Chapter One: Introduction to Human Rights Law

- ✓ Human rights are a special sort of inalienable moral entitlement.
- ✓ They attach to all persons equally, by virtue of their humanity, irrespective of race, nationality, or membership of any particular social group. Human rights belong to an individual as a consequence of being human.
- ✓ The term came into wide use after World War II, replacing the earlier phrase "natural rights," which had been associated with the Greco-Roman concept of natural law since the end of the Middle Ages.
- ✓ The concept of human rights is based on the belief that every human being is entitled to enjoy her/his rights without discrimination. Human rights differ from other rights in two respects.
- ✓ Firstly, they are characterised by being:
  - Inherent in all human beings by virtue of their humanity alone (they do not have, *e.g.,* to be purchased or to be granted);
  - Inalienable (within qualified legal boundaries); and
  - Equally applicable to all.
- ✓ Secondly, the main duties deriving from human rights fall on states and their authorities or agents, not on individuals.
- ✓ One important implication of these characteristics is that human rights must themselves be protected by law (the rule of law). Furthermore, any disputes about these rights should be submitted for adjudication through a competent, impartial and independent tribunal, applying procedures which ensure full equality and fairness to all the parties, and determining the question in accordance with clear, specific and pre-existing laws, known to the public and openly declared.
- ✓ The idea of basic rights originated from the need to protect the individual against the (arbitrary) use of state power. Attention was therefore initially focused on those rights which oblige governments to refrain from certain actions. Human rights in this category are generally referred to as fundamental freedoms.
- ✓ The specific nature of human rights, as an essential precondition for human development, implies that they can have a bearing on relations both between the individual and the state, and between individuals themselves.
- ✓ The **individual-state relationship** is known as the **vertical effect of human rights**.
- ✓ While the primary purpose of human rights is to establish rules for relations between the individual and the state, several of these rights can also have implications for **relations among individuals**. This so-called **horizontal effect** implies, among other things, that a government not only has an obligation to refrain from violating human rights, but also has a duty to protect the individual from

infringements by other individuals. The right to life thus means that the government must strive to protect people against homicide by their fellow human beings.

1.2 Historical Development

2. Pre World War II Developments

- ✓ The origins of human rights may be found both in Greek philosophy and the various world religions.
- ✓ In the Age of Enlightenment (18th century) the concept of human rights emerged as an explicit category. Man/woman came to be seen as an autonomous individual, endowed by nature with certain inalienable fundamental rights that could be invoked against a government and should be safeguarded by it.
- ✓ Human rights were henceforth seen as elementary preconditions for an existence worthy of human dignity.
- ✓ Before this period, several charters codifying rights and freedoms had been drawn up constituting important steps towards the idea of human rights.
  - the *Magna Charta Libertatum* of 1215,
  - *the Golden Bull* of Hungary (1222),
  - the Danish *Erik Klippings Håndfaestning* of 1282,
  - the *Joyeuse Entrée* of 1356 in Brabant (Brussels),
  - the *Union of Utrecht* of 1579 (The Netherlands) and
  - the English *Bill of Rights* of 1689.
- ✓ These documents **specified rights**, which could be claimed in the light of particular circumstances (*e.g*. threats to the freedom of religion), but they **did not yet contain an all-embracing philosophical concept of individual liberty.**
- ✓ Freedoms were often seen as rights conferred upon individuals or groups by virtue of their rank or status.
- ✓ In the centuries after the Middle Ages, the concept of liberty became gradually separated from status and came to be seen not as a privilege but as a right of all human beings. Spanish theologists and jurists played a prominent role in this context. Among the former, the work of Francisco de Vitoria (1486-1546) and Bartolomé de las Casas (1474-1566) should be highlighted. These two men laid the

(doctrinal) foundation for the recognition of freedom and dignity of all humans by defending the personal rights of the indigenous peoples inhabiting the territories colonised by the Spanish Crown.

- ✓ **The Enlightenment** was decisive in the development of human rights concepts.
- ✓ The ideas of Hugo Grotius (1583-1645), one of the fathers of modern international law, of Samuel von Pufendorf (1632-1694), and of John Locke (1632-1704) attracted much interest in Europe in the 18th century.
- ✓ Locke, for instance, developed a comprehensive concept of natural rights; his list of rights consisting of life, liberty and property.
- ✓ Jean-Jacques Rousseau (1712-1778) elaborated the concept under which the sovereign derived his powers and the citizens their rights from a social contract.
- ✓ The term human rights appeared for the first time in the French *Déclaration des Droits de l'Homme et du Citoyen* (1789).
- ✓ The people of the British colonies in North America took the human rights theories to heart. The American Declaration of Independence of 4 July 1776 was based on the assumption that all human beings are equal. It also referred to certain inalienable rights, such as the right to life, liberty and the pursuit of happiness. These ideas were also reflected in the Bill of Rights which was promulgated by the State of Virginia in the same year. The provisions of the Declaration of Independence were adopted by other American states, but they also found their way into the Bill of Rights of the American Constitution.
- ✓ The French *Déclaration des Droits de l'Homme et du Citoyen* of 1789, as well as the French Declaration of 1793, reflected the emerging international theory of universal rights. Both the American and French Declarations were intended as systematic enumerations of these rights.
- ✓ The **classic rights of the 18th and 19th** centuries related to the **freedom of the individual**. Even at that time, however, some people believed that citizens had a right to demand that the government endeavour to improve their living conditions. Taking into account the principle of equality as contained in the French Declaration of 1789, several constitutions drafted in Europe around 1800 not only contained classic rights, but also included articles which assigned responsibilities to the government in the fields of employment, welfare, public health, and education. Social rights of this kind were also expressly included in the Mexican Constitution of 1917, the Constitution of the Soviet Union of 1918, and the German Constitution of 1919.
- ✓ In the 19th century, there were frequent inter-state disputes in connection with the protection of the rights of minorities in Europe. These conflicts led to several humanitarian interventions and called for

international protection arrangements. One of the first such arrangements was the Treaty of Berlin of 1878.

- ✓ The need for international standards on human rights was first felt at the end of the 19th century, when the industrial countries began to introduce labour legislation. This legislation, which raised the cost of labour, had the effect of worsening their competitive position in relation to countries that had no labour laws.
- ✓ Economic necessity forced the states to consult each other. It was as a result of this that the first conventions were formulated in which states committed themselves *vis-à-vis* other states in regard to their own citizens. The **Bernlin Convention of 1906, which prohibited night-shift work by women** can be seen as the **first multilateral convention** meant to safeguard social rights. Many more labour conventions were later drawn up by the International Labour Organisation (ILO),which as founded in 1919.

3. Post World War II Developments

- ✓ The atrocities of World War II put an end to the traditional view that states have full liberty to decide the treatment of their own citizens.
- ✓ The signing of the Charter of the United Nations (UN) on 26 June 1945 brought human rights within the sphere of international law.
- ✓ The Charter contains a number of articles specifically referring to human rights.
- ✓ Less than two years later, the UN Commission on Human Rights (UNCHR),which was established early in 1946, submitted a draft Universal Declaration of Human Rights (UDHR). The UN General Assembly (UNGA) adopted the Declaration in Paris on 10 December 1948. This day was later designated **Human Rights Day.**
- ✓ During the 1950s and 1960s, more and more countries joined the UN. Upon joining the UN, they formally accepted the obligations contained in the UN Charter, and in doing so subscribed to the principles and ideals laid down in the UDHR. This commitment was made explicit in the Proclamation of Teheran (1968), which was adopted during the first World Conference on Human Rights, and repeated in the Vienna Declaration and Programme of Action, which was adopted during the Second World Conference on Human Rights (1993).
- ✓ Since the 1950s, the UDHR has been backed up by a large number of international conventions. The most significant of these conventions are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

- ✓ These two Covenants, together with the UDHR, form the International Bill of Human Rights. At the same time, many supervisory mechanisms have been created, including those responsible for monitoring compliance with the two Covenants.
- ✓ Human rights have also been receiving more and more attention at the regional level.

Theories of Human Rights: Justification

- ✓ The justification *of a right refers to how we argue for its existence, what philosophical* assumptions and theories we use to defend and define the right.

➢ **Classification of Human Rights**

- ✓ The term human rights, is used to denote a broad spectrum of rights ranging from the right to life to the right to a cultural identity. They involve all elementary preconditions for a dignified human existence. These rights can be ordered and specified in different ways.
- ✓ At the international level, a distinction has sometimes been made between civil and political rights, on the one hand, and economic, social and cultural rights on the other.
- ✓ Although human rights have been classified in a number of different manners it is important to note that international human rights law stresses that all human rights are universal, indivisible and interrelated. The indivisibility of human rights implies that no right is more important than any other.

1. CLASSIC AND SOCIAL RIGHTS

- ✓ **Classic rights** are often seen to require the **non-intervention of the state** (negative obligation), and **social rights** as requiring active **intervention on the part of the state**,
- ✓ Classic rights entail an obligation for the state to refrain from certain actions, while social rights oblige it to provide certain guarantees.
- ✓ The evolution of international law, however, has led to this distinction between classic and social rights has become increasingly awkward. Classic rights, such as civil and political rights, often require considerable investment by the state. The state does not merely have the obligation to respect these rights, but must also guarantee that people can effectively enjoy them. Hence, the right to a fair trial, for instance, requires well-trained judges, prosecutors, lawyers and police officers, as well as administrative support. Another example is the organisation of elections, which also entails high costs.
- ✓ On the other hand, most social rights contain elements that require the state to abstain from interfering with the individuals exercise of the right.

2. CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS

➢ **Civil rights**

- ✓ The term “civil rights” is often used with reference to the rights set out in the first eighteen articles of the UDHR, almost all of which are also set out as binding treaty norms in the ICCPR. From this group, a further set of “physical integrity rights” has been identified, which concern the right to life, liberty and security of the person, and which offer protection from physical violence against the person, torture and inhuman treatment, arbitrary arrest, detention, exile, slavery and servitude, interference with one’s privacy and right of ownership, restriction of one’s freedom of movement, and the freedom of thought, conscience and religion.
- ✓ The difference between “basic rights” and “physical integrity rights” lies in the fact that the former include economic and social rights, but do not include rights such as protection of privacy and ownership.
- ✓ Although not strictly an integrity right, the right to equal treatment and protection in law certainly qualifies as a civil right. Moreover, this right plays an essential role in the realisation of economic, social and cultural rights.
- ✓ Another group of civil rights is referred to under the collective term “due process rights”. These pertain, among other things, to the right to a public hearing by an independent and impartial tribunal, the “presumption of innocence”, the *ne bis in idem* principle and legal assistance (*e.g.,* Articles 9, 10, 14 and 15 of the ICCPR).
- ➢ **Political rights*:*** are those set out in Articles 19 to 21 of the UDHR and also codified in the ICCPR. They include **freedom of expression**, **freedom of association and assembly**, **the right to take part in the government of one’s country**, and **the right to vote and stand for election at genuine periodic elections held by secret ballot** (Articles 18, 19, 21, 22 and 25 of the ICCPR).
- ➢ **Economic and social rights:** are listed in Articles 22 to 26 of the UDHR, and further developed and set out as binding treaty norms in the ICESCR. These rights provide the conditions necessary for prosperity and wellbeing. Economic rights refer, for example, to the right to property, the right to work, which one freely chooses or accepts, the right to a fair wage, a reasonable limitation of working hours, and trade union rights. Social rights are those rights necessary for an adequate standard of living, including rights to health, shelter, food, social care, and the right to education (Articles 6 to 14 of the ICESCR).
- ➢ **Cultural rights:** The UDHR lists cultural rights in Articles 27 and 28. These include the right to participate freely in the cultural life of the community, to share in scientific advancement, and the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author (Article 15 of the ICESCR and Article 27 of the ICCPR).

- ***The alleged dichotomy between civil and political rights, and economic, social and cultural rights***

✓ Traditionally, it has been argued that there are fundamental differences between economic, social and cultural rights, and civil and political rights.

✓ These two categories of rights have been seen as two different concepts and their differences have been characterised as a dichotomy.

✓ According to this view, civil and political rights are considered to be expressed in a very precise language, imposing merely negative obligations which do not require resources for their implementation, and which, therefore, can be applied immediately. On the other hand, economic, social and cultural rights are considered to be expressed in vague terms, imposing only positive obligations conditional on the existence of resources and therefore involving a progressive realisation.

✓ As a consequence of these alleged differences, it has been argued that civil and political rights are justiciable whereas economic, social and cultural rights are not. In other words, this view holds that only violations of civil and political rights can be adjudicated by judicial or similar bodies, while, economic, social and cultural rights are □by their nature□ non-justiciable.

3. FUNDAMENTAL AND BASIC RIGHTS

✓ Fundamental rights are taken to mean such rights as the right to life and the inviolability of the person. Within the UN, extensive standards have been developed which, particularly since the 1960s, have been laid down in numerous conventions, declarations and resolutions, and which bring already recognised rights and matters of policy which affect human development into the sphere of human rights. Due to the concern that a broad definition of human rights may lead to the notion of □violation of human rights□ losing some of its significance has generated a need to distinguish a separate group within the broad category of human rights. Increasingly, the terms □elementary□, □essential□, □core□ and □fundamental□ human rights are being used.

✓ Another approach is to distinguish a number of □basic rights□, which should be given absolute priority in national and international policy. These include all the rights which concern people□s primary material and non-material needs. If these are not provided, no human being can lead a dignified existence.

✓ Basic rights include the right to life, the right to a minimum level of security, the inviolability of the person, freedom from slavery and servitude, and freedom from torture, unlawful deprivation of liberty, discrimination and other acts which impinge on human dignity. They also include freedom of thought, conscience and religion, as well as the right to suitable nutrition, clothing, shelter and medical care, and other essentials crucial to physical and mental health.

✓ Mention should also be made of so-called participation rights. For instance, the right to participate in public life through elections (which is also a political right; see above) or to take part in cultural life. These participation rights are generally considered to belong to the category of fundamental rights, being essential preconditions for the protection of all kinds of basic human rights.

4. OTHER CLASSIFICATIONS

➢ ***Freedoms***

✓ Preconditions for a dignified human existence have often been described in terms of freedoms.United States President, Franklin D. Roosevelt, summarised these preconditions in his famous Four Freedoms Speech to the United States Congress on 26 January 1941:

- Freedom of speech and expression;
- Freedom of belief (the right of every person to worship God in his own way);
- Freedom from want (economic understandings which will secure to every nation a healthy peace-time life for its inhabitants); and
- Freedom from fear (world-wide reduction of armaments to such a point and in such a thorough fashion that no nation would be able to commit an act of physical aggression against any neighbour). Roosevelt implied that a dignified human existence requires not only protection from oppression and arbitrariness, but also access to the primary necessities of life.

➢ ***Civil liberties***

✓ Civil liberties refer primarily to those human rights which are laid down in the United States Constitution: freedom of religion, freedom of the press, freedom of expression, freedom of association and assembly, protection against interference with one s privacy, protection against torture, the right to a fair trial, All the rights of workers. This classification does not correspond to the distinction between civil and political rights.

➢ ***Individual and collective rights***

✓ Freedom of association and assembly, freedom of religion and, more especially, the freedom to form or join a trade union, fall into collective rights.

✓ The collective element is even more evident when human rights are linked specifically to a membership of a certain group, such as the right of members of ethnic and cultural minorities to preserve their own language and culture. One must make a distinction between two types of rights, which are usually called collective rights: individual rights enjoyed in association with others, and the rights of a collective.

✓ The most notable example of a collective human right is the right to selfdetermination, which is regarded as being vested in peoples rather than in individuals (Articles 1 of the ICCPR and ICESCR).

The recognition of the right to self-determination as a human right is grounded in the fact that it is seen as a necessary precondition for the development of the individual. It is generally accepted that collective rights may not infringe an universally accepted individual rights, such as the right to life and freedom from torture.

➢ ***First, second and third generation rights***

✓ First proposed by Karel Vasak at the International Institute of Human Rights in Strasbourg. His division follows the principles of *Liberté*, *Égalité* and *Fraternité* of the French Revolution.

✓ **First generation rights** are related to liberty and refer fundamentally to civil and political rights.

✓ **The second generation rights** are related to equality, including economic, social and cultural rights.

✓ **Third generation or solidarity rights** cover group and collective rights, which include, *inter alia,* the right to development, the right to peace and the right to a clean environment. The only third generation right which so far has been given an official human rights status - apart from the right to self-determination, which is of longer standing - is the right to development.

