperscript{76} Article 41(1) reads in part “Communications under this Article may be received and considered only if submitted by a state party which has made a declaration recognizing in regard to itself the competence of the committee.
\textsuperscript{77} Article 42(1)(a) of the International covenant on civil and political Rights
accept or reject the contents of the report of the Adhoc conciliation commission\textsuperscript{78}. Despite the fact that it is a substantial step forward to give one state locus stand to complain about the treatment by another state of its own nationals\textsuperscript{79}. The inter-state communication procedure under the covenant has never yet been invoked.

\textbf{(c) Conciliation Procedure}

If an inter-state communication provided under Article 41, is not resolved to the satisfaction of the State parties concerned, the committee may, with the prior consent of the State parties concerned, appoint an Adhoc conciliation commission so as to make available to the State parties concerned the good offices of the commission with a view to make an amicable solution of the matter on the basis with respect for the present covenant\textsuperscript{80}. The commission shall consist of five persons acceptable to the State parties concerned. If the State parties concerned fail to reach an agreement with in three months on all or part of the composition of the commission, the members of the commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-third majority vote of the committee from among its members\textsuperscript{81}. The members of the commission shall serve in their personal capacity. They shall not be nationals of the State parties concerned or of a state not party to the civil covenant or a state party which has not made a declaration under Article 41\textsuperscript{82}. In short the conciliation procedure is available only to those State parties to the civil covenant who have made declaration under Article 41.

\textsuperscript{78} Article 42(7)(d) of the International covenant on civil and political Rights
\textsuperscript{79} The inter state procedure is not however, confined to substantive breaches of the covenant but also includes any breach of other covenant obligations under taken by a state party because the precise complaint forwarded to the Human Right committee need only concern the fact that one state party considers that another state party “is not giving effect to the provisions of the covenant”. Failure to furnish reports in according with the reporting obligations would be a signification breach of the obligations assumed
\textsuperscript{80} Article 42(1)(a) of the International covenant on civil and political rights
\textsuperscript{81} Article 42(1) (b) of the International covenant on civil and political Rights
\textsuperscript{82} Article 42 (2) of the International covenant on civil and political Rights
The Conciliation commission shall elect its own chairman and adopt its own rules of procedure. The U.N. Secretariat shall also service the commissions appointed under Article 42. The Information received and collected by the committee shall be made available to the commission and the commission may call up on the State parties concerned to supply any other relevant information. After the commission has fully considered the matter but in every event not later that twelve months after having been seized of the matter, it shall submit to the chairman of the committee a report for communication to the State parties concerned. In case the commission is unable to complete the consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter. In case however an amicable solution on the basis of respect for Human Rights as recognized in the present covenant is reached, the commission shall confine its report to a brief statement of the facts of the solution reached. But if solution as aforesaid is not reached the commissions report shall embody its findings on all questions of fact relevant to the issues between the parties concerned and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the State parties concerned. In such a case the State parties concerned shall within three months of the receipt of the report, notify the chairman of the committee whether or not they accept the contents of the report of the commission. The Committee shall submit to the General Assembly of the UN, through the economic and social Council, an annual report of its activities.

d. The Individual Communication Procedure

The individual’s communication procedure is provided under the First Optional Protocol to the International covenant on Civil and Political Rights, 1966. This method of implementation is available to State parties to the civil covenant who are also parties to the optional protocol. In respect of State parties of the protocol, the committee is

83 Article 42 (3) of the International covenant on civil and political Rights
84 Article 42 (5) of the International covenant on civil and political Rights
85 Article 42(6) of the International Covenant on Civil and Political Rights
86 Article 42 (7) of the International Covenant on Civil and Political Rights
87 Article 45 of The International Covenant on Civil and Political Rights
competent “to receive and consider communications from individuals subject to its jurisdiction, who claim to be victims of a violation by that state party of any of the rights set forth in the covenant”. No communication shall be received by the committee if it concerns a state party to the covenant which is not a party to the present protocol.\footnote{Article 1 of the optional protocol to the International Covenant on Civil and Political Rights.}

The grounds of admissibility with regard to individual communication are laid down in Articles 1, 2, 3 and 5(2) of the optional protocol. These are also detailed in Rule 96 of the Rules of procedure. In particular the rules are (a) the Communication is not anonymous and that it emanates from and individual or individuals, subject to the jurisdiction of a state party to the optional protocol; (b) That the individual claims, in a manner sufficiently substantiated, to be a victim of a violation by that state party of any of the rights set party of any of the rights set forth in the covenant. Normally the communication should be submitted by the individual personally or by that individuals representative, a communication submitted on behalf of an alleged victim, however be accepted when it appears that the individual in question is unable to submit the communication personally; (c) such communication does not constitute an abuse of the right of submission; (d) That the communication is not incompatible with the provisions of the covenant (e) That the same matter is not being examined under another procedure of International investigation or settlement, (f) That the individual has exhausted all available domestic remedies complex procedures to determine admissibility (Rules 93-98) and merits (99-101) must be followed. The committee must hold “Closed meetings” when conducting optional protocol business\footnote{Article 5 (3) of the optional protocol to the International Covenant on Civil and Political Rights} oral deliberations and summary records shall remain confidential\footnote{Rule 102 (1) of the Rules of procedure CCPR/C/3 Rev. 8 dated 22 September 2005}. There are further detailed rules concerning confidentiality in Rule 102. Under Article 5(4) of the optional protocol the committee: “Shall forward its view to the state party concerned and to the individual”\footnote{Rule 100 (3) of the Rules of procedure, CCPR/C/3 Rev 8 dated 22 September, 2005}.

Assuming the likely continued non invocation of the Inter-state dispute procedure, the efficacy of the International measures of protection, when an individual’s rights under
the covenant have been violated, will be crucial to the successful vindication of those rights. The burden cast on the committee is a very heavy one\textsuperscript{92}.

The Committee also publishes its interpretation of the content of Human Rights provisions known as general comments on thematic issues or its methods of work. Human Rights Committee is an independent body. It does not form part of the United Nations though it is serviced by the U.N. Secretariat. The full competence of the committee extends to the second optional protocol to the covenant on the abolition of the death penalty with regard to states who have accepted the protocol. Human Rights Committee performs the vital function of monitoring the enjoyment of the rights set out in the covenant, a legally binding International treaty. Whether in its consideration of states parties reports, its adoption of general comments or its examination of complaints by individuals or states alleging violations of the covenant, the committee is the pre-eminent interpreter of the meaning of the International convention civil and political Rights. In doing so, it seeks to give a full and generous interpretation to the meaning of the covenant provisions, consistent with its character as an instrument guaranteeing fundamental rights and freedoms. The Committee’s members do not simply look at the formal legal position applicable in a particular state or case, but rather go deeper, to the practical realities on the ground in the states with which it is concerned and issue findings with a view to achieving positive change. Indeed, compliance by a state with the committee’s views is evidence of a states good faith attitude towards covenant obligations. Over the years, the committees work has resulted in numerous changes of law, policy and practice, both at the general national level and in the context of individual cases. In a direct sense, therefore, the committees discharge of the monitoring functions entrusted to it under the covenant has improved the lives of individuals in countries in all parts of the world. It is in this sprit that the committee will continue to make its work relevant and applicable to all State parties and to strive for the enjoyment of all civil and political rights guaranteed by the covenant in full and without discrimination all people. However there are certain defects in Human Rights Committee. There is no provision in the International covenant on Civil and Political Rights, 1966 giving binding power to the

\textsuperscript{92} I.J.I.L. Vol 48 No.2 April – June 2008 P 226
reports and comments of the committee. It can only review, criticize and comment on the
reports submitted by the State parties to the covenant. Without the co-operation of State
parties to the covenant, the Human Rights Committee can not perform its functions
successfully and effectively.

5.3.2. The Committee on Economic, Social and Cultural Rights

The International covenant on Economic, Social and cultural Rights, 1966 is the
only United Nations Human Rights treaty which did not establish a committee to oversee
and monitor the implementation of the covenant. The committee on Economic Social and
Cultural Rights was established by the United Nations Economic and Social Council\textsuperscript{93} to
carry out the monitoring functions assigned to the to the United Nations Economic and
social Council in part IV of the Covenant. It is the body of independent experts that
monitors implementation of the International covenant on Economic, Social and cultural
Rights by its State parties. It strives to develop a constructive dialogue with State parties
and seeks to determine through a variety of means whether or not the norms contained in
the covenant are being adequately applied in states parties and how the implementation
and enforcement of the covenant could be improved so that all people who are entitled to
the rights enshrined in the covenant can actually enjoy them in full\textsuperscript{94}. Drawing on the
legal and practical expertise of its members, the committee can also assist Governments
in fulfilling their obligations under the covenant, by issuing specific legislative, policy
and other suggestions and recommendations such that economic, social and cultural
rights are more effectively secured\textsuperscript{95}. State parties are obliged to submit regular reports
the committee on how the rights are being implemented. States must report initially
within two years of accepting the covenant and thereafter every five years. The
Committee examines each report and addresses its concerns and recommendations to the
state party in the form of concluding observations.

\textsuperscript{93} ECOSOC Resolution 1985/17 of 28 May 1985
\textsuperscript{94} OHCHR FACT SHEET no.16 (Rev.1) P.No. 15
\textsuperscript{95} Ibid
With regard to individual complaints on 10 December 2008, the General Assembly unanimously adopted an optional protocol\(^6\) to the International covenant on Economic, Social and cultural Rights which provides that the committee competence to receive and consider communications. The General Assembly took note of the adoption by the Human Rights Council by its resolution 8/2 of 18\(^{th}\) June 2008 of the Optional Protocol. In addition to the committee on Economic, Social and Cultural Rights, other committees with competence can consider individual communications involving issues related to economic, social and cultural rights in the context of its treaty.

The Committee also publishes its interpretation of the provisions of the covenant, known as general comments. The General comments will serve as a means of promoting the implementation of the covenant\(^7\). The Committee is serviced by the United Nations centre for Human Rights.

The implementation of the Human Rights under the International Convention Economic, Social and Cultural Rights through System of reporting is weak and has many limitations. This is because of the general nature of obligation under taken by the State parties to the covenant. As compared to Article 2 of the covenant on civil and political Rights, Article 2 of the Economic covenant is much weaker, general and vague. While under Article 2 of the civil covenant each state party to the covenant undertakes “To respect and to ensure to all individuals within its territories and subject to its jurisdiction the rights recognized in the present covenant……”. Under Article 2 of the Economic covenant each state party to the covenant simply “undertakes to take steps, individually

\(^6\) General Assembly Resolution A/RES /63/117
\(^7\) The Committee by the year 2009 has adopted 20 general comments on different rights which are: (1) on reporting by states parties 2) on Technical and assistance measures 3) on the nature of states parties obligations; 4) on the right to adequate housing 5) on persons with disabilities 6) on the Economic, Social and Cultural Rights of the Older Persons; 7) on the Right to Adequate Housing: Forced Evictions; 8) on the Relationship between Economic Sanctions, and Respect of Economic, Social and Cultural Rights; 9) on the domestic application of the covenant, 10) on the role of national Human Rights institutions in the protection of economic, Social and cultural Rights; 11) on the plans of action for primary education 12) on the right to adequate food; 13) on the right to education 14) on the right to the highest attainable standard of health 15) on the right to water; 16) on the equal rights of men and women to the enjoyment of all economic, social and cultural rights 17) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literarly or artistic production of which he is the author 18) on the right to work 19) on the right to social security and 20) on non-discrimination in economic, social and cultural rights
and through International assistance and co-operation, especially economic and technical, to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognized in the present covenant by all approximate means including particularly the adoption of legislative measures”. Because of the very nature of economic, social and cultural rights, binding obligations as contrasted to civil and political rights could not be enacted. The implementation of economic, social and cultural rights depends upon the state of development in economic progress of the state concerned. That is why Article 2 speaks of “achieving progressively the full realization of the rights recognized in the covenant”. By undertaking to submit reports on the measures they have adopted and made in observance of the rights recognized in the Economic covenant the State parties have accepted some obligations in this respect. This will promote and strengthen International co-operation among states. Thus, even though the system of reporting has several limitations and is definitely a very weak method of enforcement yet it promotes International co-operation. Moreover the economic covenant recognizes and promotes International responsibility for “providing assistance such as furnishing of technical assistance for the achievement of rights recognized in the Economic covenant”98.

5.3.3. The Committee on the Elimination of Discrimination against Women

The Committee on the Elimination of Discrimination against Women was established pursuant to the Convention on the Elimination of all forms of Discrimination Against Women99. It is the body of independent experts that monitors implementation of the Convention on the Elimination of all forms of Discrimination against Women. The Committee consists of 23 experts on the women’s rights from around the world. In the election of persons to the committee, consideration is given to equitable geographical distribution and to the representation of different civilizations and legal systems. The committee’s main function is to monitor the implementation of the convention based on consideration of reports from State parties. The countries who have become party to the

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99 Article 17 of the Convention on the Elimination of all forms of Discrimination Against Women.
treaty are obliged to submit regular reports to the committee on how the rights of the
convention are implemented. During its sessions the committee considers each state party
report and addresses its concerns and recommendations to the state party in the form of
concluding observations.