✓ While the classification of rights into generations has the virtue of incorporating communal and collective rights, thereby overcoming the individualist moral theory in which human rights are grounded, it has been criticised for not being historically accurate and for establishing a sharp distinction between all human rights.

Sources of Human Rights Law

1. International Conventions

✓ International treaties are contracts signed between states. They are legally binding and impose mutual obligations on the states that are party to any particular treaty (states parties).

✓ The main particularity of human rights treaties is that they impose obligations on states about the manner in which they treat all individuals within their jurisdiction.

✓ Nowadays, more than forty major international conventions for the protection of human rights have been adopted. International human rights treaties bear various titles, including covenant, convention and protocol; but what they have in commone are the explicit indication of states parties to be bound by their terms.

✓ Human rights treaties have been adopted at the universal level (within the framework of the United Nations and its specialised agencies, for instance, the ILO and UNESCO) as well as under the auspices of regional organisations, such as the Council of Europe (CoE), the Organisation of American States (OAS) and the African Union (AU) (formerly the Organisation of African Unity (OAU)). These

organisations have greatly contributed to the codification of a comprehensive and consistent body of human rights law.

a. UNIVERSAL CONVENTIONS FOR THE PROTECTION OF HUMAN RIGHTS

- ✓ Human rights had already found expression in the Covenant of the League of Nations, which led, *inter alia*, to the creation of the International Labour Organisation.
- ✓ At the San Francisco Conference in 1945, held to draft the Charter of the United Nations, a proposal to adopt a Declaration on the Essential Rights of Man was put forward but was not examined because it required more detailed consideration than was possible at the time. Nonetheless, the UN Charter clearly speaks of promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion (Article 1, para. 3). The idea of promulgating an international bill of rights was developed immediately afterwards and led to the adoption in 1948 of the Universal Declaration of Human Rights (UDHR).
- ✓ The UDHR, adopted by a resolution of the United Nations General Assembly (UNGA), although not a treaty, is the earliest comprehensive human rights instrument adopted by the international community.
- ✓ On the same way that it adopted the Universal Declaration, the UNGA requested the UN Commission on Human Rights to prepare, as a matter of priority, a legally binding human rights convention. Wide differences in economic and social philosophies hampered efforts to achieve agreement on a single instrument, but in 1954 two draft conventions were completed and submitted to the UNGA for consideration.
- ✓ Twelve years later, in 1966, the International Covenant on Economic, Social 21 and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were adopted, as well as the First Optional Protocol to the ICCPR, which established an individual complaints procedure. Both Covenants and the Optional Protocol entered into force in 1976. A Second Optional Protocol to the ICCPR, on the abolition of the death penalty, was adopted in 1989 and entered into force in 1991.
- ✓ **The International Bill of Human Rights** consists of the UDHR, the ICESCR, and the ICCPR and its two Optional Protocols. The International Bill of Rights is the basis for numerous conventions and national constitutions.
- ✓ Besides the International Bill of Human Rights, a number of other instruments have been adopted under the auspices of the UN and other international agencies. They may be divided into three groups:

a) Conventions elaborating on certain rights, *inter alia*:

- The Convention on the Prevention and Punishment of the Crime of Genocide (1948)

- ILO 98 concerning the Right to Organise and to Bargain Collectively (1949)
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

b) Conventions dealing with certain categories of persons who may need special protection*, inter alia:*

- The Convention relating to the Status of Refugees (1951), and the 1967 Protocol thereto
- The Convention on the Rights of the Child (1989)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (2000)
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)
- ILO 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (2000)

c) Conventions seeking to eliminate discrimination

- ILO 111 concerning Discrimination in respect of Employment and Occupation (1958)
- UNESCO Convention against Discrimination in Education (1960)
- The International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)
- The Convention on the Elimination of All Forms of Discrimination Against Women (1979) and its Optional Protocol (2000)

b. REGIONAL CONVENTIONS FOR THE PROTECTION OF HUMAN RIGHTS

✓ The UN Charter encourages the adoption of regional instruments for the establishment of human rights obligations, many of which have been of crucial importance for the development of international human rights law.

✓ The Council of Europe adopted in 1950 the European Convention for the Protection of Human Rights and Fundamental Freedoms, supplemented by the European Social Charter in 1961, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1987, and the Framework Convention on National Minorities in 1994.

✓ The American Convention on Human Rights was adopted in 1969, under the auspices of the Organisation of American States. This Convention has been complemented by two protocols, the 1988 Protocol of San Salvador on Economic, Social, and Cultural Rights and the 1990 Protocol to Abolish the Death Penalty. Other Inter-American Conventions include the Convention to Prevent and Punish

Torture (1985), the Convention on the Forced Disappearances of Persons (1994), and the Convention on the Prevention, Punishment and Eradication of Violence against Women (1995).

- ✓ In 1981, the Organisation of African Unity, now the African Union, adopted the African Charter on Human and Peoples Rights. Two protocols to the Charter have been adopted: the Additional Protocol on the Establishment of the African Court on Human and Peoples Rights (1998), and the Protocol on the Rights of Women in Africa (2003). Other African instruments include the Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), and the African Charter on the Rights and Welfare of the Child (1990).

2. International custom

- ✓ Customary international law plays a crucial role in international human rights law.
- ✓ The Statute of the International Court of Justice refers to general practice accepted as law. In order to become international customary law, the general practice needs to represent a broad consensus in terms of content and applicability, deriving from a sense that the practice is obligatory (*opinio juris et necessitatis*).
- ✓ Customary law is binding on all states (except those that may have objected to it during its formation), whether or not they have ratified any relevant treaty.
- ✓ One of the important features of customary international law is that customary law may, under certain circumstances, lead to universal jurisdiction or application, so that any national court may hear extra-territorial claims brought under international law. In addition, there also exists a class of customary international law, *jus cogens*, or peremptory norms of general international law, which are norms accepted and recognised by the international community of states as a whole as norms from which no derogation is permitted. Under the Vienna Convention on the Law of Treaties (VCLT) any treaty which conflicts with a peremptory norm is void.
- ✓ The Human Rights Committee in its General Comment 24 (1994) has summed up the rights which can be assumed to belong to this part of international law which is binding on all states, irrespective of whether they have ratified relevant conventions, and to which no reservations are allowed: *[A] State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women and children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language. And […] the right to a fair trial […].*

3. General principles of law

- ✓ In the application of both national and international law, general or guiding principles are used.
- ✓ In **international law**, they have been defined as **logical propositions resulting from judicial reasoning on the basis of existing pieces of international law**.
- ✓ At the **international level**, general principles of law occupy an important place in case-law regarding human rights. A clear example is the principle of proportionality, which is important for human rights supervisory mechanisms in assessing whether interference with a human right may be justified.
- ✓ General principles used because no legislation is able to provide answers to every question and to every possible situation that arises. Therefore, rules of law or principles that enable decision-makers and members of the executive and judicial branches to decide on the issues before them are needed.
- ✓ General principles of law play two important roles:
  - they provide guidelines for judges, in particular, in deciding in individual cases;
  - they limit the discretionary power of judges and of members of the executive in their decisions in individual cases.

4. Subsidiary means for the determination of rules of law

- ✓ According to Article 38 of the Statute of the International Court of Justice, *judicial decisions and the teachings of the most qualified publicists* are subsidiary means for the determination of rules of law. Therefore, they are not, strictly speaking, formal sources, but they are regarded as evidence of the state of the law.
- ✓ As for the judicial decisions, Article 38 of the Statute of the International Court is not confined to international decisions (such as the judgements of the International Court of Justice, the Inter-American Court, the European Court and the future African Court on Human Rights); decisions of national tribunals relating to human rights are also subsidiary sources of law.
- ✓ The writings of scholars contribute to the development and analysis of human rights law. Compared to the formal standard setting of international organs the impact is indirect. Nevertheless, influential contributions have been made by scholars and experts working in human rights fora, for instance, in the UN Sub-Commission on the Promotion and Protection of Human Rights, as well as by highly regarded NGOs, such as Amnesty International and the International Commission of Jurists.

Chapter Two: Human Rights Systems: Substantive Rights, Institutions and Procedures

The Universal System: The UN System

- ➢ **The Legal Framework**

1. The UN Charter

- ✓ Adopted on 26 June 1945, the **United Nations Charter** was **designed to establish the foundations of a new peaceful world order.**
- ✓ Drawing lessons from the appalling atrocities of the Second World War, the Charter's primary aim was thus to save succeeding generation from the scourge of war (preamble, paragraph 2) and to ensure the maintenance of international peace and security.
- ✓ The Charter has demonstrated not only a move towards the lasting and stable internationalization of human rights but it has also implied their contribution to ensuring the establishment of the peaceful, post-war world order.
- ✓ Under the Dumbarton Oaks proposals for the United Nations of 1944, the four powers intended to have rather a general reference to human rights. Finally, during the San Francisco Conference, more extensive references to human rights were included in the Charter, albeit this compromise was achieved at the expense of less imperative formulations. Finally, the Charter refers to human rights in altogether seven provisions of diversified content and character (Paragraph 3 of the preamble, Article 1(3), Articles 55 and 56, Article 76(C), Article 13(1)(b), Article 62(2) and (3), and Article 68).
- ✓ As reflected in the preamble to the Charter, the United Nations were guided, among others, by the motive to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small (preamble paragraph 3).
- ✓ The Charter sets out that the purpose of the United Nations will be, inter alia, to achieve international cooperation also in promoting and encouraging respect for human rights and for fundamental freedoms for all with out distinction as to race, sex, language, or religion (Article 1(3)).
- ✓ More specific rules of conduct aimed at the accomplishment of these tasks are contained in three sets of provisions of the Charter: on international economic and social cooperation (Articles 55 and 56), on the international trusteeship system (Article 76(c) and on the functions and powers of the UN organs in this sphere (Article 13(1)(b), Article 62(2) and (3), and Article 68).
- ✓ Of particular consequence is the **first set of human rights provisions** which **relates to international economic and social cooperation** laid down in Chapter IX of the Charter. Its Article 55 sets forth that with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote, inter alia, universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (Article 55(c)). As a direct extension these provisions, Article 56

provides that all Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the proposes set forth in Article 55.

- ✓ As far as **the second set of provisions** is concerned, it was provided that one of the **basic objectives of the international trusteeship system** (Chapter of the Charter) will also be to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the people of the world (Article 76 (c))
- ✓ With in the **third set of provisions**, the Charter translated its objectives and role in the field of human rights into the functions and powers of number of UN organs. Thus, the **General Assembly** was assigned the tasks of initiating studies and making recommendations for the purpose, inter alia, of promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (Article 13(b).
- ✓ Another principal organ of the United Nations, **the Economic and Social Council,** was entrusted in Article 62 with a function to make recommendations for the purposes of promoting respect for, and observance of, human rights and fundamental freedoms for all (paragraph 2) and to prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence (paragraph 3). For organizational purposes, Article 68 provides that [T]he Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

2. The UDHR

- ✓ The adoption of declaration of the human rights was envisaged as the very first item on the United Nations agenda within the proramme of the International Bill of Human Rights.
- ✓ The task of preparing a declaration was given to the **Commission on Human Rights** which started its work in 1947 and established for that purpose a drafting committee of eight members chaired by Mrs. Eleanor Roosevelt.
- ✓ In 1948 the Commission adopted the draft Declaration and submitted it through the Economic and Social Council to the General Assembly. After lengthy discussions at the General Assembly and its Third Committee, the Declaration was adopted on 10 December 1948 during the third session of the Assembly at the Chaillot Palace in Paris.
- ✓ The Declaration was adopted by forty-eight votes in favor, none against and eight abstentions (Byelorussia, Czechoslovakia, Poland, Saudi Arabia, South Africa, Ukraine, USSR and Yugoslavia). Altogether the Declaration was drafted and eventually adopted within two years.

- ✓ The Universal Declaration was adopted through Resolution 217(III) which contained five parts: Part A, the text of the Declaration as such; Part B, Right of Petition; Part C, Fate of Minorities; Part D, Publicity to be Given to the Universal Declaration of Human Rights; and Part E, preparation of a Draft Covenant on Human Rights and Draft Measures of Implementation. Contained in part A of Resolution 217(III), the Universal Declaration is made up of the Preamble and 30 articles which comprise its operative part.
- ✓ The Preamble to the Declaration is significant for several reasons. Its fundamental message lies in the statement that **recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world** (Paragraph 1).
- ✓ The Preamble also reflects its pre-1945 roots by pointing out that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind. Against this background the Universal Declaration announces the advent of a world in which human beings shall enjoy freedom of speech belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people (paragraph 2). The latter provisions reflect explicitly the Four Freedoms Message to the US Congress by Franklin D. Roosevelt in January 1941.
- ✓ Another important element of the Preamble is the recognition, in its final paragraph, of the rights and freedoms contained in the Declaration as a common standard of achievement for all peoples and nations. This common standard (in French, L□Oreal common) seems to presuppose both a common ideal and a normative reference system for the new international order.
- ✓ The operative part of the Declaration can be divided into three groups of provisions.
  - The first group (Article 1) contains an affirmation of the philosophical foundations of human rights by saying that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
  - The second group of provisions proclaims a number of **general principles**. One is the principle of **equality and non-discrimination** (Article 2), the principle that plays a fundamental role in the whole of human rights law. The second **principle relates to the concept of the duties of States** in the form of the right of everyone to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized (Article 28). The third principle spells out a concept of **the duties of everyone to the community** (Article 29(1)) and **permissible limitations in the exercise of the human rights and freedoms** (Article 29(2)). And the fourth principle provides for the **prohibition of activates by any State, group or person aimed at the destruction of the rights and freedoms** set fourth in the Declaration (Article 30).

- ✓ As far as substantive rights are concerned, the Declaration contains in Articles 3 to 27 the fundamental civil and political rights and freedoms, as well as economic, social and cultural rights. The catalogue of rights and freedoms of the first generation includes virtually all the fundamental civil and political rights and freedoms (Articles 3 to 21). Among these the following were included: the right to life, liberty and security, freedom from slavery and servitude, freedom from torture and inhuman treatment or punishment, the right to recognition as a person before the law; freedom from arbitrary arrest, detention or exile, the right to equal protection of the law, the right to an effective remedy; the right to a fair trial, the right to privacy, freedom of movement and residence, the right to nationality, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of assembly and association, the right to property, the right to participate in the government of one□s country, and others.
- ✓ Less extensive is the catalogue of economic, social and cultural rights (Articles 22 to 27). This contains the right to social security, the right to work, the right to rest and leisure, the right to an adequate standard of living, the right to education, and the right to participate in the cultural life.

3. The Covenants on Civil a political and Economic, social and Cultural Rights

- ✓ After the adoption of the Universal Declaration, the Commission on Human Rights embased on the second part of □the Bill of Human Rights□ namely the development of norm that were undisputedly binding on those states that choose to adhere to them.
- ✓ The General Assembly at its first session in 1946 assigned the commission the task of preparing an □international bill of rights.□
- ✓ However, USA and some other western countries argued against this proposal and in 1951 they succeeded in persuading the General Assembly not to follow the recommendations of the Commission on Human Rights but instead decided in favor of two separate conventions, on civil and political rights and the other on economic, social and cultural rights.
- ✓ The arguments put forward by USA and others were centered around asserted differences in regard to the possibility for the individual to legally enforce his rights and the different kind of monitoring mechanisms the two sets of rights would require.
- ✓ As of January 2001, 146 states are parties to the Covenant on Civil and Political rights and 142 states to the covenant on Economic, Social and Cultural Rights.
- ✓ The two covenants contain some identical or similar provisions, such as the right to self-determination (Article 17 both covenants) and the principle of non-discrimination (Article 2 of both covenants). Also the safeguard clauses that the rights should not be used as a pretext for the destruction of other rights, are the same (Article 5 of both covenants).

- **The International Covenant on Civil and Political Rights**

✓ The International Covenant on Civil and Political Rights contains 53 articles, of which 27 are of a normative character. It also consists of a first optional protocol adopted at the same time as the Covenant in 1906, establishing a procedure for individual complaints, and a second optional protocol, adopted in 1989 aiming at the abolition of the death penalty. As of January 2001, 98 states are parties to the first protocol and 45 states to the second.

✓ Pursuant to Article 28 of the Covenant, a Human Rights Committee is established, consisting of 18 members, who are nominated and elected by states but who serve in their individual capacity. Its mandate is to consider the reports that all states parties are under a duty to submit regularly to the committee, to consider interstate complaint and to deal with the individual complaints that may come before it under the first optional protocol

- **The International Covenant on Economic, Social and Cultural Rights**

✓ The International Covenant on Economic, Social, and Cultural Rights consists of 31 articles, of which the first 15 are of a normative character and the last 16 of a more procedural nature.

✓ In its normative articles it sets out many of the fundamentals for the well being and prosperity of an individual. Each state party is under an obligation to undertake steps to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the present covenant, by all appropriate means, including particularly the adaption of legislative measures (Article 27 the Covenant).

✓ A core provision is Article 11, which recognizes the rights of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions unfortunately, as the committee itself has noted, in many parts of the world there exists a disturbingly large situation. Much debate had been held on the difficulties to enforce and measure to what extent a state party is fulfilling its obligation under the Covenant.

✓ The denial of these are often the first steps towards alienation and polarization in societies, which in turn lead to increased risks for violent conflict and further oppression.

✓ The covenant on Economic, Social and Cultural Rights do not make provision for the establishment of a separate treaty body. Instead, the responsibility for the supervision of the Covenant is entrusted to the Economic and Social Council (ECOSOC) originally; the ECOSOC delegated this work to a special group of government experts. However, in 1985, the ECOSOC decided to instead create the Committee on Economic, Social and Cultural Rights, a body composed of eighteen members, elected by ECOSOC from a list of candidates nominated by states parties for terms of four years. Members

serve in their individual capacities, and meet twice a year for sessions of three weeks duration. The main function of the committee, as will all others of the six treaty bodies, is the examination of state report.

4. The International Convention on the Elimination of All Forms of Racial Discrimination

- ✓ In 1969 the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) entered into force after having been adopted in 1965 by the General Assembly.
- ✓ The Convention, which as of January 2001 has 156 states parties, was the first United Nations human rights instrument outside the provisions on Human Rights in the Charter that established an international monitoring system, including a procedure for individual complaints.
- ✓ The conclusion of the Convention was a priority objective not the least of the new member states of the UN, which had just gained their independence in the early 1960s.
- ✓ The Convention contains 25 articles, of which the first seven articles are of a normative character.
- ✓ A broad definition of racial discrimination is found in Article 1, and the Convention sets out a number of detailed prohibitions and obligations to prevent discrimination based on the grounds of race, color, descent, or national or ethnic origin.
- ✓ States are under an obligation to criminalize dissemination of ideas based on racial superiority and hatred and participation in racial organizations or activities.
- ✓ The committee established under the treaty reminded states that its undertaking was not only an obligation to enact certain criminal laws but also to ensure that the laws are effectively enforced.
- ✓ The international monitoring procedures are dealt with in the second part of the Convention (Articles 8 to 16).
- ✓ A Committee on the Elimination of Racial Discrimination (CERD), consisting of 18 independent experts created by the states parties after being nominated by such states parties, examines and comments on reports submitted by the parties. Such report has to be submitted initially one year after the convention enters in to force for a state and thereafter every two years. The committee was also competent to deal with complaints of a state party about non-fulfillment of the treaty obligations by another state party. The committee is empowered to play a role of inquiry and conciliation, aiming at reaching an amicable solution of the dispute (Articles 11 to 13).

5. The Convention on the Elimination of Discrimination against Women

- ✓ Equal rights of women and men are a basic principle of law embodied in the charter of the United Nations and in numerous human rights instruments in the preamble and in the provisions dealing with non-discrimination, eg. Article 1, Para. 3 and Article 55of the Charter.

- ✓ This principle is proclaimed in the Universal Declaration as well as in the two covenants (Articles 1 and 2 of the Universal Declaration and in both covenants, but in different paragraphs). In addition, states parties specifically undertake to ensure the equal right of men and women to the enjoyment of all rights set forth in each covenant (Article 3 of both covenants).
- ✓ The creation of a special functional commission, the Commission on the Status of Women and a number of legal instruments relating to the enjoyment of women of human rights has been decided upon. Such conventions have also been concluded within the framework of the International Labor Organization (ILO), governing discrimination in employment, equal remuneration, protection from hazardous work and maternity protection.
- ✓ The commission on the status of women was established in the early days of the United Nations, in 1943. In 1967, the General Assembly adopted the Declaration on the Elimination of Discrimination Against Women (CEDAW). This was a reaction based on a growing concern that additional means for promoting and protecting equal enjoyment of human rights by women is necessary.
- ✓ In 1972 the secretary-General asked the Commission on the Status of Women to request the view of member states as to the form and content of a possible legally binding instrument on the subject. In 1974 the Commission began drafting a convention. The World Conference of the International Women□s year, held in Mexico-city in 1975, encouraged the work in its Plan of Action. The Plan of Action called for convention on the elimination of discrimination against women, with effective procedures for its implementation. In 1977 a draft instrument was submitted to the General Assembly, which appointed a special working group to finalize the draft. The Convention was adopted by the General Assembly in 1979, which is entered into force in 1981, and has as of January 2001 165 states parties.
- ✓ The Convention consists of 30 Articles, of which the first 16 are of a normative character.
- ✓ The definition of discrimination against women, contained in the first article, is more detailed than in many other discrimination clauses.
- ✓ In both its definition and in other provisions the convention on the elimination of All Forms of Discrimination Against Women (Article 18 of the Convention) reflects the depth of exclusion and restriction practiced against women because of their sex.
- ✓ It identifies many areas where there have been a notorious discrimination against women; for example in regard to political and civil rights, economic rights and employment. It calls for equal rights for women, regardless of their marital status. It calls for national legislation to ban discrimination. It allows for temporary special measures to accelerate the achievement of equality between men and women.

- ✓ The Convention recognizes that, even if women's equality is guaranteed by law and special measures taken in order to promote ade facto equally, there is still a necessity to take measures to remove the social, cultural and traditional patterns which perpetuate gender-role stereotypes and to create an overall framework in society that promotes the equal rights and responsibilities between men and women, including shared responsibilities in the domestic sphere.
- ✓ The Convention provides for equal rights of women in political and public life, equal access to education and employment, equality in access to health facilitates and an end to discrimination in the field of finance and areas of economic and social rights.
- ✓ The Convention also stresses the need to eliminate discrimination in all matters relating to marriage and family related matters and stresses the social services needed especially childcare facilities for a full participation of women in public life.
- ✓ The issues of gender-based violence are not specifically addressed in the convention.
- ✓ The Convention establishes a Committee on the Elimination of Discrimination Against Women consisting of 23 members nominated and elected by states parties but serving in their personal capacity.

6. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- ✓ Although the eradication of torture has long been a goal proclaimed by the international community, torture is still practiced in many states.
- ✓ Torture is consistently outlawed in international law.
- ✓ The Universal Declaration states in Article 5 that "no one shall be subjected to torture or cruel, inhumane or degrading treatment or punishment.
- ✓ In 1949, the four General Conventions included a prohibition against "Cruel treatment and torture" as well as "outrages upon personal dignity, in particular humiliating and degrading treatment" in their common article 3.
- ✓ In 1955 the Standard Minimum Rules for Treatment of Prisoners were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Prisoners. These congresses, that have conveyed every 5 years since 1955, have contributed in ways to the development of norms aiming at a more human treatment of persons in detention. The standard Rules for prisoners gives in 95 articles guidelines for the treatment of detained persons, and forbids cruel, degrading or in human treatment or punishment as well as corporal punishment. These standards have influenced the legislation of many countries and have, in many instances, helped to provide some measures of protection to incarcerated persons.

- ✓ In 1966, with the adoption of the Covenant on Civil and Political Rights, the international community unequivocally repeated the prohibition against torture.
- ✓ In 1975 the General Assembly adopted a Declaration on the Protection of All Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which contained in its first article a definition of the term torture.
- ✓ In 1979, a code of conduct for Law Enforcement Officials was adopted by the General Assembly, which prescribes that no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor --- invoke superior orders or exceptional circumstances such as sate of war or threat of war, a threat to national security internal political instability or any other public emergence as a justification of such acts. (Article 5 of the Code of Conduct for Law Enforcement Officials).
- ✓ In 1982 the General Assembly adopted the principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, in human or degrading treatment or punishment.
- ✓ On 10 December, 1984, another major step was taken when the General Assembly adopted the Convention Against Torture on Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force in 1987. The Convention has, as of January 2001, 122 states parties. The provisions in this Convention build on elements from the other instruments mentioned above. The Convention provides for a definition of torture in its first article, which includes **intentional acts for certain enumerated reasons which causes severe pain or suffering of physical or mental nature for a persons, When such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public, official or other person acting in an official capacity** (Article 1 of the Convention Against Torture).
- ✓ The Convention establishes a committee Against Torture, consisting of ten members, nominated and elected by states parties but serving in their personal capacity (Article 2 of the Convention Against Torture).

7. The Convention of the Right of the Child

- ✓ The welfare and rights of children has been a subject which the United Nations has dealt with since its creation. Already the League of Nations had promoted the idea of granting special protection to the rights of the child through the adoption in 1924 of a Declaration on the Rights of the Child.
- ✓ One of the first decisions of the General Assembly in 1946 was to create the United Nations Fund for Children (UNICEF), an organization which during a first phase dealt primarily with assistance to children affected by emergencies. In 1953 it was made a permanent body and its mandate expanded

to cover development issues and the welfare of children in a more general sense. Now a day, UNICEF regards the promotion and protection of the rights set out in the 1989 Convention on the Rights of the Child as a general framework and mandate for all its activities.

- ✓ The Universal Declaration of Human Rights, adapted in 1948, recognized in article 25 that childhood is entitled to special care and assistance and that all children, whether born in or out of wedlock, shall enjoy the same social protection.
- ✓ In 1959, the United Nations adopted a Declaration on the Rights of the Child, where the rights from the old 1924 Declaration were reaffirmed and further elaborated. The need to give the force of legally binding obligations to children s rights also became more evident, and in 1979- the International Year of the Child- the Commission on Human Rights Started its work on the drafting of a convention. The drafting process took ten years.
- ✓ The Convention was adopted by the General Assembly in 1989, and entered into force in 1990.
- ✓ The Convention on the Rights of the Child is the first specific Human Rights treaty that has achieved an almost Universal adherence. As of January 2001 it has 190 states parties and only the United States and Somalia have failed to accede to the Convention.
- ✓ The Convention consists of 54 articles, of which the first 42 are of a normative character. The Convention is all encompassing and sets up a holistic approach where civil, political, economic, social and cultural rights are included, all being of importance for safeguarding the dignity of the child and a harmonious development of his personality.
- ✓ A child is defined as **every human being below the age of eighteen years.** Unless, under the law applicable to the child, majority is attained earlier (Article 1 of the Convention).
- ✓ Four general principles have guided the authors of the Convention, and later been highlighted by the committee on the Rights in the General Guidelines as the core message of the Convention.
  - The principle of the full and equal value of children and that each child shall enjoy the rights set out in the convention without discrimination (Article 2 and 4 of the Convention.)
  - The principle that in all actions concerning children the best interest of the child shall be the primarily consideration (Article 3 of the Convention).
  - The principle of the right to life does not only entail the right to be protected against being killed but a right to survival and development (Article 6 of the Convention).
  - The principle that children, who are capable of forming their own views, shall also have the right to participate and express their views, which shall be duly respected (Article 12 of the Convention).
- ✓ The Convention establishes a Committee on the Rights of the Child, originally composed of 10 members, but which the states parties in 1995, decided should be enlarged to 18 members. As of

January 2001 the amendment had not entered into force and the number of expert members remains ten. The members of the committee are nominated and elected by states, but serve in their personal capacity and those covenants of other international instruments.

❖ **Reservations and Declarations**

✓ When becoming party to a treaty, a state may, by formulating reservations, declarations and interpretative statements, seek to limit its domestic application beyond what is permissible under the limitations referred to above. Although it is desirable that states become party to a convention unconditionally, this is often not the case.

a) Reservation

✓ Is a statement made by a state by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that state. A reservation may enable a state to participate in a multilateral treaty that it would otherwise be unable or unwilling to participate in.

✓ The International Court of Justice stated in its Advisory Opinion on the Genocide Convention (1951): Object and purpose of the Convention limit both the freedom of making reservations and that of objecting to them. These words were later codified in Article 19 of Vienna Convention on the Law of Treaties which sets out the general rule on reservations: A state may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

a) The reservation is prohibited by the treaty;
b) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
c) In cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

✓ Unless expressly permitted by a treaty, the effectiveness of a reservation is dependent on its acceptance by other states parties, and any other state party may object to it.

✓ As a rule, a reservation is considered accepted by another state party if that state party has raised no objection within twelve months after it has been notified of the reservation (Article 20(5)VCLT). Regrettably, silence on the part of other states parties seems to be the common response to reservations; and, unfortunately, this silence is rarely the result of conscious deliberation.

✓ The UN Commission on Human Rights has stated that reservations should be formulated as precisely and narrowly as possible (Resolution 1998/9). Reservations often reflect an admission (oppossition) that the country in question cannot, or will not, bring its conduct up to international standards. General reservations may, moreover, encourage other states to follow suit, and thereby reduce the ability of the state making the reservation to complain when other states make similar reservations.

Furthermore, extensive limitations may contravene established principles of international law contrary, for instance, to Article 27 VCLT that states: A party may not invoke the provisions of its domestic law as justification for its failure to perform a treaty.

- ✓ Article 57(1) of the ECHR prohibits reservations of a general character. The European Court of Human Rights discussed the issue of general reservations in *Belilos* v. *Switzerland* (1988). In *Loizidou* v. *Turkey* (1995), the Court held that: *[A] State may not make a reservation in relation to an article of the Convention that does not deal directly with substantive rights and freedoms, but instead with procedural or formal matters. If [?] substantive or territorial restrictions were permissible under these provisions, Contracting Parties would be free to subscribe to separate regimes of enforcement of Convention obligations [?]. Such a system [?] would not only seriously weaken the role of the [?] Court [?] but would also diminish the effectiveness of the Convention as a constitutional instrument of European public order (ordre public).*
- ✓ Certain instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), have been subject to many reservations, some of them clearly incompatible with the object and purpose of the treaty.
- ✓ 'Reservations must be specific and transparent. Reservations may thus not be general, but must refer to a particular provision of the covenant and indicate in precise terms its scope in relation thereto.

b) Declarations

- ✓ Some conventions allow or even require states parties to make declarations concerning the extent to which they are bound by a certain provision. Such statements may relate to the competence of a supervisory mechanism. For instance, Article 41 ICCPR stipulates that a state party may choose (not) to recognise the competence of the Human Rights Committee to receive state complaints regarding its human rights performance.
- ✓ A state party may also make interpretative declarations, otherwise known as understandings, whereby it does not intend to modify or limit the provisions of the treaty, but indicates merely how it interprets a particular article. Such interpretative declarations may raise certain problems in international law as to their differentiation with reservations.
- ✓ The VCLT is silent on the question of interpretative declarations.
- ✓ One of the major differences between a reservation and an interpretative declaration lies in the author's purpose in making that declaration. While a reservation seeks to exclude or modify the legal effect of the treaty's provisions in their application to the state author, the interpretative declaration seeks only to clarify the meaning or scope of the treaty provisions.

❖ **Restrictions and Derogations**

a) Restrictions

✓ Conventions and other instruments may contain a number of restrictions or limitations to the rights they stipulate. It is generally accepted that only few rights and freedoms are "absolute". At the same time, such restrictions must be used only to establish the proper limits of the protected right and not as an excuse for undermining the right itself or destroying it altogether. In general, there must be a proportionate relationship between the restriction of the right as such and the reason for the restriction.

✓ Various international instruments contain provisions allowing restrictions (used interchangeably with the term "limitations") on human rights. Such provisions may take the form of general limitations. Article 4 of ICESCR, for instance, reads: *The states parties to the present Covenant recognise that, in the enjoyment of those rights provided by the state in conformity with the present Covenant, the state may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting general welfare in a democratic society.*

✓ The African Charter on Human and Peoples" Rights does not contain a specific provision on restrictions but Article 27(2) on "duties" has come to play the role of a general limitation clause providing: "The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest."