In accordance with the optional protocol to the convention, the committee is
mandated to: 1) receive communications from individuals or groups of individuals or
groups of individuals submitting claims of violations of rights protected under the
convention to the committee and 2) initiate inquires into situations of grave or systematic
violations of women’s rights. These procedures are optional and are only available where
the state concerned has accepted them. The committee is serviced by the UN Division
for the advancement of women which is based in New York. The Committee submits
its annual report to the General Assembly through the Economic and Social Council, on
its activities and may make suggestions and general recommendations based on the
examination of reports and information received from the states parties. The Secretary
General transmits the reports of the committee to the commission on the status of women
for its information.

The implementation machinery under the Convention on the Elimination of all
forms of Discrimination against Women is very weak and far from satisfactory by any
standard. The committee has no teeth. It can not compel the States parties to give effect to
the provisions of the convention. It may simply make suggestions and general
recommendations based on the examination of reports and information received from the
State parties. Indeed it is much weaker than the Human Rights Committee established
under the International Covenant on civil and political rights. The convention of the
Elimination of All forms of Discrimination against Women is also conspicuous by
absence of provisions relating to inter-state communication systems.

100 http://www2.ohchr.org/english/bodies/cedaqw/index.htm P1 of 2
101 Human Rights : A Basic Hand book for UN Staff P.No47
102 Article 21 of the convention on the Elimination of All forms of Discrimination Against Women


5.3.4. The Committee against Torture

The committee against Torture was established pursuant to the convention against Torture and other cruel, Inhuman or Degrading Treatment or punishment. The Committee consists of 10 experts of high moral standing and recognized competence in the field of Human Rights. They are elected and nominated by states parties to the convention for a four-year term. The primary functions of the committee are to monitor the implementation of the convention by examining reports submitted by states parties, to receive individual communications concerning violations of the convention by states parties which have accepted the optional procedure under Article 22 of the convention and to conduct inquires into alleged systematic practice of Torture in states which have accepted the procedure under Article 20.

Under the convention, all states parties are obliged to submit regular reports to the committee on how the rights are being implemented. States must report initially one year after acceding to the convention and then every four years. The committee examines each report and addresses its concerns and recommendations to the state party in the form of “concluding observations”. In addition to the reporting procedure, the convention establishes three other mechanisms through which the committee performs its monitoring functions: the committee may also, under certain circumstances, consider individual complaints, or communications from individuals claiming that their rights under the convention have been violated, undertake inquires, and consider inter-state complaints.

The optional protocol to the convention, which entered into force in June 2006, creates the sub-committee on prevention of Torture. This sub-committee has a mandate to visit places where persons are deprived of their liberty in the state parties. Under the optional protocol, states parties shall establish an independent National preventive mechanisms for the prevention of Torture at the domestic level which has also a mandate

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103 Article 17 of the convention against Torture and other cruel, Inhuman or Degrading Treatment or Punishment.
to inspect places of detention. The committee also publishes its interpretation of the content of the provisions of the convention, known as general comments on thematic issues\textsuperscript{104}. The committee against torture shall submit an annual report on its activities under this convention to the states parties and to the General Assembly of the U.N\textsuperscript{105}.

The machinery provided for by the convention on torture for the consideration of communications whether inter-state or individual can be set in motion when Human Rights violations have already occurred. In some sense, it seeks to remedy such a violation by recording publicly that a state has violated one or more provisions of the convention, in order to induce the state concerned to remedy the violation. This is also the object of other International instruments on Human Rights questions, established in the United Nations context. Nevertheless, the establishment of International standards and of monitoring and inquiry procedures, relating to torture and other subjects, is not in itself sufficient to guarantee observance of Human Rights by states members of the United Nations which have undertaken to comply United Nations activities in this regard can be supplemented in a timely way by its technical assistance and advisory services programme which operates at two levels\textsuperscript{106}.

In the first place, even when a state has accepted International obligations and is willing to respect them, it is not always in a position to do so because of the lack, at the domestic level, of the competent persons and infrastructure necessary for the application of the standards contained in the relevant International instruments. The United Nations can then provide its assistance and its advisory services to help the state concerned to ensure the realization of the rights that have been recognized\textsuperscript{107}.

In the second place, through its technical assistance programme, the United Nations also wages campaign to prevent Human Rights violations. The setting up of national infrastructures for the protection and promotion of Human Rights, the

\textsuperscript{104} http://www2.OHCHR.org/english/bodies/cat/index.htm page2 of 2
\textsuperscript{105} Article 24 of the convention Against Torture and other Cruel, Inhuman or Degrading treatment or punishment
\textsuperscript{106} OHCHR Fact Sheet No. 17 P.No. 6
\textsuperscript{107} OHCHR Fact Sheet No. 17 P.No. 7
organisation of courses of study and in-service training for officials responsible for the realization of Human Rights at the national level lay down the foundations for creating a Human Rights culture, which constitutes the best guarantee against the violation of those rights\textsuperscript{108}.

5.3.5. The Committee on the Rights of the Child

The committee on the Rights of the Child was established under the convention on the Rights of the Child. It comprises of ten independent experts of high moral standing and recognized competence\textsuperscript{109}. The members of the committee are elected for a term of Four years and are eligible for re-election. The main function of the committee is to monitor the implementation of the convention on the Rights of the Child based examination of state reports in close cooperation with the United Nations Children’s Fund (UNICEF), Specialised Agencies and other competent bodies including Non-Governmental Organizations (NGO’s). It also monitors implementation of two optional protocols to the convention, on involvement of children in armed conflict and on sale of children, child prostitution and child pornography.

All State parties are obliged to submit regular reports to the committee on how the rights are being implemented. States must report initially two years after acceding to the convention and then every five years. The committee examines such report and addresses its concerns and recommendations, to the state party in the form of “concluding observations”. The committee reviews additional report which must be submitted by states who have acceded to the two option protocols to the convention. The committee cannot consider individual complaints, although child rights may be raised before other committees with competence to consider individual complaints.

In 2010, the committee considered reports in two parallel chambers of 9 members each “as an exceptional and temporary measure”, in order to clear the backlog of reports.