✓ In order to prevent abuse, conventions often contain a paragraph prohibiting the abuse of an international instrument to destroy another right. Article 5 of ICCPR, for instance, stipulates: *Nothing in the present Convention may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant.*

✓ Apart from these general provisions most human rights treaties contain specific provisions in various individual articles, which specify the limitations and restrictions that are allowed on the particular right. Such specific limitation clauses include "prescribed by law", "in a democratic society", "public order (*ordre public*)", "public health", "public morals", "national security", "public safety" and "rights and freedoms of others". For a few rights, such as freedom from torture or slavery, no limitations have been formulated.

✓ When a right is subject to a limitation, no other limitations are permitted and any limitation must comply with the following minimum requirements:

- The limitation must not be interpreted so as to jeopardise the essence of the right concerned;
- The limitation must be interpreted strictly in the light and context of the particular right;
- The limitation must be prescribed by law and be compatible with the object and purpose of the instrument;
- The restriction must be based on a law;
- The restriction must be necessary; there must be a pressing social need, assessed on a case-by-case basis. That the law would be useful is in itself not sufficient; it must be consistent with other protected rights. In some treaties, the condition that it be "necessary" (in a democratic society) is added; and
- The restriction must be justified by the protection of a strictly limited set of well-defined public interests, which usually includes one or more of the following grounds: national security, public safety, public order (*ordre public*), the protection of health or morals, and the protection of the rights and freedoms of others.

✓ Most of these requirements have been developed by academia and the jurisprudence of major human rights bodies. In this regard it is important to bear in mind the Siracusa Principles on the limitation and derogation provision in the International Covenant on Civil and Political Rights. The Siracusa Principles were adopted by a group of 31 distinguished experts in international law convened by the International Commission of Jurists, who met in Siracusa, Sicily in 1984.

★ Any restriction on the enjoyment of the rights enshrined in human rights instruments must be legally established, non-discriminatory, proportional, compatible with the nature of the rights, and designed to further the general welfare. I

★ t is also important to stress that the burden falls upon states parties to prove that a limitation imposed upon the enjoyment of the rights is legitimate.

b) Derogations

✓ Some human rights instruments allow states to take measures derogating temporarily from some of their obligations.

✓ Derogating measures must be of an exceptional and temporary nature. There are derogation clauses in, *inter alia*, Article 15 of ECHR, Article 27 of ACHR and Article 31 of European Social Charter.

✓ Some human rights instruments, such as the Convention on the Right of the Child, the ICESCR, and the African Charter on Human and Peoples' Rights, do not contemplate any derogation clause.

✓ The rationale for derogation provisions is to strike a balance between the sovereign right of a government to maintain peace and order during public emergencies, and the protection of the rights of the individual from abuse by the state.

- ✓ Thus, the state is allowed to suspend the exercise of some rights when necessary to deal with an emergency situation (*e.g.*, derogation of the right to peaceful assembly), provided it complies with safeguards against any abuse of these derogation provisions.
- ✓ When derogation measures are allowed, such derogations have to meet several criteria:
  - There must be a war or general state of emergency threatening the life of the nation;
  - The state of emergency must be officially proclaimed;
  - Measures may not go beyond the extent strictly required by the situation;
  - Measures may not be inconsistent with other obligations under international law; and
  - Measures may not be discriminatory solely on grounds of race, colour, sex, language, religion or social origin.
- ✓ A state availing itself of the right of derogation must immediately provide justification for its decision to proclaim a state of emergency and also for any specific measure based on such a proclamation.
- ✓ With regard to derogations and limitations, the Final Document of the 1991 Moscow meeting of the Conference on Security and Co-operation in Europe (CSCE), states: *The participating states reaffirm that a state of public emergency is justified only by the most exceptional and grave circumstances [...]. A state of public emergency may not be used to subvert the democratic constitutional order, nor aim at the destruction of internationally recognised human rights and fundamental freedoms. [...] The participating states confirm that any derogation from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation.*
- ✓ Moreover, as stipulated in a number of international conventions (*e.g.*, Article 4(2) of ICCPR, Article 15(2) of ECHR and Article 27(2) of ACHR), a number of rights can under no circumstances be limited or derogated from. Such rights are often called *notstandsfest* - a German term - and include the right to life, freedom from slavery, torture and imprisonment for debt, the principle of legality in the field of criminal law, freedom of thought, conscience and religion and the right to juridical personality.
- ✓ The Human Rights Committee, in its General Comment 29 sets out in detail the conditions that must be met in order to derogate from the rights contained in the ICCPR and refers in length to those rights which are not derogable. The Committee established that the rights contained in Article 4(2) of ICCPR are not the only non-derogable rights; there are elements of other rights not listed in Article 4(2) that cannot be subject to lawful derogation.

Institutions and Procedures

- ✓ The numerous human rights conventions under the framework of the United Nations and the regional systems in Africa, the Americas and Europe have led to the creation of a wide range of mechanisms for monitoring compliance with the standards agreed upon.

There are two distinctive types of supervisory mechanism:

1. Treaty Based Mechanisms

- ✓ supervisory mechanisms enshrined in legally binding human rights instruments or conventions. Within the UN framework these mechanisms are often called treaty bodies, *e.g.*, the Human Rights Committee and the Committee on the Rights of the Child. The African Commission and future Court on Human and Peoples Rights, the European Court and commission of Human Rights and the Inter-American Court and Commission of Human Rights are also treaty bodies.
- ✓ The six most well-known human rights treaties are the two Covenants (ICESCR and ICCPR), CERD, CEDAW, CAT and **CRC**. In addition, mention should be made of the CMW, which entered into force in 2003.Each of these conventions has a supervisory body.
- ✓ These bodies consist of a number of experts of a high moral character and recognised competence in the field of human rights. They act in their personal capacity, which means that although they are normally nationals of a state party to the treaty in question, they are not acting under instructions from respective governments.
- ✓ The treaty-based procedures are the mechanisms established within the context of a specific human rights treaty. The Convention on the Elimination of All Forms of Racial Discrimination (1965) was the first human rights treaty of universal application to provide for a mechanism of supervision. This mechanism subsequently served as a model for other human rights treaties, notably the International Covenant on Civil and Political Rights.
- ✓ The treaty bodies, with the exception of the Committee on Economic, Social and Cultural Rights, are not organs of the UN, but derive their status from the convention concerned. To implement these conventions, regular meetings of states parties are held to discuss issues regarding the conventions, mainly in connection with the election of members to the treaty bodies.
- ✓ The various supervisory procedures established in human rights treaties can be divided into four main groups:

i. Reporting procedures

- ✓ Most human rights treaties include a system of periodic reporting. States parties to them are obliged to report periodically to a supervisory body on the implementation at the domestic level of the treaty

in question. As formulated, *e.g.,* in Article 40 of the ICCPR, States Parties shall submit reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made in the enjoyment of those rights. At the UN level, each treaty body has formulated general guidelines regarding the form and contents of the reports to be submitted by States Parties as envisaged (HRI/GEN/2/Rev.2) and their own rules of procedures (UN HRI/GEN/3/Rev.1).

- ✓ The report is analysed by the relevant supervisory body, which comments on the report and may request the state concerned to furnish more information.
- ✓ Reporting procedures under the different treaty-based mechanisms are meant to facilitate and initiate a dialogue between the supervisory body and the State Party.
- ✓ The quality of the reports submitted by states varies. Some reports are reliable and reflect serious efforts to comply with the reporting requirements, while others are lacking in credibility. In any case, the reports generally reflect the view of the respective state.
- ✓ In addition to the government report, the treaty bodies receive information on a country s human rights situation from other sources, including non-governmental organisations, UN agencies, other intergovernmental organisations, academic institutions, and the press.
- ✓ The quality of decision making throughout the reporting procedure depends to a great extent on this additional information that the experts may receive from the external sources. Additional information provided by, in particular, NGOs and agencies of the United Nations grant a wider perspective as to the actual situation in the country concerned.
- ✓ In an increasing number of countries, NGOs prepare and submit to the treaty bodies alternative reports aimed at counter balancing the information submitted by the state. In the light of all the information available, the Committees examine the reports together with government representatives.
- ✓ Based on this dialogue, the Committees decide on their concerns and recommendations to the state concerned, referred to as concluding observations.

ii. Inter-state-complaint procedure

- ✓ Some human rights instruments allow states parties to initiate a procedure against another state party, which is considered not to be fulfilling its obligations under the instrument.
- ✓ In most cases, such a complaint may only be submitted if both the claimant and the defendant state have recognised the competence of the supervisory body to receive this type of complaint.
- ✓ The possibility to lodge complaints against another state party is contemplated in, *inter alia,* Article 41 of ICCPR; Article 21 of CAT; Article 11 of CERD.
- ✓ In practice, inter-state complaint mechanisms are seldom used. Inter-state relationships are delicate and inter-state mechanisms may not be ideal procedures as states bringing complaints may elicit

reprisals. In addition, many states have not recognised the competence of the supervisory bodies to receive inter-state complaints.

iii. Individual complaint procedure

- ✓ It seems reasonable that individuals, on whose behalf human rights were stipulated in the first place, should be enabled to initiate proceedings to protect their rights.
- ✓ Such a procedure, whereby an individual holds a government directly accountable before an international supervisory body aims to afford far-reaching protection to the individual.
- ✓ In order for an individual to bring a case/communication/petition under a human rights convention, the following requirements have to be met:
  - the alleged violating state must have ratified the convention invoked by the individual;
  - the rights allegedly violated must be covered by the convention concerned; and
  - proceedings before the relevant body may only be initiated after all domestic remedies have been exhausted.
- ✓ At the UN level, individual complaint mechanisms are found under five conventions: in the First Optional Protocol to the ICCPR; Article 22 of CAT; Optional Protocol to the CEDAW; Article 14 of CERD and Article 77 of CMW.
- ✓ Individual complaints under one of the above-mentioned treaties can be brought only against a state that has recognised the competence of the committee established under the relevant treaty or become party to the relevant optional protocols.
- ✓ In the case of the ICCPR and the CEDAW, a state recognises the Committees competence by becoming a party to an optional protocol, which has being added to the ICCPR and the CEDAW.
- ✓ In the case of the CAT and the CERD, states recognise the Committees competence by making an express declaration under Articles 22 and 14 respectively.
- ✓ Anyone under the jurisdiction of a state party can lodge a complaint with a committee against a state that satisfies this condition, claiming that his or her rights under the relevant treaty have been violated. There is no formal time limit after the date of the alleged violation for filing a complaint under the relevant treaties, but the victim should submit a complaint as soon as possible after having exhausted domestic remedies.
- ✓ In general terms, the system works as follows:
- Once a complaint (which should comply with some basic requirements) is submitted, the case is registered and transmitted to the state party concerned to give it an opportunity to comment.
- The state is requested to submit its observations within a set time frame which varies between procedures. The two major stages in any case are known as the admissibility stage and the merits

stage. The admissibility of a case refers to the formal requirements that the complaint must satisfy before the relevant committee can consider its substance. The merits of the case are the substance, on the basis of which the committee decides whether or not the rights under a treaty have been violated.

- Once the state replies to the complaint, the alleged victim is offered an opportunity to comment. Again, the time frames vary somewhat between procedures. At this point, the case is ready for a decision by the relevant committee.
- If the state party fails to respond to the complaint the committee may take a decision on the case on the basis of the original complaint. There is no appeal against committees decisions.
- When a committee decides that the state party has violated a right, or rights, enshrined in the treaty, it invites the state party to supply information within a given time limit on the steps it has taken to give effect to the committees findings.

iv. Inquiries and other procedures

- ✓ Most supervisory mechanisms now discussed involve inquiries, but others may entail initiatives aimed at preventing violations or promoting compliance with specific human rights. The supervisory bodies discussed above play a rather passive role as they generally cannot initiate proceedings, and are largely dependent on information submitted by governments, or individual plaintiffs or petitioners.
- ✓ Recently, however, several supervisory mechanisms have been established whereby an independent person or group of persons may raise, on the persons or groups own initiative, issues of non-compliance with human rights. Such a body may, for instance, act upon receipt of complaints or take an initiative itself. It may also initiate a visit *in loco* to gather information, or do so as part of a regular visit-programme. One example of a visit-programme - an enquiry and *in loco* visits procedure - is that set out in Articles 126 and 132 of the Third Geneva Convention (1949), and the provision in Article 143 of the Fourth Geneva Convention providing for on-site visits to places of internment or detention. Mention should also be made of the International Fact-Finding Commission established under Article 90 of Protocol I to the Geneva Conventions.

2. **Non-treaty Based (Charter Based) Mechanisms:** supervisory mechanisms not based on legally binding human rights treaty obligations. Generally, this type of mechanism is based on the constitution or charter of an intergovernmental human rights forum, or on decisions taken by the assembly or a representative body of the forum in question. Under the UN framework, the non-treaty-based mechanisms are referred to as charter-based mechanisms, which include the 1503 procedure and the country mandates. The European Commission against Racism and Intolerance under the Council of Europe is also an example of a regional non-treaty based mechanism.

i. International Court of Justice (ICJ)

- ✓ The International Court of Justice is the principal judicial organ of the United Nations.
- ✓ Its statute is an integral part of the charter of the United Nations and, consequently, all member states of the United Nations are ipso facto parties to the statue of the court.
- ✓ Only states may be parties in cases before the courts and the jurisdiction of the court will comprise all cases which the parties refer to it. In addition, states parties to the statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the court in all legal disputes concerning:
  - the interpretation of a treaty;
  - any fact which, if established, would constitute a breach of an international obligation; and
  - The nature or extent of the reparation to be made for the breach of an international obligation.
- ✓ The General Assembly or the Security Council may request the court to give an advisory opinion on any legal question other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the court on legal questions arising within the scope of their activities.
- ✓ A number of human rights instruments contain provisions where by any dispute between the contracting states relating to the interpretation, application or fulfillment of the instrument may be submitted to the Court at the request of any of the parties to the dispute. However, neither the ICCPR nor the ICESCR specifically provides for adjudication by the court.

ii. Security Council

- ✓ Under the charter of the United Nations member states have conferred on the Security Council primary responsibility for the maintenance of international peace and security and have agreed that in carrying out its duties under this responsibility the Security Council acts on their behalf.
- ✓ The Security Council may **investigate any dispute**, or **any situation which might leads 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.
- ✓ Any member of the United Nations may bring such dispute to the attention of the Security Council.
- ✓ When the Security Council determines the existence of any threat to the peace, breach of peace, or act of aggression, it may make recommendations, or decide what measures shall be taken to maintain or restore international peace and security measures which the security council may initially take include complete or partial interruption of economic relations and of rail, sea, air postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations. If such measures

would be, or prove to be, inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.

- ✓ The Security Council has dealt with several human rights problems, including massive and repeated violations in South Africa, Somalia, Haiti, Yugoslavia, and Rwanda; the situation in the occupied Arab territories; the instances of hostage and abduction.

iii. United Nations General Assembly

- ✓ One of the **functions** of the United Nations General Assembly is **to initiate studies** and **make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, languages or religion**. Such matters are usually referred by the General Assembly to its Third Committee which deals with social, humanitarian and cultural matters.
- ✓ The General Assembly has established a number of subsidiary organs which are concerned with human rights. These include;

1. **The International Law Commission**; whose object is the **promotion of the progressive development of international law and its codification**. Among the international human rights instruments it has prepared are the Genocide Convention, the Refugees Convention, the Conventions Relating to the Status of Stateless Persons and the Reduction of Statelessness, the Declaration on Territorial Asylum, and the Statute of the Office of the United Nations High Commissioner for Refugees.
2. **The Office of the United Nations High Commissioner for Refugees**, which provides **protection and assistance for refugees and other displaced persons.**
3. **The Special Committee on Declaration, or the Committee 24**, whose principal function is **to monitor the implementation of the Declaration on the Granting Independence to Colonial Countries and Peoples.**
4. **Committee on the Exercise of the Inalienable Rights of the Palestinian People**, which was required to consider and recommended to the General Assembly a programme of implementation designed to enable the Palestinian People to exercise its inalienable rights in Palestine; including the right to self determination and the right to return to their homes and property from which they had been displaced and uprooted.

iv. Economic and Social Council

- ✓ The Economic and Social Council is authorized by the charter of the United Nations to make recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedoms for all.

- ✓ It is also authorized to prepare draft conventions for submission to the General Assembly, to call international conferences, and to obtain reports from member states on the steps taken to give effect to its recommendations and to those of the General Assembly, and to communicate its observations on these reports to the General Assembly.
- ✓ May also furnish information to the Security Council.
- ✓ Acting on the authority, of the charter, one of the first decisions of ECOSOC was to establish the Commission on Human Rights and the Commission on the Status of Women.
- ✓ ECOSOC is a political body which originally comprised lightens members but now consists of fifty four members of the United Nations elected by the General Assembly. It normally holds an organizational session and two regular sessions each year. Human rights items are usually referred to the first session of the social committee on which all fifty-four members are represented.

v. UN Human Rights Council

- ✓ The Commission on Human Rights is the principal functional organ of the United Nations concerned with human rights. It consists of fifty-three members-all-states-who are elected from time to time by ECOSOC.
- ✓ These fifty-three states are elected on a geographical basis and represent a cross-section of the world in many respects. The Commission is essentially a political body, and its states members include those whose human rights records range from the good to the dismissal. Yet, it is this body that drafted the UDHR, the ICCPR and ICESR, and all the principal human rights instruments.
- ✓ In addition to representatives of its states members, sessions of the Commission may be attended by representative of any member state of the United Nations which is not represented on the Commission but is invited to participate in its deliberations, and by observers from states members and non-members of the United Nations not represented on the Commission, and from United Nations bodies, specialized agencies, other inter-governmental organizations concerned with human rights, national liberation movements, and non-governmental organizations in consultative status with ECOSOC.

vi. International Lab-our Organizations (ILO)

- ✓ The ILO has long been concerned with labor rights, first as parallel organization to the League of Nations, then as a specialized agency of the UN system. It has developed several complicated procedures for monitoring state behavior in the area of labor rights.
- ✓ In general, certain differences aside, its record on helping apply international labor rights is similar to that of the UN Human Rights Commission in two respects it **proceeds according to indirect implementation efforts falling short of direct enforcement;** and **its exact influence is difficult to specify.**

- ✓ It is concerned with economic and social rights, such as the right to work, the right to just and favorable conditions of work, the right to form and join trade unions, the right to social security, and the right to an adequate standard of living. It is also concerned with civil and political rights such as the freedom of expression, the freedom of association, and the freedom of peaceful assembly.
- ✓ The ILO seeks to lay down standards in respect of these rights. Among the human rights conventions adopted by the General Conference of the ILO are the following:
  - Convention Concerning Freedom of Association and Protection of the Right to Organize
  - Convention Concerning the Application of the Principles of the Right to Organize and to Bargain Collectively
  - Convention Concerning Equal Remuneration for Men and Woman Workers for Work of Equal Value
  - Convention on the Abolition of Forced Labor
  - Convention Concerning Discrimination in Respect of Employment and Occupation
  - Convention Concerning Employment Policy
  - Convention Concerning Protection and Facilities to be afforded to Workers Representatives in the Undertaking
  - Convention Concerning Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service
  - Convention Concerning the Promotion of Collective Bargaining
  - Convention Concerning Employment Promotion and Protection Against Unemployment
  - Convention .Concerning Indigenous and Tribal Peoples in Independent Countries.
- ✓ The ILO supervises the application of the standards it has laid down through tripartite-composed or representatives of governments, workers and employers-bodies. Among them is the twenty-member committee of Experts on the Application of Conventions and Recommendations which meets annually in March to examine periodic reports submitted by each member state on the measures it has taken to give effect to the conventions it has ratified.
- ✓ The nine-member committee on Freedom of Association of the ILO Governing Board examines complaints against member states of infringement of the right to freedom of association

Regional Human Rights systems

1. The European Human Rights System

- ✓ In May 1948, 800 prominent members of the various sectors of the European Community drawn from nineteen European states including politicians, lawyers and those active in wartime resistance movements, met in The Hague, under the auspices of the International Committee of Movements for European Unity, to demonstrate their support for the cause of Europeans Unity.

- ✓ The immediate consequence of the Hague Congress was the creation, one year later of the Council of Europe Comprising two principal organs, a Committee of Ministers (which meets at least twice a year at ministerial level and throughout the year at the level of their deputies, and provides an opportunity for a continuing dialogue on the development of European co-operation) and a Parliamentary Assembly (which is a consultative body with no legislative powers elected by the parliaments of member states or according to a procedure determined by them).
- ✓ The objectives of the Council, and therefore the obligations incumbent on its members, we described as the consolidation of pluralist democracy, respect for human rights, and the assertion of the rule of law.
- ✓ The statute creating the Council of Europe was signed in London on 5 May 1949.
- ✓ A common history and shared cultural traditions, coupled with what was perceived as a growing threat to their accustomed way life from an alien transplanted ideology, enabled its member states, barely two years after the proclamation of Human Rights and Fundamental Freedoms, (ECHR). Twelve states signed the EHCR in Rome on 4 November 1950. It entered into force in September 1953, and has now been ratified by all member states.

2. The Inter-American Human Rights System

- ✓ The Charter of the Organization of American States (OAS) was singed on 30 April 1948 at the Ninth International Conference of American States convened in Bogota.
- ✓ The Charter enters into force on 13 December 1951. Its preamble stated that the historic mission of American is to offer to man a land of liberty, and a favorable environment for the development of his personality and the realization of his just aspirations, and that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man.
- ✓ In its substantive provisions, the charter reaffirmed and proclaimed as a principle of the OAS the fundamental rights of the individual without distinction as to race, nationality, creed or sex. At the same conference, the American Declaration of the Rights and outside of man was adopted in the form of a resolution.
- ✓ In 1959, in Santiago, the fifth meeting of consultation of ministers of foreign affairs adopted a resolution creating the Inter-American Commission on Human Rights, and in the following year the OAS council adopted the statute of the Commission and elected its seven members.
- ✓ The statute described the Commission as an autonomous entity of the Organization of American States, the function of which is to promote respect for human rights. It added that for the purpose

of the statute, human rights are understood to be those set forth in the American Declaration of the Rights and Duties of Man (ADRD).

- ✓ However, the powers of the commission were limited by its statute to gathering information, preparing studies and making recommendations to governments for the adoption of Progressive measures in favor of human rights within the framework of their domestic legislation (the statute of the Inter-American Commission on Human Rights, 1960, Article 9).
- ✓ In 1965, the Commission was authorized to examine and report on communication submitted to it, thereby initiating an individual petition system.
- ✓ In 1970, the protocol of Buenos Aires which amended the Charter changes the status of the commission from an autonomous entity into one of the principal organs of the OAS. Its functions were re-defined to be to promote the observance and protection of human rights and to serve as a cumulative organ of the organization in these matters.
- ✓ The states parties to the ACHR under take to respect and to ensure the free and full exercise of these rights to all person subject to their jurisdiction (Article 1 of the Convention). These obligations are monitored by two bodies, each composed of seven experts the Inter-American Commission on Human Rights established in 1959, and the Inter-American Court of Human Rights.

3. The African Human Rights System ACHPR

- ✓ The initiative for an African Human Rights Charter was taken at a meeting of African jurists, the African Conference on the Rule of Law, convened by the International Commission of Jurists (ICJ) in Lagos in 1961. The idea was developed at a number of UN seminars and ICJ conferences held in the following years.
- ✓ UN seminars were held in Cairo in 1969 and in Dar-es-Salam in 1973. At the 1978 Dakar symposium organized by the ICJ and the Senegalese Association for Legal Studies and Research, a follow-up group was formed to Sell the idea to African Heads of State. In the following year, on the initiative of president Senghor of Senegal, the Assembly of Heads of State and Government of the Organization of African Unity (OAU) meeting in Monrovia decided to convene a meeting of highly qualified experts to prepare a preliminary draft of a convention that would provide for the promotion and protection of human rights in Africa. A few months later, at a UN seminar in Monrovia which was attended by the representatives of thirty African states, several specific proposals relating to the establishment of a regional commission in Africa were adopted.
- ✓ The draft prepared by African experts was considered at two sessions of the conference of OAU Ministers of Justice held in Gambia in 1980 and 1981. In June 1981, the ACHPR was unanimously

adopted at the Nairobi Assembly of Heads of states and Government of the OAU. It became operative in October 1986, and an African Commission began functioning on 2 November 1987.

- ✓ An eleven member Commission has the task of promoting the rights, ensuring their protection, and interpreting the AFCHPR (Article 45 of the Charter). Its promotional activities include making recommendations to governmental and formulating principles and rules aimed at solving legal problems relating to the enjoyment of the recognized rights upon which governments may base their legislation.
- ✓ In 1998, the thirty-fourth summit of Head of State and Government of the OAU adopted a protocol to the ACHPR for the establishment of an African Court on Human and People□s Rights.

4. The Arab and Asian Human Rights Systems

- ✓ The Arab and Asian states have not yet created regional human rights regimes, but some steps have been taken in that direction.
- ✓ In 1968, the Council of the Arab League adopted a resolution relating to the creation of a Permanent Arab Commission on Human Rights.
- ✓ On September 15, 1994, the League of Arab States approved an Arab Charter on human Rights building on earlier texts adopted by regional non-governmental organizations and inter-governmental organizations. The Charter has not yet entered into force. It requires acceptance by seven states before it comes into force. As of January 1, 1998, only Egypt had ratified the Charter. Iraq signed it on February 5, 1996.
- ★ In Asia, despite efforts by NGOs and the U.N., governments in the region have been unwilling in general to ratify global human rights instruments, or create a regional human rights system. As of March 1998, for instance, 27 states in the region, including virtually all Pacific Island States, had not signed or ratified either the UN Covenants or the Torture Convention. The vastness of geographical scope of the region, the vast differences in culture, language, political ideology and economic development among nations, the recent economic crisis in Asia, coupled with a lack of a regional organization, constitute serious hurdles to the creation of an Asian- Pacific regional system. However, with ongoing effort by the UN, NGOs and political movements to enhance human rights respect and awareness in the region through the dismantling of the concept of □Asian values□ which states often use to limit human rights, the opportunity to create a regional system may improve in the future.

Chapter three: Systems of Protection for Vulnerable Groups

- ✓ The aim of human rights instruments is the protection of those vulnerable to violations of their fundamental human rights.

- ✓ There are particular groups who, for various reasons, are weak and vulnerable and consequently require special protection for the equal and effective enjoyment of their human rights.
- ✓ Often human rights instruments set out additional guarantees for persons belonging to these groups; *i.e.,* the Committee on Economic, Social and Cultural Rights has repeatedly stressed that the ICESCR is a vehicle for the protection of vulnerable groups within society, requiring states (parties) to extend special protective measures to them and ensure some degree of priority consideration, even where in the face of severe resource constraints.

1. Women's rights

- ✓ The inferior status of women is entrenched in history, culture and tradition.
- ✓ Through the ages, national and religious institutions have been called upon to justify violations of women's rights to equality and enjoyment of fundamental human rights. Even now, women are subject to discrimination in all stages of life; in income, education, health and participation in society and they are particularly vulnerable to specific violations such as gender-based violence, trafficking and sex discrimination.
- ✓ Various international bodies have been established with the aim of eradicating policies, actions and norms that perpetuate discrimination against women and violate women's human rights.

International Human Rights Standards

- ✓ After the Second World War, a number of treaties on the protection of women were drafted and both the UN Charter and the International Bill of Human Rights (see *e.g.* Article 3 of ICESCR and Article 3 of ICCPR) proclaim equal rights for men and women and ban discrimination on the grounds of sex.
- ✓ In addition to instruments relating to discrimination in general, a whole series of instruments have been developed specifically for the protection of women, the elimination of discrimination against women and the promotion of equal rights.
- ✓ One of the most important instruments for the protection of women is **the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),** which was adopted by the UNGA on 18 December 1979, following consultations over a five-year period by various working groups, the CSW and the UNGA. It entered into force in 1981. The 30-article Convention sets out internationally accepted principles and measures to achieve equal rights for women everywhere. As of July 2004, 177 states were parties to CEDAW.

- ✓ Articles of the Convention call for non-discriminatory health services for women, including services related to family planning, and equal legal capacity to that of men. States Parties agree that all contracts and other private instruments that restrict the legal capacity of women shall be deemed null and void (Article 15). Special attention is given to the problems of rural women (Article 14).
- ✓ The effectiveness of the Convention in promoting the rights it contains is significantly undermined by the numerous reservations made by States Parties. Most reservations aim to preserve religious and national institutions that are contrary to the rights guaranteed and many are obviously incompatible with the object and purpose of the Convention.
- ✓ On 6 October 1999, the General Assembly adopted an Optional Protocol to the CEDAW, which entered into force in 2000. The Protocol establishe6s a procedure that allows individual women, or groups of women, to submit claims of violations of rights protected under the Convention to the CEDAW Committee. In July 2004, 60 states had ratified the Optional Protocol.
- ✓ Other universal instruments relating to the rights of women include the **UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)**, the **UN Convention on the Political Rights of Women (1952**) and the **UN Convention on the Nationality of Married Women (1957)**. Furthermore, the Rome Statute of the International Criminal Court (1998) Article 7 establishes that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence are each to be considered a crime against humanity.

Supervision

- ✓ The CEDAW establishes the Committee on the Elimination of Discrimination Against Women to oversee the implementation of the rights it guarantees (for further analysis of the Convention and Committee see XX).
- ✓ The Committee acts as a monitoring system to oversee the implementation of the Convention. This is done principally by examining reports submitted by states parties, but in 1999, an optional protocol expanded the powers of the Committee to include competence to receive individual complaints. This procedure allows individuals and groups of individuals, alleged victims of violations, to file a complaint against states parties to the protocol. As has been examined, the Optional Protocol also establishes a distinctive feature: an inquiry procedure that allows the Committee to initiate investigations into suspected grave or systematic violations by a state party of the rights contained in the Convention. In this regard the Committee can carry out visits to the country in question.
- ✓ The Committee has contributed significantly to the interpretation of the obligations imposed by the Convention through its General Recommendations which have dealt with several issues of utmost

importance for women such as violence against women (General Recommendation No. 12 - Violence against women); equal remuneration for work of equal value (General Recommendation No. 13 - Equal remuneration for work of equal value); female circumcision (General Recommendation No. 14 - Female circumcision); AIDS (General Recommendation No. 15 - Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome); violence against women (General Recommendation No. 19 - Violence against women); equality in marriage and family relations (General Recommendation No. 21 - Equality in marriage and family relations); women's political rights (General Recommendation No. 23 - Political and Public Life) and women and health (General Recommendation No. 24 - Women and Health).

- ✓ The UN Commission on the Status of Women has a mandate to consider confidential and public communications on the status of women. During each session, a Working Group of five members, selected with due regard for geographical distribution, gathers in closed meetings to consider communications addressed to the Commission and those pertaining to women received by the Office of the High Commissioner for Human Rights, including the replies of governments thereto, with a view to bringing to the attention of the Commission those communications which reveal a consistent pattern of reliably attested injustice and discriminatory practices against women. The Commission may make recommendations to ECOSOC regarding the complaints submitted; what steps are to be taken is decided by ECOSOC.

2. The rights of the child

- ✓ Every child has the right to grow to adulthood in health, peace and dignity. Young children are vulnerable and dependent on adults for their basic needs, such as food, health care and education. Ensuring the rights of children to health, nutrition, education, and social, emotional and cognitive development is imperative for every country and entails obligations for every government.
- ✓ Ensuring that children enjoy fundamental rights and freedoms not only advances a more equitable society, but fosters a healthier, more literate and, in due course, a more productive population. Clearly, children's rights are closely tied to women's rights; even before being born a child's survival and development is dependent on the mother's health and opportunities. Women are still primary care-givers for children, so ensuring women's rights is positively linked to children's enjoyment of human rights.

Intenational Human Rights Standards

- ✓ In 1924, the League of Nations adopted a Declaration on the Rights of the Child (Declaration of Geneva), containing five basic principles reflecting the clear consensus that children were in need of special protection. In 1959, the UNGA unanimously adopted another more elaborate Declaration on

the Rights of the Child, stating in the preamble that the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.