\textsuperscript{108} Ibid
\textsuperscript{109} Article 43 of the Convention on the Rights of the Child
The committee also publishes its interpretation of the content of Human Rights provisions, known as general comments on thematic issues and organizes days of general discussion. The committee is required to submit reports on its activities every two years to the General Assembly through the Economic and social Council\textsuperscript{110}. The implementation machinery under the convention is very weak. The Committee on the Rights of the Child has no teeth. It can simply make suggestions and recommendation. Therefore, International co-operation and sincere national efforts are required to improve the lot of millions of children who are the victims of violation of Human Right all over the world.

5.3.6. The Committee on the Elimination of Racial Discrimination

The committee on the Elimination of Racial Discrimination was established under the International convention on the Elimination of All forms of Racial Discrimination. It is composed of 18 experts, acting in their personal capacity, who are nominated and elected by State parties to the convention for a Four-year term. This committee is empowered to oversee the implementation of the obligations accepted by the State parties\textsuperscript{111}. The committee monitors the implementation of the convention by examining reports submitted by states parties which are due every two years. The states parties are to submit their report within one year of becoming parties to the convention and then once every two years\textsuperscript{112}. The committee is required to send annual report to the General Assembly through the Secretary-General of the United Nations. In its report the committee may make general recommendations and proposals on the basis of the review of the reports and information received from the states parties.

In additions to the reporting procedure the convention establishes three other mechanisms through which the committee performs its monitoring functions: the early-warning procedure, the examinations of individual\textsuperscript{113} and the examination of inter-state

\textsuperscript{110} Article 44 of the convention on the Rights of the Child
\textsuperscript{111} Article 8 of the convention on the Elimination of All forms of Racial Discrimination
\textsuperscript{112} Article 9 of the convention on the Elimination of All forms of Racial Discrimination
\textsuperscript{113} Article 14 of the convention on the Elimination of All forms of Racial Discrimination
complaints\textsuperscript{114}. The committee also publishes its interpretation of the content of Human Rights provisions, known as general recommendation on thematic issues and organizes thematic discussions. The International Convention on the Elimination of All forms of Racial Discrimination has been successful to some extent because a number of State parties to the convention have enacted national legislations giving effect to the provisions of the convention. But so far as Elimination of All forms of Racial Discrimination all over the world is concerned, it has failed miserably. The glaring examples of such failures are Rwanda, Bosnian crisis and Kosovo crisis.

5.3.7. The Committee on the protection of Rights of all Migrant Workers and Members of their Families

The committee on the protection of Rights of all Migrant Workers and Members of their Families was established under the International convention on the protection of the Rights of all Migrant Workers and Members of their Families\textsuperscript{115}. It is the body of independents experts that monitors implementation of the International convention on the protection of the Rights of all Migrant Workers and Members of their Families. It held its first session in March 2004.

All States parties are obliged to submit regular reports to the committee on how the rights are being implemented. States must reports initially one year after acceding to the convention and then every five years. The committee will examine each report and address its concerns and recommendations to the State party in the forms of “concluding observations”. The committee will also, under certain circumstances be able to consider individual complaints or communications from individuals claiming that their rights under the conventions have been violated after 10 State parties have accepted this procedure in accordance with Article 77 of the convention. At the moment, two States have accepted this procedure. The committee also organizes days of general discussion and can publish statements on themes related to its work and interpretations of the

\textsuperscript{114} Article 11 of the Convention on the Elimination of All forms of Racial Discrimination
\textsuperscript{115} Article 72 of the International convention on the protection of the Rights of all Migrant Workers and Members of their Families
content of the provisions in the convention. The committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present convention, containing its own considerations and recommendations based, in particular, on the examination of reports and any observations presented by State parties.

5.3.8. The Committee on the Rights of Persons with Disabilities

The Committee on the Rights of Persons with Disabilities was established pursuant to the convention on the Rights of Persons with Disabilities. It is the body of 12 independent experts that monitors the implementation of the convention on the Rights of Persons with Disabilities and its optional protocol.

All State parties are obliged to submit regular reports to the committee on how the rights are being implemented. States must report initially with in two years of accepting the convention and there after every four years. The committee examines each report and shall make such suggestions and general recommendations on the reports as it may consider appropriate and shall forward these to the convention the state party concerned. The optional protocol to the convention gives the committee competence to examine individual complaints with regard to alleged violations of the convention by State parties to the protocol. This convention contains a unique provision regarding the role of civil society in monitoring its implementation. Article 33 of the convention states that Civil Society shall be involved and participate fully in monitoring process established by State parties, thus giving Civil Society a central role in promoting the implementation of the convention.

5.4. Regional Human Rights Enforcement Machinery

Apart from the mechanisms which emerged in the International level, there were also attempts in regional levels for the protection of Human Rights. This move started with the adoption of the European Convention on Human Rights, 1950. Later similar

116 Article 34 of the convention on the Rights of Persons with Disabilities
systems emerged in America and Africa. Notable feature of all these moves were the incorporation of provisions for proper enforcement of Human Rights. The General Assembly in its forty-ninth session, by adopting resolution 49/189, reaffirmed that regional arrangements play a fundamental role in promoting and protecting Human Rights and should reinforce Universal Human Rights standards, as contained in International Human Rights Instruments. The Assembly requested the commission on Human Rights to continue to pay special attention, to the most appropriated ways of assisting, at their request, to countries of different regions under the programme of advisory services and to make, where necessary, relevant recommendations. Currently, there are three major regional systems: the European Human Rights system, the Inter-American Human Rights System, and the African Human Rights System. In addition to the above, Arab Commission on Human Rights was set up as a Sub-committee of the League of Arab States to promote Human Rights in Arab States.

5.4.1. Human Rights Enforcement Machinery under the European Human Rights System

The European system is set up under the auspices of the Council of Europe. The principal convention of the system is the European convention on Human Rights and fundamental freedoms. It provided and still provides individual remedies to violations of Human Rights by providing common Human Rights across the board including a mechanism for remedying violations.