- ✓ Serious work on drafting a convention on the rights of the child began in the final years of the 1970s, resulting in the UNGA adoption of the Convention on the Rights of the Child (CRC) on 20 November 1989. The Convention entered into force on 2 September 1990 and a few years later the majority of the world's states had ratified it. As of July 2004, 192 states had ratified the Convention, making the CRC the most universally accepted human rights treaty ever drafted. The United States and Somalia are the only UN members, which have not ratified the Convention.
- ✓ The Convention is meant to be all encompassing and sets out civil, political, social, economic and cultural rights for every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier (Article 1). Four general principles have guided the authors of the Convention:
  - The principle of non-discrimination (Article 2);
  - The best interests of the child (Article 3);
  - The right to life, survival and development (Article 6); and
  - Respect for the views of the child (Article 12).
- ✓ Underpinning the CRC are three core concepts; protection, provision and participation:
  - protection, against, *e.g.*, violence, abuse, neglect, maltreatment or exploitation (Article 19);
  - provision of, *e.g.*, name and nationality (Article 7), social security, adequate standard of living and education (Articles 26 to 28);
  - participation through the right of a child to express its views, to freedom of thought and to freedom of association (Articles 12 to 15).
- ✓ The CRC contains several rights which are also included in other international instruments, but Article 41 provides an explicit most favourable conditions clause, stating that nothing in the CRC shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in the law of a state party or international law in force in that state (Article 41).
- ✓ While the Convention sets out many rights already proclaimed in other instruments such as the ICCPR (Articles 23(4) and 24) and ICESCR (Article 10(3)), it is the first instrument to specifically grant child rights and protection as autonomous human beings. The value added by the CRC lies mainly in that:

- The general rights formulated in earlier conventions and the UDHR have been reformulated with a special focus on the rights and needs of the child. Other rights only applicable to children are elaborated, such as the right to adoption, education and contact with parents.
- New elements have been included, such as the provisions regarding parental guidance and regarding international co-operation in the field of handicapped children.
- The CRC covers children in difficult circumstances, such as the separation from parents; abuse and neglect; disabled and refugee children; indigenous children and children belonging to minorities; sale, trafficking and abduction of children; deprivation of liberty; and children in armed conflict.

✓ Some international instruments contain more protective clauses than the CRC. For instance, Article 32 CRC regarding child labour does not explicitly define a minimum age for admission to employment.ILO 138 stipulates that the minimum age for admission to employment or work shall not be less than 15 years and that developing countries may initially specify a minimum age of 14 years. For employment under specified circumstances (*e.g.,* in the case of health hazards), the minimum age is 18 years in the aforementioned ILO Convention. The CRC generally sets out the minimum age of 18 years (Article 1) so does ILO 128 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), which defines persons younger than 18 as children (Article 2).

✓ Similarly, while the CRC forbids recruitment of children below 15 years for the armed forces, Article 77 of Protocol I to the Geneva Conventions of 1949, affords superior protection as regards recruitment of children between 15 and 17 years of age. Here, Article 41 (most favourable treatment) applies for those states, which have ratified more favourable international instruments. Moreover, states may make declarations when ratifying the CRC, expressing their commitment to apply more protective standards; *e.g.*, by not recruiting children under 18 years of age into the armed forces.

✓ Two optional protocols to the CRC were adopted by the UNGA in 2000. The Optional Protocol to the CRC , on the Involvement of Children in Armed Conflict aims at, *inter alia,* raising the minimum age of individuals taking part in armed conflict to 18 and includes a unique provision regulating the acts of non-state actors, stipulating that non-state forces should not recruit persons under 18. The Second Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography stipulates, *inter alia*, that states have to ensure that certain acts against children are criminalised, and that states are obliged to prosecute or extradite offenders under their jurisdiction.

✓ Relevant standards in the regional systems for the protection of children s rights include the Africa Charter on the Rights and Welfare of the Child (1990), setting out in Article 18(3) that the State shall

[…] ensure protection of the rights of the woman and the child as stipulated in international declarations and conventions.

- ✓ The American Convention on Human Rights sets out the equal rights of children born in and out of wedlock (Article 17(5)) and that "every minor child has the right to measures of protection […] on the part of his family, society, and the state." Other relevant documents within the American context are, for instance, the Inter-American Convention on the International Return of Children (1989); the Inter-American Convention on Conflict of Laws Concerning the Adoytion of Minors (1984); and the Inter-American Convention on International Traffic in Minors (1994). Within the European system the European Social Charter sets out special protection for children with regard to employment (Article 7) and the right of children and young persons to social, legal and economic protection (Article 17). Other important European conventions on the Adoption of Children (1967); the European Convention on the Legal Status of Children born out of Wedlock (1975); and the European Convention on the Exercise of Children's Rights (1996).

Supervision

- ✓ The CRC establishes the Committee on the Rights of the Child to supervise the progress made by the states parties in achieving the realisation of their obligations contained in the Convention.
- ✓ The Committee is composed of ten multidisciplinary experts from fields such as international law, medicine, education and sociology, whose main task is to review reports submitted by states on actions they have taken to implement the Convention, as it has no competence to receive individual complaints.
- ✓ The Committee may convene informal regional meetings with the collaboration of UNICEF, to get familiar with the different issues facing children in different regions, as well as establishing dialogues with NGOs and governments. Like other supervisory mechanisms, the Committee adopts General Comments for the interpretation of the rights contained in the CRC. The Committee has recently (2003) adopted General Comment 5 on general measures of implementation of the CRC, outlining the obligations of states in regard to the Convention.
- ✓ The United Nations Children's Fund (UNICEF), one of the key organisations concerned with children's rights.
- ✓ UNICEF was created in 1946 in the aftermath of WWII to provide European children facing famine and disease with food, clothing and health care. Today, UNICEF aims to overcome the obstacles that

poverty, violence, disease and discrimination place in a child's path. UNICEF's role is specifically mentioned in Article 45 of the CRC. The organisation focuses on improving the child's environment, the improvement of primary health care, water supply, nutrition, education and community development. In recent years, it has invested heavily in programmes for, among other things, immunisation, water supply systems and literacy. UNICEF is a global leader in vaccine supply, reaching 40 percent of the world's children and is paramount in the implementation of the targets set at the 1990 World Summit for Children and the Millennium Development Goals.

3. Minority protection regime

➢ **The rights of indigenous people**

✓ Indigenous peoples have only after World War II become the subject of international human rights debate.

✓ The indigenous differ enormously in cultures, religions, and patterns of social and economic organisation, such as the Mayas in Guatemala, the Inuit in Canada, the Masai in Tanzania, and the Naga in India. Some estimated 5,000 indigenous peoples comprising around 300 million persons live in more than 70 countries from the Arctic to the Amazon.

✓ In his Study of the Problem of Discrimination Against Indigenous Populations, the rapporteur of the Sub-Commission, Mr Martinez Cobo, has formulated a definition, which features the most important characteristics: *Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.*

✓ Looking at Mr Martinez Cobo's definition and the ILO Conventions, a number of characteristics can be distinguished:

- Indigenous peoples have a strong affinity with the land they live on. Their environment is essential for their survival as a cultural entity; it is decisive for their social and cultural conditions;
- They are not dominant in their present national society, usually they have little if any influence on state policy;
- They generally speak their own language and have common cultural qualities; and
- Their political/organisational structure is generally of a decentralised nature.

International Human Rights Standards

- ✓ The first international standard on indigenous populations was ILO 107 (1957), revised and reformulated in 1989 and amended in ILO 169. In this Convention, a definition of indigenous peoples is given in Article 1(1):
  - Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.
  - Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all their own social, economic, cultural and political institutions.
- ✓ Since the 1970s, the United Nations has been involved in initiatives, frequently in co-operation with the ILO and the OAS, concerning the development of specific standards for the protection of indigenous peoples.
- ✓ In 1982, the UN Working Group on Indigenous Populations was created as a body of the Sub-Commission for the Prevention of Discrimination and Protection of Minorities (now Sub-Commission on the Protection and Promotion of Human Rights). One of its commitments was the drafting of a Declaration on the Rights of Indigenous Populations, which was adopted by the Sub-Commission in August 1994. The draft Declaration consists of 45 articles, related to issues such as:
  - The right of indigenous populations to self-determination (Article 3);
  - The right not to be forcibly removed from their lands or territories (Article 10);
  - The right to practice and revitalise their cultural traditions and customs (Article 12);
  - The right to establish their own media in their own languages (Article 18); and
  - The right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources [...] (Article 30).
- ✓ Although some instruments, such as the Draft Declaration on Indigenous Rights , ILO 169 and the Convention on the Rights of the Child (Article 30) address indigenous people as a separate group from minorities in general, in General Comment 23, the Human Rights Committee states that indigenous peoples are minorities for the purposes of Article 27 (see above National Minorities). Other treaty bodies also deal with minorities; for example, the Committee on the Elimination of Racial Discrimination (CERD) has issued a General Recommendation on Indigenous Rights under the CERD (General Recommendation No. 23 - Rights of indigenous peoples).

Supervision

- ✓ At the UN treaty-based level, the Human Rights Committee has been called upon several times by indigenous persons to decide on possible infringements of their human rights.
- ✓ A number of cases have involved complaints relating to the preservation of culture of indigenous groups, language rights and access to effective remedies. Issues include dispossession by the state of the ancestral land of indigenous groups; legality of rules stipulating loss of membership in an indigenous minority following marriage to a non-indigenous person; forced use of language other than the indigenous language during official court proceedings; indigenous rights to natural resources; and state interference with traditionally indigenous lands.
- ✓ Three charter-based bodies have been established to deal with issues relating to indigenous peoples at the UN:
  - the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People,
  - the Working Group on Indigenous Populations, and
  - the Permanent Forum on Indigenous Issues.

- ✓ In 2001, the UN Commission on Human Rights appointed a Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, from Mexico, in response to the growing international concern regarding the marginalization and discrimination against indigenous people worldwide (Resolution 2001/57).
- ✓ The Special Rapporteur has under his mandate addressed a wide range of human rights issues. He has, for instance, formulated a proposal for a definition of indigenous peoples, and addressed the role of intergovernmental and non-governmental organisations, the elimination of discrimination, and basic human rights principles, as well as special areas of action in fields such as health, housing, education, language, culture, social and legal institutions, employment, land, political rights, religious rights and practices, and equality in the administration of justice. His conclusions, proposals and recommendations mark important progress in United Nations consideration of the human rights problems facing indigenous peoples; many are still under consideration and others have been incorporated into resolutions of the Sub-Commission.
- ✓ Apart from facilitating and encouraging dialogue between governments and indigenous peoples, the Working Group on Indigenous Populations has a two-fold mandate: a) to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples; and b) to give attention to the evolution of international standards concerning indigenous rights.

- ✓ The Permanent Forum on Indigenous Issues serves as an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues relating to economic and social development, culture, the environment, education, health and human rights.
- ✓ The Forum focuses on the following issues:
  - to provide advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the UN through the Council;
  - to raise awareness and promote the integration and co-ordination of activities relating to the indigenous issues within the UN system; and
  - to prepare and disseminate information on indigenous issues.

➢ **Protection of disabled persons**,

- ✓ Discrimination against persons with disabilities has a long history and persons with disabilities are regularly excluded from participation in society and denied their human rights.
- ✓ Discrimination against the disabled can take many forms, ranging from limited educational opportunities to more subtle forms, such as segregation and isolation because of physical and social barriers. The effects of discrimination are most clearly felt in the sphere of economic, social and cultural rights, in the fields of, for instance, housing, employment, transport, cultural life and access to public services.
- ✓ The obstacles the disabled face in enjoying their human rights are often the result of exclusion, restriction, or preference, and, for instance, when the disabled do not have access to reasonable accommodation on the basis of their limitations, their enjoyment or exercise of human rights may be severely restricted.
- ✓ In order for disabled persons to freely enjoy their fundamental human rights, numerous cultural and social barriers have to be overcome; changes in values and increased understanding at all levels of society has to be promoted, and those social and cultural norms that perpetuate myths about disability have to be put to rest.

International Human Rights Standards

- ✓ In general, international human rights instruments protect the rights of persons with disabilities through the principles of equality and non-discrimination.
- ✓ The UDHR refers expressly to disabled persons, stipulating in Article 25 that everyone has the right to security in the event of [...] disability, but its derivatives, the ICCPR and ICESCR, do not contain any explicit reference to persons with disabilities.
- ✓ Many provisions of the Covenants are, however, of direct relevance for ensuring equal opportunities and the full participation of persons with disabilities in society; for example, Article 6 (respecting the

right to life) and Article 7 (respecting the right to freedom from torture and other cruel, inhuman or degrading treatment and punishment) under the ICCPR and Article 2 (the general non-discrimination norm) under the ICESCR. Article 23 of the Convention on the Rights of the Child specifically discusses the rights of handicapped and disabled children.

- ✓ The Committee on Economic, Social and Cultural Rights has adopted a General Comment on persons with disabilities.General Comment No. 5 - Persons with disabilities is particularly important as it establishes that disability falls under the heading, other status in Article 2 ICESCR and is therefore regarded by the Committee as a prohibited ground for discrimination. Similarly, the Committee on the Elimination of All Forms of Discrimination Against Women has adopted General Recommendation No. 18 - Disabled women .
- ✓ Under the auspices of the AU, the African Charter of Human and Peoples Rights stipulates in Article 18(4) that the disabled shall be entitled to special measures of protection and the African Charter on the Rights and Welfare of the Child discusses the rights of handicapped children in Article 13.
- ✓ The European Social Charter (revised) stipulates that disabled persons have the right to independence, social integration and participation in the life of the community (Part I No. 15) and sets out steps that states shall undertake to this end, such as promoting access to employment and education (Article 15).
- ✓ Article 6 of the Protocol of San Salvador stipulates: States Parties undertake to adopt measures to make the right to work fully effective [...] in particular, those directed to the disabled and Article 9 sets out the right to social security in case of disability. Moreover, provisions in human rights instruments protecting members of vulnerable groups are applicable to disabled persons.
- ✓ Two international conventions dealing directly with the rights of disabled persons have been drafted. One is the **Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities 1999)** (see 2.3), The other Convention is ILO 159 concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983). It sets out, *inter alia,* principles of vocational rehabilitation and employment policies aimed at equal opportunity and measures for action at the national level to be taken for the development of rehabilitation and employment services for disabled persons.
- ✓ Specific non-binding instruments have also been adopted at the international level addressing the rights of disabled persons. These instruments include the Declaration of the Rights of Mentally Retarded Persons (UNGA Resolution 26/2856 (XXVI), 1971); the Declaration on the Rights of Disabled Persons (UNGA Resolution 30/3447 (XXX), 1975); the World Programme of Action concerning Disabled Persons (UNGA Resolution 37/52, 1982); the Tallinn Guidelines for Action on Human

Resources Development in the Field of Disability (UNGA Resolution 44/70, 1990); the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (UNGA Resolution 46/119, 1991); ILO Recommendations concerning Vocational Rehabilitation of the Disabled (1955) and concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983); the Sundberg Declaration on Actions and Strategies for Education, Prevention and Integration (1981); the Salamanca Statement on Principles, Policy and Practice in Special Needs Education (1994); and the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (UNGA Resolution 48/96, 1993).

- ✓ A World NGO Summit on Disability was held in Beijing in March 2000, resulting in the Beijing Declaration on the Rights of People with Disabilities in the New Century. Through this Declaration, the NGOs in the field of disability lent their moral authority to the idea of a disability-specific human rights treaty.
- ✓ In 2001, in the wake of the Beijing Summit, the General Assembly established an Ad Hoc Committee to consider proposals for a convention on disability. The aim is a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the work done in the fields of social development, human rights and non-discrimination (UNGA Resolution 56/168, 2001). The Committee is at the first stages of work and held its second session in June 2003, assisted by the participation of several prominent global NGOs in the field of disability such as: Disabled Persons International (DPI); Inclusion International; Rehabilitation International (RI); World Blind Union (WBU); World Federation of the Deaf (WFD); World Network of Users and Survivors of Psychiatry (WNUSP); and World Federation of the Deaf-Blind (WFDB).
- ✓ In December 2001, the Mexican government put forward Resolution 56/168 in the United Nations General Assembly. The resolution called for consideration of a Convention on the human rights of persons with disabilities and further sought the immediate formation of an Ad-Hoc Committee. This Committee would consider proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities. Resolution 56/168 passed without any vote.
- ✓ The General Assembly subsequently passed Resolution 56/510, respecting the accreditation and participation of NGOs in the Committee, and Decision 56/474, which requests the Secretary-General to make, as needed and within existing resources, reasonable efforts to facilitate the participation by persons with disabilities in the meetings and deliberations of the Ad Hoc Committee [...]

Supervision

- ✓ In 1994, the position of Special Rapporteur on Disability of the United Nations Commission for Social Development was established. The task of the Special Rapporteur is to monitor implementation of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities and to advance the status of people with disabilities throughout the world. Furthermore, under the auspices of the UN, the Division for Social Policy and Development of the United Nations Secretariat is the focal point on matters relating to disability.
- ✓ One of the major development goals of the United Nations is promoting the quality of life of the disadvantaged, including people with disabilities. The year 1982 was the UN International Year of Disabled Persons and towards its end the World Programme of Action concerning Disabled Persons (WPA) was adopted by the General Assembly. The WPA is a global strategy to enhance disability prevention, rehabilitation and equalisation of opportunities with the aim of full participation of persons with disabilities in social life and national development. The WPA emphasises the need to approach disability from a human rights perspective and that persons with disabilities should not be treated in isolation, but within the context of normal community services. The WPA provided analysis of principles, concepts and definitions relating to disabilities and an overview of the world situation regarding persons with disabilities, setting out recommendations for action at the national, regional and international levels.
- ✓ The International Day of Disabled Persons is 3 December each year. The aim is to promote an understanding of disability issues and mobilise support for the dignity, rights and well-being of persons with disabilities. Similarly, the United Nations Economic and Social Commission for Western Asia (ESCWA) has launched the Arab Decade for People with Disabilities from 2003-2012.

➢ **Elderly Persons**

- ✓ The majority of older persons are women and striking differences exist between regions; for instance, one out of five Europeans is 60 years or older, but only one in twenty Africans.
- ✓ It is only recently that the attention of the world community has been drawn to the social, economic and political issues related to this phenomenon of ageing on a massive scale.
- ✓ As the world□s population ages and the traditional role of the family as the main support of older people weakens, the elderly are increasingly vulnerable to abuse and various forms of negative stereotyping and discrimination. They often have limited access to health care and face specific age related restrictions in many fields, such as job discrimination in hiring, promotion and dismissal. Furthermore, as many industrialised countries struggle with the task of adapting their social and economic policies to the ageing of their populations, even in affluent societies many older persons live in conditions of poverty.

- ✓ In developing countries with limited social security systems, the emigration of the younger members has left the elderly, traditionally cared for by members of their families, to fend for themselves. This is especially true in the case of older women who live longer than men do and more commonly face poverty and isolation.

International Human Rights Standards

- ✓ In general, the rights stipulated for the elderly in international instruments stem from the principles of dignity and non-discrimination.
- ✓ Neither the UDHR nor its derivatives, the ICCPR and ICESCR , contain any explicit reference to older persons, but many provisions of these instruments are of direct relevance to ensuring equal opportunities and the full participation of the elderly.
- ✓ Although the rights of older persons are not referred to in the Bill of Rights, the ICESCR Committee expressly addresses the economic, social and cultural rights of older persons in General Comment No. 6 - The economic, social and cultural rights of older persons . In the General Comment, the Committee calls on states parties, *inter alia*:
  - to pay particular attention to older women as they have often not engaged in a remunerated activity entitling them to an old-age pension;
  - to institute measures to prevent discrimination on grounds of age in employment and occupation; to take appropriate measures to establish general regimes of compulsory old-age insurance; and
  - to establish social services to support the whole family when there are elderly people at home and assist elderly persons living alone or elderly couples wishing to remain at home.
- ✓ The General Comment also sets out that, even though not specified as a prohibited ground for discrimination in the Convention, □other status□ could be interpreted as applying to age. It is beyond doubt that the principle of non-discrimination enshrined in the ICESCR, ICCPR, CERD and CEDAW prohibits discrimination on the grounds of age.
- ✓ Three regional human rights instruments expressly mention older persons as a group in need of special protection. In Article 18(4), the African Charter stipulates that the aged shall have the right to measures of special protection in keeping with their physical or moral needs. The Protocol to the African Charter on the Rights of Women in Africa sets out special protection for elderly women. Article 17 Protocol San Salvador stipulates that everyone has the right to special protection in old age and calls upon states to progressively provide suitable facilities, food and medical care for elderly persons that lack them; to undertake work programmes to enable the elderly to take part in productive activity; and to foster establishment of social organisations aimed at improving the quality of life of the elderly.

- ✓ The Revised European Social Charter sets out the right to social protection for the elderly in Article 23. According to this provision states parties undertake to adopt measures:
  - to enable the elderly to remain full members of society for as long as possible by providing adequate resources and information about available services;
  - to enable the elderly to choose their life-style freely and live independently for as long as possible by providing adequate housing and services; and
  - to guarantee support for older persons living in institutions. In addition, the Charter on Fundamental Rights of the European Union (2000) sets out the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life (Article 25).
- ✓ In 1982, the World Assembly on Ageing, held in Austria, adopted the Vienna International Plan of Action on Ageing , the first international instrument on ageing. It was endorsed by UNGA Resolution 37/51. The Plan promotes international co-operation to strengthen the capacities of states to contend with the ageing of populations and to address the developmental potential and dependency needs of older persons. It addresses research, training and education and makes recommendations in the following areas: a) education; b) health and nutrition; c) family; d) protection of elderly consumers; e) income security and employment; f) housing and environment; and g) social welfare. The Plan is to be implemented within the framework of other international standards and human rights instruments
- ✓ In 1991 in pursuance of the Plan of Action, the General Assembly adopted the United Nations Principles for Older Persons (UNGA Resolution 46/91) encouraging states to adopt certain principles relating to the status of the elderly, promoting independence, participation, care, self-fulfilment and dignity of elderly persons.
- *Independence*: includes access to adequate food, water, shelter, clothing and health care, as well as the opportunity for remunerated work and access to education and training.
- *Participation*: aims for older persons to actively participate in the formulation and implementation of policies that affect their well-being, to share their knowledge with younger generations. Furthermore, the elderly should have the right to form movements and associations.
- *Care*: entails that the elderly should benefit from family and health care and that when residing in care or treatment facilities their human rights and fundamental freedoms shall be respected.
- *Self-fulfilment:* entails that educational, cultural, spiritual and recreational resources should be available for older persons to be able to pursue opportunities for the full development of their potential.

- *Dignity:* aims for the elderly to live in dignity and security and be free of exploitation and physical or mental abuse; to be treated fairly, regardless of age, gender, racial or ethnic background, disability, financial situation or any other status; and be valued independently of their economic contribution.

✓ In 1992, the General Assembly adopted the Proclamation on Ageing. The Proclamation, *inter alia,* urges support for older women and that they be recognised for their contributions to society; older men are encouraged to develop capacities, which they may have been prevented from developing during breadwinning years; families should be supported in providing care and all family members encouraged to co-operate in care-giving.

✓ In 2002, the Second World Assembly on Ageing adopted a Second International Plan of Action on Ageing . This plan includes a number of central themes setting out goals, objectives and commitments. These include:

- the full realisation of all human rights and fundamental freedoms of all older persons;
- the achievement of secure ageing;
- empowerment of older persons;
- provision of opportunities for individual development;
- ensuring the full enjoyment of all human rights, and the elimination of all forms of violence and discrimination against older persons;
- gender equality among older persons;
- recognition of the importance of families;
- provision of health care, support and social protection for older persons; and
- recognition of the situation of ageing indigenous persons.

Supervision

✓ Several supervisory bodies are progressively developing the application of their respective instruments to afford protection to this group and now concluding observations frequently offer recommendations on the protection of elderly persons (see, for example, the Concluding Observations of the CESCR on Jamaica E/2002/22 (2001); CEDAW Committee on Iceland A/57/38 (2002) and CERD Committee on Iraq CERD/C/304/Add. 28 (1997)).

✓ The UN Commission for Social Development is responsible for follow-up and appraisal of the implementation of the 2002 International Plan of Action on Ageing. The Commission is to integrate the different dimensions of population ageing as contained in the International Plan of Action in its work.

✓ The United Nations conferences and special sessions of the General Assembly provide the context in which the specific contributions and concerns of older persons shall be expressed.

- ✓ To follow up on the International Plan of Action and the Principles for Older Persons the UNGA proclaimed 1999 the International Year of Older Persons. The theme was "A society for all ages", containing four dimensions: individual lifelong development, multigenerational relationships, the inter-relationship between population ageing and development, and the situation of older persons. The International Year raised awareness, and fostered research and policy action worldwide, including efforts to integrate the issue of ageing into all sectors of public life.

➢ **Refugees**

- ✓ Throughout history, people have fled their homes to escape persecution.
- ✓ In the aftermath of World War II, the international community included the right to seek and enjoy asylum in the 1948 Universal Declaration of Human Rights.
- ✓ In 1950, the Office of the United Nations High Commissioner for Refugees (UNHCR) was created to protect and assist refugees, and, in 1951, the United Nations adopted the Convention Relating to the Status of Refugees (1951 Convention), which is the cornerstone document of refugee protection. In addition, the Protocol relating to the Status of Refugees (the 1967 Protocol) helped to widen the definition of a refugee, as it lifted the time and geographic limits found in the 1951 Convention.
- ✓ While the international community has generally responded swiftly and generously to refugee crises in the past 50 years, some worrying trends are emerging. Countries that once generously opened their doors to refugees have largely regressed in their commitment to protect refugees by adopting adversarial and restrictive policies. Real and perceived abuses of asylum systems, as well as irregular movements, have led to the refusal of entry to refugees and expulsion from asylum countries. Those who reach a potential country of asylum are often turned away or sent back without having been able to apply for asylum.
- ✓ The majority of today's refugees are from Africa and Asia. Current refugee movements frequently take the form of mass exoduses rather than individual flights. Eighty percent of today's refugees are women and children and the causes of flight now includse natural or ecological disasters and extreme poverty. As a result, many of today's refugees do not fit the definition contained in the 1951 Convention. In 2001, there were an estimated 14.9 million refugees in the world people who had crossed an international border to seek safety and at least 22 million internally displaced persons (IDPs) who had been uprooted within their own countries.
- ✓ According to the 1951 Convention relating to the Status of Refugees, a refugee is someone who:
  - Has a well-founded fear of persecution because of his/her Race,Religion, Nationality, Membership in a particular group, or Political opinion;
  - Is outside his/her country of origins; and

- Is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.

✓ The African Union Convention Governing the Specific Aspects of Refugee Problems in Africa, a regional treaty adopted in 1969, added to the definition found in the 1951 Convention to include a more objectively based consideration, namely: Any person compelled to leave his/her country owing to external aggression, occupation, foreign domination or event seriously disturbing public order in either part or whole of his/her country of origin or nationality. (Article 1(2)).

✓ In 1984, a colloquium of Latin American Government representatives and jurists adopted the Cartagena Declaration. Like the AU Convention, the declaration adds a more objectively based consideration to the 1951 Convention refugee definition to include: Persons who flee their countries because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

International Human Rights Standards

✓ The 1951 Convention Relating to the Status of Refugees, as amended by the 1967 Protocol Relating to the Status of Refugees, is the most important international instrument protecting the rights of refugees.

✓ The 1951 Convention specifies who is a refugee, and what rights a refugee has, once she/he has been recognised as such.

✓ In Article 33, the principle of *non-refoulement* is established. This principle forbids states to expel or return a refugee, in any manner whatsoever, to the frontiers of territories where his/her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion (the *non-refoulement* principle also encompasses non-rejection at the border and can oblige a state to accept a person on its territory).

✓ It does not oblige a state to grant the person asylum. The refugee may be expelled to another state where his life and freedom will not be in danger, provided that state is prepared to admit him. Granting of asylum may, however, be the result of *non-refoulement*, if no other state is prepared to admit the refugee.

✓ The 1951 Convention also includes exclusion clauses, which stem from the understanding that the commission of some types of crimes justifies the exclusion of the perpetrators from the benefits of refugee status. Under Article 1(f), refugee status under the 1951 Convention does not apply to

persons with regard to whom there are □serious reasons□ for considering they have committed the following crimes: a) Crimes against peace, war crimes and crimes against humanity; b) Serious non-political acts; and c) Acts contrary to the purposes and principles of the United Nations.

- ✓ Often the recognition as refugee on the basis of Article 1(A) of the 1951 Convention will coincide with the granting of asylum, according to national law. In general, asylum will not be granted if the person concerned can enjoy protection elsewhere, or if there are compelling reasons of public order not to admit her/him.
- ✓ There can be situations in which it would be inhumane to return someone who does not fulfil the criteria for refugee status under the Refugee Convention. This can be the result of general circumstances in the country of origin such as, for example, war and hunger. It can also be related to individual circumstances such as the risk of torture or cruel, inhuman or degrading treatment or punishment upon return. Granting of asylum may therefore imply both admission as refugee on the basis of the 1951 Convention and permission to stay on humanitarian grounds.
- ✓ In addition to the 1951 Convention and the 1967 Protocol, two regional instruments have been adopted expanding the definition found in the 1951 Convention, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) and the Cartagena Declaration on Refugees (1984) (see textbox above).
- ✓ In addition to international and regional refugee conventions, international human rights law and international humanitarian law play a significant role in guaranteeing international protection of refugees.
- ✓ Article 3 of CAT provides for protection from *refoulemen*t in situations where there is a substantial risk of torture. The *non-refoulement* provision under CAT is absolute. Unlike the *non-refoulement* provision of the 1951 Convention it is not linked to cases where a person fears harm on account of race, religion, nationality, membership of a particular social group, or political opinion and it does not provide for exceptions based on national security. This means that the prohibition of return applies to all persons regardless of their past criminal conduct.
- ✓ CRC applies to all children without discrimination, including child refugees and asylum seekers. CRC specifically stipulates that every child seeking refugee status has a right to protection and humanitarian assistance in the enjoyment of the rights set forth in the Convention, as well as other conventions to which the state is party.
- ✓ Regional human rights conventions also establish important safeguards for refugees. For example, Article 3 of European Convention has been interpreted by the European Court as prohibiting return

of persons where there is a risk of torture while Article 22(7) of the American Convention recognises the right to seek and be granted asylum and Article 22(8) prohibits *refoulement.*

- ✓ In humanitarian law, Article 44 of the Fourth Genena Convention Relative to the Protection of Civilian Persons in Time of War deals specifically with refugees and displaced persons. Moreover, the 1977 Additional Protocol which one provides that refugees and stateless persons are to be protected under the provisions of Parts I and III of the Fourth Geneva Convention.

Supervision

- ✓ UNHCR was created to provide international protection to refugees and to find durable solutions to refugee problems. These functions include securing legal and practical protection to refugees with and through governments, overseeing the mobilisation and co-ordination of resources for the well-being and survival of refugees and encouraging conditions in conflict zones that will allow refugees to return voluntarily to their countries of origin. Both the 1951 Convention (Article 35) and its 1967 Protocol (Article II) bestow upon UNHCR responsibility for supervising implementation by states.
- ✓ The Convention and Protocol specifically establish the obligation of states to provide UNHCR with information on the condition of refugees, implementation of the Convention and Protocol and relevant national law. They do not, however, provide for individual complaints or a state reporting procedure. In addition to providing protection to refugees, UNHCR□s mandate has been expanded to include persons in refugee-like situations, internally displaced persons, stateless persons, and returnees (refugees who have returned to their own countries).
- ✓ At the international level, UNHCR promotes accession by states to international agreements relating to refugees and monitors government compliance with international refugee law. To this end, the Global Consultations on International Protection were launched in 2001. The Consultations were aimed at promoting improved understanding of the 1951 Convention, its strengths, limitations and potential. The process was designed along three tracks: a) Ministerial Meetings of states parties to the Convention; b) Roundtable meetings with experts; and c) Policy formulation in the framework of the Executive Committee (ExCom). These consultations resulted in the establishment of the Agenda for Protection, a series of guidelines for UNHCR, governments and humanitarian organisations to strengthen worldwide refugee protection.
- ✓ In the field, UNHCR staff work to protect refugees through a wide range of activities, including emergency response; relocating refugee camps away from border areas to improve safety; ensuring that refugee women have access to food distribution and social services; reuniting separated families; providing information to refugees on conditions in their home country so that they can make decisions

about return; documenting a refugee's need for resettlement to a third country of asylum; visiting detention centres; and giving advice to governments on draft refugee laws, policies and practices.

- ✓ UNHCR seeks long-term and durable solutions to refugee problems by helping refugees return voluntarily to their home countries if the situation allows it; monitoring the treatment and promoting the reintegration of returnees after repatriation has taken place; helping refugees integrate in their countries of asylum and resettling refugees to third countries when needed.
- ✓ International human rights supervisory mechanisms have also played a key role in protecting the rights of refugees and asylum seekers. Both the Committee Against Torture and the Human Rights Committee constitute crucial safeguards for refugees and asylum seekers in danger of being returned to face torture or cruel, inhuman or degrading treatment or punishment. Under its individual complaint procedure, the Committee Against Torture has developed a broad jurisprudence concerning the principle of *non-refoulement* under Article 3 of CAT and has provided important protection to refugees and asylum seekers who risked being deported to countries where they would be exposed to torture.
- ✓ The Committee on Economic, Social and Cultural Rights and the CEDAW, CRC and CERD Committees have all played an important role in refugee protection by raising issues relating to refugees when examining state reports.