Additional protocols have added more rights and new structures into the system. In addition to these protocols, the system contains several conventions. The

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118 It entered into force in 1953
120 The European convention has adopted fourteen protocols by October 31, 2008, protocol 1, introduces the right to property, education and free elections. Protocol 2 provides for the competency of the European court of Human Rights to give advisory opinions. Protocol 3 abolished the system of Sub-commission. Protocol 4 establishes the right of free movement and freedom to chose a place of residence. Protocol 5 made certain procedural changes regarding election of the members of the commission and the court. Protocol 6 prohibits the death penalty in times of peace. Protocol 7 introduces the rights of aliens not to be deported without due process of law. Protocol 8 laid down that the commission may set up chambers or
following are the Human Rights enforcement mechanisms under the European Human Rights system:

5.4.1 (a) The European Court of Human Rights

Before the establishment of the current system, the European system had both a commission and a court\textsuperscript{122}. Under the current system there is only the European Court of Human Rights\textsuperscript{123}. A state party to the convention may refer to the court any alleged breach of the provisions of the convention and protocols thereto by another contracting party\textsuperscript{124}. Under the European Human Rights System this mechanism is mandatory on all member states\textsuperscript{125}. This court may receive applications from any person, non-governmental organization or group of individuals claiming to be victims of a violation by one of the High contracting parties of the rights set forth in the convention or the protocol thereto\textsuperscript{126}. It is further provided that the State parties shall not stand in the way of effective exercise of the above mentioned rights\textsuperscript{127}. It examined only those matters where all domestic remedies had been exhausted. The European court can award damages and make declaratory judgments. The European countries on committee decide on the admissibility of a case\textsuperscript{128}. The chamber, which is bench of seven judges, decides all interstate and individual complaints on the merits\textsuperscript{129}.\footnote{Committee. Protocol 9 gives direct access to individuals in the court. Protocol 10 reduces the requirements for the adoption of commission reports to simple majority of the Council of ministers. Protocol 11 achieves a major restructuring by abolishing the commission and full time court. Protocol 12 prohibited discrimination. Protocol 13 provided for the total abolition death penalty. Protocol 14 introduced a new mechanism to assist enforcement of Judgement by the committee of Ministers.\textsuperscript{121} One such convention is the European charter, which concerns with economic and social rights. The convention on the exercise of Children’s Rights is also one such conventions. Conventions on Human Rights and Bio-medicine and the frame work convention for the protection of National Minorities are further instruments providing for the protection of Human Rights in the Council of Europe countries.\textsuperscript{122} Clare Ovey and Robin C.A. White, European Convention on Human Rights 3rd edition 2002 P. 396\textsuperscript{123} Ibid\textsuperscript{124} Article 33 of the European convention\textsuperscript{125} Soren C. Prebensen, Inter State Complaints under Treaty provisions - the Experience under the European convention on Human Rights, HUM…RTS. L.J 446, 449 (1999): this procedure used to be a voluntary undertaking in the pre-protocol 11 system. However, after the introduction of protocol 11 states do no longer have an option.\textsuperscript{126} The ECHR Article 34 as amended by protocol No. 11, Article 1\textsuperscript{127} Ibid\textsuperscript{128} ECHR Article 27(1)\textsuperscript{129} ECHR Article 29(2)}
The European court sits in Grand chamber of seventeen judges to decide on the merits of all inter-state and individual complaints in cases where the chambers relinquish their power in favour of the Grand chambers\textsuperscript{130}. The Grand chamber also decides on the merits of cases where applicants request a referral to the Grand chambers of the decision by the chambers within three months\textsuperscript{131}. Decisions of the Grand chamber are final\textsuperscript{132}. This body can also give advisory opinions if requested by the Council of ministers\textsuperscript{133}. The European court of Human Rights has rendered a signal service by developing a body of case law concerning Human Rights. The weakness of the European Human Rights system lies in its heavy reliance on its court system. There are situations that such individual complaints do not simply disclose at face value. As much as the European court of Human Rights has been successful in its functions, it has limitations in addressing broad violations of Human Rights. Therefore the European system should also revamp its activities that are similar to reporting.

5.4.1 (b) Committee of Ministers

The committee of Ministers is a body of the Council of Europe\textsuperscript{134} entrusted with the tasks of supervising the implementation of the decisions of the European court of Human Rights. The committee of Ministers meets only twice a year\textsuperscript{135} and operates through disputes who met every two weeks\textsuperscript{136} and permanent representatives for which the other times during which it is not is a session\textsuperscript{137}. The committee of Ministers has developed its own rules for exercising its task of supervising the implementation of the decisions of the court of Human Rights.

\textsuperscript{130} ECHR Article 30
\textsuperscript{131} ECHR Article 47(1)
\textsuperscript{132} ECHR Article 44
\textsuperscript{133} ECHR Article 47(1)
\textsuperscript{135} Clare Ovey & Robin C.A. White European convention on Human Rights, 421 (3\textsuperscript{rd} ed. 2002)
\textsuperscript{137} Clare Ovey & Robin C.A. White European convention on Human Rights, 421 (3\textsuperscript{rd} ed. 2002)
5.4.1(c) Commissioner for Human Rights

This is a body established for raising awareness about Human Rights and respect for Human Rights. It was established by a Resolution of The committee of Ministers. Its Mandates include promotion of Human Rights through education and identification of short comings in law and practice concerning Human Rights. It also organizes seminars and conducts site visits that culminate in country reports like visit reports.

5.4.2. Human Rights Enforcement Machinery under the Inter-American Human Rights System

The Inter-American System is established within the ambit of the organization of American States. The system has developed a unique dual system of Human Rights, protection. Understanding how the Inter-American System developed, helps one to grasp the duality aspect of the rights protection of this system. The first system developed out of the charter-based system; the other system emanated from the Inter-American convention of Human Rights. In the OAS system, Human Rights are protected under two interrelated frame works. The first is founded upon charter and the 1948 American Declaration of the Rights and duties of man. The second and more effective is founded upon the American convention of Human Rights. The convention is applicable to only those states that have ratified it; where as the Declaration is application to all O.A.S members States.

The Charter of the organization of American states which forms part of the O.A.S charter-based system, contained and still contains very few reference to Human Rights. In its preamble, the O.A.S Charter declares fundamental Rights to be “a historic mission

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138 Christina M Cerna, The Inter-American System for the protection of Human Rights, 195 (2004); OAS is a regional International organization whose membership is open to all American States.
139 Vincent O. Orlu Nmehielle, the African Human Rights system: Its laws, practices and institutions, 54 (2001)
140 Scott Davidson Inter-American Human Rights System 8 (1997)
of American” and Human Rights to be part of consolidation process of the American continent\(^{143}\). The Declaration of the Rights and Duties of man\(^{144}\), which also forms the second instrument in charter-based system, on the other hand, contains a detailed list of rights\(^{145}\). It also contains few duties of man\(^{146}\). The rights contained in the declaration range from civil and political rights to Economic and Social Rights\(^{147}\). The declaration of the Rights and duties of man constituted an “authoritative interpretation” of the fundamental individual rights as expressed in Article 33 of the O.A.S charter\(^{148}\). Still many O.A.S member states do not believe that it is a binding document\(^{149}\). The United States and Venezuela are leading members of this group.

The Inter-American convention on Human Rights forms the second and main leg of the protection system. The convention remedied the weak legal status of the Declaration\(^{150}\). The convention left out some of the rights in declaration and completely left out the duties. The content of the convention include only civil and political Rights\(^{151}\). Other Treaties of the system include the Additional protocol to the American convention on Human Rights in the Area of Economic, Social and Cultural Rights,\(^{152}\) the protocol to Abolish the death penalty\(^{153}\) and the Inter-American convention for the prevention, punishment and eradication of violence Against women\(^{154}\). The following are the Human Rights enforcement mechanisms as per the mandate of Inter-American Human Rights system:

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\(^{143}\) Preamble Paragraphs of the OAS charter
\(^{144}\) OAS Resolution xxx, adopted by the ninth Inter-conference of American States (1948) reprinted in Basic document pertaining to Human Rights in the Inter-American system, OAS/ser. LV/11.82 doc.6 rev 1 at 17 (1992)
\(^{145}\) Scott Davidson, Inter-American Human Rights system, 13 (1997)
\(^{146}\) Article 29-38 of the Declaration of the Right and duties of man; the Banjul charter and the Universal Declaration of Human Rights also contain duties in them
\(^{147}\) Scott Davidson, Inter-American Human Rights system 13 (1997)
\(^{148}\) Mark freeman & Girban van ert, International Human Rights law, 102 (2004)
\(^{150}\) Mark freeman & Girban van ert, International Human Rights law 103, (2004)
\(^{151}\) Rhona K.M. Smith, International Human Rights , 117, 2003;
\(^{153}\) ibid
\(^{154}\) ibid at 594
5.4.2(a) The Inter-American Commission of Human Rights

Originally, the Inter-American Commission was established by a resolution of the OAS\textsuperscript{155}. As a charter based organ, it used the Declaration of the Rights and duties of Man to enforce Human Rights\textsuperscript{156}. Article 9 of its statute enumerated the powers of the Inter-American Commission\textsuperscript{157}. The commission interpreted Article 9 to enable to issue country reports\textsuperscript{158}. A country report is an enforcement mechanism comprising studies and investigations about the Human Rights situations in member countries and finally culminates in the production of country reports. When a special Inter-American conference took place in 1965, it revamped the powers of commission by authorizing it to receive individual communications\textsuperscript{159}. However this empowerment mandated it to receive individual communications only for some rights\textsuperscript{160}. Non-Government organizations can also file complaint with the Inter-American Commission\textsuperscript{161}. The commission may also receive a complaint from state party alleging that another state has committed a violation of Human Rights set out in the convention. But such procedure is optional. This is subject to the condition that a state party which alleges that another state party is violating Human Rights recognized under the convention must have made a declaration recognizing the competence of the commission to receive such complaints and the state party against which a complaint is made must have also made a similar declaration\textsuperscript{162}. Such complaints are subject to admissibility criteria\textsuperscript{163}.

\begin{itemize}
  \item \textsuperscript{155} Scott Davidson, Inter-American Human Rights system 99 (1997)
  \item \textsuperscript{156} ibid at 16
  \item \textsuperscript{157} OAS ser L.V/11.82 Doc 6 rev at 93 (1992) reads: (1) Except when justifiably prevented, to attend the regular and special meetings of the commission hold at is permanent head quarters or in any other place to which it may have decided to sit temporarily. (2) to serve, expert when justifiably prevented on special committee which the commission may from to conduct on site observations, or to perform any other duties with in their ambit
  \item \textsuperscript{158} Scott Davidson, the Inter-American court of Human Rights 15 (1997)
  \item \textsuperscript{159} Scott Davidson, Inter-American Human Rights system 17 (1997).
  \item \textsuperscript{160} ibid at 17; only the following rights were subjects of individual petitions- the right to life, Liberty and security of persons, equality before the law, freedom of religion, freedom of expression, freedom from ability arrest and the right to due process.
  \item \textsuperscript{161} Article 44 of the American convention on Human Rights
  \item \textsuperscript{162} Article 45 of the American convention on Human Rights
  \item \textsuperscript{163} According to the Article 46 & 47 of the American convention on Human Rights, a complaint is considered to be admissible only if it fulfils certain further conditions. (1) Before making the complaint domestic remedies must have been exhausted; (2) the complaint must have been made within six months of the date of the alleged violation was noticed or final judgment; (3) A petition on the same subject must not have been pending before another International procedure for settlement; (4) The complaint or
In the course of ascertaining the facts of the case, the Inter-American commission can report to investigation it deems necessary. It can request the state to provide information or resort to hearing oral statements. The main object of the commission is to secure a friendly settlement between the parties. In case a friendly settlement is not made, the commission draws up a report containing the facts and its conclusions. Then the report is transmitted to the states concerned. If within three months from the date of the transmission of the said report the matter is not settled or is not submitted to the court either by the commission or state concerned, the commission may, by vote of an absolute majority of the members draws up a report setting forth its opinion and conclusions on the question submitted for its consideration. The commission may also make recommendations to the state party to take measures to remedy the situation within a prescribed period. The matter does not end here. After the expiry of the said period, the commission takes a decision, by the votes of an absolute majority of its members, as to the state concerned has taken adequate measures to remedy the situation. The Inter-American commission through its recommendation has awards monetary damages, orders individual and general measures. The Inter-American commission of Human Rights plays a major role in the protection of Human Rights in the region.

5.4.2(b) The Inter-American Court of Human Rights

In accordance with the American convention on Human Rights has been constituted and began to function in 1979. The court has an adjudicatory jurisdiction according to which the commission and if they expressly accept this form of jurisdiction,
the states parties may submit cases concerning the interpretation and application of the convention. Article 64 of the American convention on Human Rights creates an advisory jurisdiction according to which O.A.S member states may consult the court regarding “Interpretation of this convention or of other Treaties concerning the protection of Human Rights in the American States”.

Finally, it is worth discussing, the relationship between the Inter- American court and the commission. Since only states and the commission have access to the Inter-American court, only individual cases go to the Inter-American court is through the Inter-American Commission. However, there is no guiding principle directing the Inter-American Commission in making such decision. This area is still left to the discretion of the commission. In spite of numerous difficulties of all kinds, the commission and court have done a remarkable job so far. They have issued important decisions as well as, in the case of the court, advisory opinions. Given the survival of some authoritarian states on the American continent and the endemic problems of democracy in Latin America, the contribution of the two bodies to progress, the Rule of Law, and respect for Human Rights should not be underestimated.

5.4.3. Human Rights enforcement Machinery Under the African Human Rights System

The African Human Rights system is organized under the African union. Initially the system was anchored in the framework of the organization of African unity, which is a predecessor to the African Union. The charter of the organization of African unity made a few references to the United Nations Charter and the Universal Declaration of Human Rights. However it did not contain any catalogue of rights in it. The struggle against colonialism at the time of the making of the charter of organization of African

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171 Articles 61 to 63 of the ACHR  
172 Scott Davidson, the Inter- American Human Rights system 185 (1997)  
176 Vincent O. Orlu Nmehielle, the African Human Rights systems; Its laws, practice and institutions 67 (2001)
unity can explain the absence of any Human Rights provision within the main text of the charter. Later developments, including the decline of colonialism and the awareness of the imminence of end of Apartheid, created the impetus to seriously consider developing an African Human Rights system. The outcome was the creation of the African charter on Human Rights and peoples Rights. The charter was adopted in 1981 in Banjul and in 1986 in Nairobi.

The Banjul charter follows a different approach than other Human Rights instruments in that it incorporates all civil, political, economic and social rights together in the same document. Besides this, the charter reflects its African identity and experiences by creating collective rights such as the rights to freely dispose of wealth and natural resources. The concept of individual duties also differentiates the Banjul charter. The duties include those owed to the family, Society and the state. Another distinguishing feature of the Banjul charter is the absence of any general limitation and derogation clauses. The charter however contains “claw-back” clauses attached to each provision. These clauses, by giving deference to national laws over charter provisions, undermine the rights guaranteed by the charter. The inclusion of such clauses creates national standards of measures against which the rights of the charter are measured.

The Banjul convention also allows for deriving inspiration from other International instruments in interpreting the provisions of the Banjul charter. The African system also contains other treaties, including specific aspects of refugee problems in Africa, African charter on the Rights and welfare of the child, the protocol to the African charter on Human Rights on the Rights of women in Africa and the protocol establishing the African Court on Human Rights enforcement Mechanisms under the African Human Rights system:

177 Ibid
178 The African charter on the Rights of Human and peoples Right is often referred to as Banjul charter to differentiate it from the OAU charter
179 Banjul charter Article 29
180 Banjul charter Article 28
181 Banjul charter Article 29 (2)
5.4.3  (a) The African Commission on Human and Peoples Rights

The African commission on Human and peoples Rights is a body established by the Banjul charter with the mandate to protect and promote Human Rights on the continent\textsuperscript{183}. The Banjul charter contains many provisions dealing with the composition, election and membership of the commission\textsuperscript{184}. The African commission carries out its mandate of promoting Human Rights by disseminating Human Rights information, organising seminars, carrying out research and encouraging and assisting National Human Rights Commissions\textsuperscript{185}.

Article 62 of the Banjul charter states each state party to the charter shall undertake to submit every two years, from the fate of the present charter comes into force, a report on the legislative or other measures they have taken to give effect to the rights and freedoms recognized and guaranteed under the charter. The African System recognizes an inter-state complaint Mechanism\textsuperscript{186}. Under the Banjul charter, the Inter-State complaint Mechanism is a mandatory procedure\textsuperscript{187}. Once a state becomes a state party to the Banjul charter, it is bound by the inter-state complaint mechanism\textsuperscript{188}. The Banjul charter provides two different ways of making an inter-state application. The first way gives a state the option of directly communicating with the state alleged to have violated rights before going to the African commission with the compliant\textsuperscript{189}. Under this system a state has a three months period during which it must seek a diplomatic solution.

\textsuperscript{184} The commission consists of eleven members to be chosen from amongst African personalities of the Highest reputation known for their high morality, integrity, impartiality and competence in matters concerning human and peoples Rights, preference being given to persons having legal experience. They serve in their personal capacity (Article 31 of the African charter on human and peoples Rights); There is also provision for the appointment of a secretary to the Commission to be appointed by the Secretary General of the Organisation of African unity. His main function is to provide for the staff and services necessary for the effective discharge of duties of the commission (Article 41 of the African charter on Human and Peoples Rights).
\textsuperscript{185} Nsongurua J. Udombana, towards the African court of Human and peoples Rights: Better than late, 3 yale Human Rights and development law journal 45, 65 (2000)
\textsuperscript{187} Ibid
\textsuperscript{188} Compare with Inter- American system where it is left to the discretion of each member state
\textsuperscript{189} Banjul charter Article 47 and 48
to the problem\textsuperscript{190}. The second option is that a state can bring the case directly to the African commission without the need to exhaust the first option\textsuperscript{191}

The African commission can deal with the matter submitted to it only after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the African commission that the procedure of achieving these remedies would be unduly prolonged\textsuperscript{192}. The Commission at the time of considering the matter may ask the state concerned to provide it with all relevant information\textsuperscript{193}. When the commission considers the matter, states concerned may be represented before it and submit written or oral representation. Thereafter the commission with in a reasonable period of time prepares a report stating facts and findings and transmit the report to the states concerned and communicate the same to the Assembly of Heads and Governments\textsuperscript{194}, with such recommendations which it deems useful or fit\textsuperscript{195}. If one or more communications reveal the existence of a serious or massive violations of human and people’s rights, the matter is taken seriously and it shall bring the same to the notice of the Assembly of Heads of states and Governments which may in its turn ask the commission to make in-depth study of the said cases and submit a factual report including its findings and recommendations\textsuperscript{196}.

The Banjul Charter under Article 55 mandates the commission to receive communications other than those of states. It provides:

1. Before each session, the secretary of the commission shall make a list of the communications other than those of states parties to the present charter and transmit them to the members of the commission, who shall indicate which communications should be considered by the commission.

\textsuperscript{190}Vincent O. Orlu Nmehielle, the African Human Rights system: Its law, practice, and Institutions, 199 (2001)
\textsuperscript{191}Banjul charter Article 49
\textsuperscript{192}Banjul charter Article 50
\textsuperscript{193}Banjul charter Article 51
\textsuperscript{194}Banjul charter Article 52
\textsuperscript{195}Banjul charter Article 53
\textsuperscript{196}Banjul charter Article 58
2. A communication shall be considered by the commission if a simple majority of its members so decide.

This broad mandate has developed into practice of accepting communications from individuals and Non-Governmental Organizations (NGOs). In handling individual complaints, the African commission first tries to reach a friendly settlement. This practice flowed from Article 52 of the Banjul charter dealing with Inter-State complaints and declaring that in an Inter-State mechanism a friendly settlement should precede adjudication of the same. The commission submits reports of all its activities to the Assembly of the Heads of States and Governments. All measures taken by the commission remain confidential until such a time as the Assembly of the Heads of States and Government otherwise decide. After considering the reports by the Assembly of the Heads of States and Governments, the Chairman gets the report published.

There is no enforcement power with the commission. The commission only submits the report. It can neither take a binding decision nor can it enforce it. It is the only the OAU Assembly which can decide and takes necessary action. It has not developed even any follow up procedure to monitor States compliance with its decisions.

5.4.3 (b) The African Court of Human Rights

The African system for the protection of Human Rights has been undoubtedly strengthened by the adoption of the Additional protocol to the African charter on Human and peoples Rights of 1997, on the establishment of the African court on Human and peoples Rights. However the court has not come into force for want of ratification. The African court was the missing element of an effective regional system for the protection

199 Banjul Charter Article 59
199 This protocol however, has not yet entered into force
of Human Rights and its establishment marks beyond any doubt the beginning of a new era in the promotion of the Rule of Law in Africa\textsuperscript{200}

5.4.4. The Arab Commission on Human Rights


The Arab commission on Human Rights consists of the member States of the Arab League. Each member of the league is represented in the commission\textsuperscript{201}. The Council of the league appoints a chairman for the commission for a period of two years\textsuperscript{202}. The term of the office may be renewed. The permanent seat of the commission is at Cairo\textsuperscript{203}. The functions of the commission include the preparation and submission of draft agreements to the league Council. It may also set up sub-committee to discharge its functions\textsuperscript{204}. The commission at its second session of 1969 prepared a “plan of action” which was adopted by the Council. It included the establishment of a National commission of Human Rights in member States, receiving reports from member states on their respective activities for the protection of Human Rights and making recommendations there on and under taking preparatory work for the proclamation of an Arab charter of Human Rights. The commission also makes an annual communication about its activities to the U.N commission on Human Rights. Thus its work is confined to the promotion of Human Rights than to the protection of Human Rights.

It is significant to note that no attempt has been made as yet by the league or by the commission in the direction of establishing an Arab regional convention on Human

\textsuperscript{200} Dr H.O. Agarwal Human Rights , Twelfth edition (2010) central law publication P 217-218
\textsuperscript{201} Article 2 of the Arab charter on Human Rights
\textsuperscript{202} Article 5 of the Arab charter on Human Rights
\textsuperscript{203} The commission, however may resolve to hold a session in any other member State of the league if the performance of the commission duties so requires.
\textsuperscript{204} Article 13 of the Arab charter on Human Rights
Rights perhaps because they are preoccupied by the rights of Arabs living in Israeli occupied territories. In May 1979 Arab lawyers union, a Non-Governmental Organisation made an attempt towards the foundation of the Human Rights in terms of Islam, to be embodied in an Arab convention on Human Rights. However no positive result has emerged as yet\(^{205}\).

5.5 Summary

The United Nations has created a global structure for protecting Human Rights. The organization’s work on Human Rights is carried out by a two bodies namely charter-based Human Rights bodies and treaty-based Human Rights, bodies, aimed at advancing democracy, Human Rights and the Rule of Law through out the world. Various Human Rights provisions of the United Nations Charter with composition, functions and procedure followed by the organs of United Nations concerned for the implementation of Human Rights, reveals the legal character of these provisions and actual work done by all the principal organs of the U.N. In 1948, the General Assembly adopted a Universal Declaration of Human Rights, which is comprehensive and has to some extent affected the content of National law. The General Assembly Resolution 60/251 mandates a Universal Periodic Review of each states fulfilment of its Human Rights obligations and commitment. The General Assembly and the Economic and Social Council has contributed much for the protection of Human Rights through its various commissions and bodies. For long the nearest approach machinery for the supervision of the problem of protection is the commission on Human Rights established by the Economic and Social Council in 1946. In 2006 growing uneasy with the way in which the commission functioned led to its replacement by the Human Rights Council consisting of 47 member states. The United Nations High Commissioner for Human Rights in 1994 established a Hotline. A 24 hour facsimile line is available to the victims of Human Rights violations, their relatives and NGOs. The United Nations condemned the Apartheid and other Human Rights violations. The International Court of Justice repeatedly quoted the Human Rights provisions of the U.N Charter, which paved the way for the development

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\(^{205}\) Dr. H.O Agarwal Human Rights Twelfth edition (2010) central law Publication P. 218
of International Human Rights jurisprudence keeping in view to cater to the needs of the society.

Several U.N. Human Rights treaties were established monitoring bodies to oversee the implementation of the treaty provisions by State parties and examine the reports of the signatory nations submit under the treaty. These committees are also in charge of issuing concluding observations or comments, where they summarise their concerns about certain states and also give recommendations for the future. Normally the Human Rights treaties establish three supervisory procedures. (1) A procedure based on the examination of periodic reports submitted by the state; (2) The procedure of Inter-State Complaints which a contracting state can set in motion against another party; (3) The procedure operating at the request of the individuals or groups of individuals, who may file with the supervisory body a “Communication” setting out the violations allegedly perpetrated by a state.

At the regional level, Human Rights protection systems developed independent of the United Nations. The most advanced is the European Human Rights system which gives individual the right to present cases of alleged violations of Human Rights to the European Court of Human Rights. The final judgements of the court are binding. The various functions of the system are allotted to committees, chambers of the court and the grand chamber of the court. In Inter-American Human Rights System, the Inter-American Commission of Human Rights and an Inter-American Court of Human Rights are playing an important role, although the judicial means at their disposal are not so advanced as those of the European Court of Human Rights. The Inter-American Court can judge the cases presented to it by the commission and by states. Individuals have no direct access to the court. The African Human Rights system is based on petitions which may be presented to the African Commission on Human and People’s Rights. The Commission may also subject to certain conditions, consider complaints from individuals. The organisation of African Unity (OAU) attempted to follow the examples of other systems and establish an African Court on Human and People’s Rights was adopted by the OAU in 1997 and it has not yet entered into force for want of ratification. In addition to the
above the Arab Commission on Human Rights was setup as a sub-committee of the league of Arab states to promote Human Rights in the Arab States.