➢ **Stateless person**

- ✓ Nationality and citizenship are fundamental elements of human security because they provide people with a sense of belonging and identity. They provide a legal basis for the exercise of many human rights.
- ✓ Persons without a nationality are in many countries denied numerous human rights that citizens take for granted, like access to schools and medical care, ownership of property, marriage and foundation of a family and enjoyment of legal protection.
- ✓ Nationality is not granted indiscriminately, but is normally based on factors such as the place of birth of a person, parentage or the relationship a person has established with a state through, for example, marriage to a national or long-term residence there.
- ✓ A **stateless person** is the person who is not considered a national of any state under operation of its law. Statelessness occurs for many different reasons.
  - A person may loose her/his nationality and is not able to acquire a new one because of extended stay abroad or because of marriage or dissolution of marriage to a person of a different nationality (women are particularly vulnerable).

- In the case of children, if they are born to stateless persons or refugees, or in some cases out of wedlock, they may be denied citizenship.
- Some individuals may find themselves stateless because of faulty administrative practices, such as excessive fees or the failure to be notified of registration or other obligations.
- Children who are not properly registered at birth can easily become stateless, as they are not able to show where or to whom they were born.

✓ Situations of statelessness involving a large number of persons in a particular society may arise in a number of different circumstances.

- Governments may change their nationality laws and deny certain groups nationality under the new laws in order to marginalise them or to facilitate their expulsion from the state□s territory.
- The transfer of territory or sovereignty or the disintegration and formation of new states may leave thousands of people stateless or with disputed claims of citizenship.

✓ International conventions on statelessness were adopted in 1954 and 1961, but because the international community did not pay much attention to statelessness at that time, few countries acceded to these treaties. UNHCR was entrusted with certain responsibilities with regard to stateless persons, but for many years the organisation devoted little time, resources, and efforts to statelessness.

✓ The end of the Cold War led to a profound change in international relations and forced the issue of statelessness onto the agenda of the international community. These changes included the disintegration of several states, the rise of ethnic consciousness in many parts of the world and the fear of large-scale population movements involving stateless persons. This prompted UNHCR and other humanitarian organisations to address the issue of statelessness in a more urgent and systematic manner, by trying to avert situations that can lead to statelessness, protecting stateless persons and trying to find adequate solutions to their problems. Ultimately, however, the problems of statelessness and disputed nationality can only be effectively addressed by states themselves.

Internaional Human Rights Standards

✓ The two primary international conventions on statelessness are the **Convention relating to the Status of Stateless Persons (1954)** and **the Convention on the Reduction of Statelessness (1961).**

✓ Article 1 Convention relating to the Status of Stateless Persons defines a stateless person as a person not considered a national (or citizen) under the law of any state. In addition to providing a definition to statelessness, the Convention seeks to improve the status of stateless persons and helps ensure that stateless persons enjoy fundamental rights and freedoms without discrimination. It regulates, *inter*

alia, the legal rights of stateless persons, their access to work and welfare and urges states to facilitate their assimilation and naturalisation.

- ✓ The Convention on the Reduction of Statelessness defines ways in which persons who would otherwise be stateless can acquire or retain nationality through an established link with a state through birth or descent. It deals with cases of statelessness resulting from, *inter alia*, a change of civil status, residence abroad, or the voluntary renunciation of nationality. It also stipulates that children should be granted the nationality of the state party in which a parent had citizenship. The Convention prohibits states parties from depriving people of their nationalities on racial, ethnic, religious, or political grounds. The Convention does not, however, oblige states to grant nationality to stateless persons who enter their territory, unless those persons already have strong connections with the state and do not have any chance of acquiring a nationality elsewhere.
- ✓ Other international instruments dealing with the right to nationality include, *inter alia*, Article 15 Universal Declaration on Human Rights, which stipulates the right to a nationality and the right not to be arbitrarily deprived of nationality and Article 5 of CERD, which seeks, with respect to the right to nationality: To prohibit and to eliminate racial discrimination in all its forms and to guarantee the right to everyone, without distinction as to race, colour, or nationality or ethnic origin, to equality before the law.
- ✓ Other international instruments deal specifically with the right to a nationality with regard to women and children. These include the Convention on the Nationality of Married Women (1957), CEDAW (Article 9) and CRC (Articles 7 and 8). The instruments concerning women seek to ensure that they enjoy equal rights to acquire, change or retain nationality, while those covering children deal mainly with the right of children to be registered and to acquire a nationality from birth.
- ✓ At the regional level, the American Convention on Human Rights (1969) and the European Convention on Nationality (1997) underline the need of every person to have a nationality, and seek to clarify the rights and responsibilities of states in ensuring individual access to a nationality.

Supervision

- ✓ Similar to the situation of IDPs, there is today no specific body that deals with the problem of statelessness, or that supervises the 1954 and 1961 statelessness conventions.
- ✓ In order to fill this vacuum, upon the entry into force of the Convention on the Reduction of Statelessness in 1975, UNHCR was provisionally asked to assume the responsibilities foreseen in Article 11 Convention on the Reduction of Statelessness of a body to which a person claiming benefit of this convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority. However, no mention was made of UNHCRs competence with regard to the

Convention relating to the Status of Stateless Persons and UNHCR was not asked to assume any wider responsibilities regarding statelessness issues.

- ✓ In recent years, the international community has faced an increased number of stateless persons and the security issues arising with them. This led the High Commissioner□s Executive Committee and the UN General Assembly to adopt and endorse the Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons (Resolution 50/152). In addition, UNHCR was requested to □actively promote accession□ to the 1954 and 1961 Conventions on statelessness, □as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of national legislation□.
- ✓ UNHCR has taken a number of practical steps to strengthen its efforts with regard to stateless persons. It has appointed a legal expert on the problem of statelessness, and has actively assisted governments in the preparation and implementation of nationality legislation while encouraging them to accede to the 1954 and 1961 statelessness conventions. In addition, UNHCR has strengthened its working relationship with a number of organisations involved in this issue such as the UNHCHR, the Council of Europe and the OSCE.

➢ **Migrant workers**

- ✓ Migrant workers play a vital role in the global economy, and today, one human being out of 35 is an international migrant. Unfortunately, the growing number of migrants due to the increased mobility of people from poorer areas to those better off is a cause of rising tension, particularly in the receiving countries. One problem is the perception of migrant workers as temporary guests, who will eventually go back □home□, when in reality they settle and become permanent members of society, entitled to rights as other citizens.
- ✓ Traditionally, poverty and the inability to earn a decent living are major reasons behind migration from one country to another, as well as war, civil strife, insecurity and persecution arising from discrimination. But migrant workers and their families frequently find themselves in situations of vulnerability in their host countries, in part due to their living and working outside of their state of origin. They are aliens and may, because of that status alone, be targets of suspicion and hostility and, as they are frequently poor, they share the economic, social and cultural handicaps of marginalised groups in the host country.
- ✓ Migrant workers often face discrimination in terms of employment: exclusion from certain jobs, difficulty in access to vocational training and contracts that are inferior to those of nationals. Migrant workers are also known to have been subject to inferior working conditions, they have been denied the right to participate in trade unions and they are often assigned jobs that nationals do not want.

Migrant workers are exceptionally vulnerable when they are recruited and employed illegally, often with criminal elements involved. Illegal immigrants are more often than not targets of exploitation.

- ✓ They are at the mercy of their employers, forced to accept abhorrent conditions, in the worst cases amounting to modern day slavery or forced labour, incapable of seeking justice for fear of expulsion from the host country. Furthermore, children of migrants often need special measures to help them adapt to a foreign language and customs, especially when it comes to education in a new language.

Interantional Human Rights Standards

- ✓ Historically, the rights of migrant workers have fallen under general diplomatic protection, based on the international law governing the treatment of non-nationals.
- ✓ In 1990, the UNGA adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families . The main thrust of the Convention is that persons who qualify as migrant workers under its provisions are entitled to enjoy their human rights regardless of their legal status.
- ✓ The Convention does not create new rights for migrants, but aims at guaranteeing equality of treatment and the same working conditions for migrants and nationals, as well as guaranteeing the rights of migrants to maintain ties to their countries of origin. The Convention aims at:
  - Preventing inhumane living and working conditions, physical and sexual abuse and degrading treatment (Articles 10, 11, 25, 54).
  - Guaranteeing migrants rights to freedom of thought, expression and religion (Articles 12, 13).
  - Guaranteeing migrants access to information on their rights (Articles 33, 37).
  - Ensuring their right to legal equality. This implies that migrant workers are subject to correct procedures, have access to interpreting services and are not sentenced to disproportionate penalties such as expulsion (Articles 16-20, 22).
  - Guaranteeing migrants equal access to educational and social services (Articles 27-28, 30, 43-45, 54).
  - Ensuring that migrants have the right to participate in trade unions (Articles 26, 40).
  - Ensuring that migrants can return to their country of origin if they wish to, that they are allowed to pay occasional visits, and that they are encouraged to maintain cultural links (Articles 8, 31, 38).
  - Guaranteeing migrants political participation in the country of origin (Articles 41, 42).
  - Ensuring migrants right to transfer their earnings to their home country (Articles 32, 46-48).
- ✓ Furthermore, the Convention establishes rules for recruitment of migrant workers, and for their return to their states of origin, it details the steps to be taken to combat illegal or clandestine migration and it imposes a series of obligations on parties in the interest of promoting sound,

equitable, humane and lawful conditions for the international migration of workers and members of their families. Although the Convention has entered into force, only a few countries (26 as of July 2004) have become party to it, most of which primarily send migrants abroad. For the time being, it looks as though several migrant-receiving countries are not willing to be bound by the Convention as many find the formulation of the rights unacceptable.

Supervision

- ✓ At the World Summit for Social Development in 1995, states committed themselves to ensure that migrant workers benefit from the protection provided by relevant national and international instruments. They pledged to take concrete and effective measures against the exploitation of migrant workers, and to encourage all states to consider ratifying and fully implementing international instruments relating to migrant workers.
- ✓ The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides for the establishment of a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- ✓ A state party can make a declaration that it recognises the competence of the Committee to receive and consider individual communications on behalf of persons who claim that their rights under the Convention have been violated. The effectiveness of this mechanism remains to be seen as its power depends on whether states will accept the Committees optional complaints procedure. Of the existing mechanisms that deal with violations of the rights of migrant workers, the ILO procedures are currently considered to be the most effective.
- ✓ In 1997, the UN Commission on Human Rights established the Working Group of Intergovernmental Experts on the Human Rights of Migrants with a mandate to gather all relevant information on the obstacles existing to the effective and full protection of the human rights of migrants, and to elaborate recommendations to strengthen the promotion, protection and implementation of the human rights of migrants.
- ✓ Furthermore, in 1999 the Commission appointed a Special Rapporteur on the human rights of migrants, to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation. The Rapporteurs mandate is to receive information on violations and make recommendations and promote effective application of human rights standards and norms. The Rapporteur has expressed concern that measures aimed at stopping irregular migration frequently undermine migrants basic rights, including the right to seek asylum and minimum guarantees against arbitrary deprivation of liberty.

➢ HIV Positive Persons and AIDS Victims

- ✓ HIV positive persons and AIDS victims are often subject to violations of many rights; some economic and social such as work-related rights and access to health care facilities, but also in relation to the enjoyment of civil rights, such as the right to privacy and freedom of movement.
- ✓ HIV/AIDS demonstrates the indivisibility of human rights since the realisation of economic, social and cultural rights, as well as civil and political rights, is essential to an effective response to the epidemic.
- ✓ The incidence of HIV/AIDS is disproportionately high in groups who already suffer from lack of protection and discrimination; such as women, children, those living in poverty, minorities, refugees and internally displaced people. In this regard, for example, the CEDAW Committee has stressed the link between women's reproductive role, their subordinate social position and their increased vulnerability to HIV infection.

International Human Rights Standards

- ✓ The key human rights principles essential for effective protection of people with HIV/AIDS are to be found in existing international instruments, such as the ICESCR; ICCPR; CEDAW; CAT; CERD; and the CRC .
- ✓ At the regional level, the American Convention on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the African Charter on Human and Peoples' Rights also enshrine general state obligations, which are applicable to persons affected by HIV/AIDS. There are, however, to date (July 2004), no binding international human rights standards dealing specifically with HIV/AIDS.
- ✓ The UN General Assembly has emphasised the need to counter discrimination and to respect human rights of people with HIV/AIDS in several resolutions (*e.g.* Resolutions 45/1990 and 46/20 1991) and has held a Special Session on the topics (*e.g.* in 2001). The UN Commission on Human Rights has also adopted numerous resolutions on human rights and HIV/AIDS (see, *e.g.,* Resolution 1989/1). Another international instrument worth mentioning is the Paris Declaration on Women, Children and AIDS (1989).
- ✓ The Office of the United Nations High Commissioner for Human Rights (OHCHR) and the joint United Nations Programme on HIV/AIDS (UNAIDS) have developed guidelines to assist states in translating international human rights norms into practical observance in the context of HIV/AIDS: The

International Guidelines on HIV/AIDS and Human Rights (1998) and its Revised Guideline 6: Access to prevention, treatment, care and support (2002).

Supervision

- ✓ Since the epidemic began in the early 1980s, the international community has become increasingly concerned with the human rights protection of HIV/AIDS infected people.
- ✓ This is a crosscutting theme that UN treaty bodies have dealt with from their different perspectives, progressively developing the application of their respective instruments to respond to the pandemic and its consequences, setting out that states parties should include in their reports information on the effects of AIDS on the enjoyment of human rights of those infected and the measures taken to prevent discrimination against them.
- ✓ The treaty bodies have dealt with HIV/AIDS in several General Comments and Recommendations. In this regard, CEDAW General Recommendation No. 15 - Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS) adopted in 1990 and 24 on Women and Health adopted in 1994 are important. In the same vein, General Comment No. 3 - HIV/AIDS and the right of the child was adopted by the Committee on the Rights of the Child in 2003.

Chapter Four: Culture, Globalization and Human Rights

Section One: Culture and Human Rights

- ✓ The end of the cold war has created a series of tentative attempts to define "a new world order". So far, the only certainty is that the international community has entered a period of tremendous global transition that, at least for the time being, has created more social problems than solutions.
- ✓ The end of super-power rivalry, and the growing North/South disparity in wealth and access to resources, coincides with an alarming increase in violence, poverty and unemployment, homelessness, displaced persons and the erosion of environmental stability. The world has also witnessed one of the most severe global economic recessions since the Great Depression of the 1930s.
- ✓ At the same time, previously isolated peoples are being brought together voluntarily and involuntarily by the increasing integration of markets, the emergence of new regional political alliances, and remarkable advances in telecommunications, biotechnology and transportation that have prompted unprecedented demographic shifts.
- ✓ Climate of change and acute vulnerability raises new challenges to our ongoing pursuit of universal human rights.

- ✓ How can human rights be reconciled with the clash of cultures that has come to characterize our time? Cultural background is one of the primary sources of identity. It is the source for a great deal of self-definition, expression, and sense of group belonging. As cultures interact and intermix, cultural identities change. This process can be enriching, but disorienting. The current insecurity of cultural identity reflects fundamental changes in how we define and express who we are today.

➢ **Universal Human Rights and Cultural Relativism**

- ✓ **Cultural relativism** is the assertion that human values, far from being universal, vary a great deal according to different cultural perspectives. Some would apply this relativism to the promotion, protection, interpretation and application of human rights which could be interpreted differently within different cultural, ethnic and religious traditions. In other words, according to this view, human rights are culturally relative rather than universal.
- ✓ This relativism would pose a dangerous threat to the effectiveness of international law and the international system of human rights that has been painstakingly constructed over the decades. If cultural tradition alone governs State□s compliance with international standards, then widespread disregard, abuse and violation of human rights would be given legitimacy. Accordingly, the promotion and protection of human rights perceived as culturally relative would only be subject to State discretion, rather than international legal imperative.
- ✓ By rejecting or disregarding their legal obligation to promote and protect universal human rights, States advocating cultural relativism could raise their own cultural norms and particularities above international law and standards.

➢ **Universal Human Rights and International Law**

- ✓ Largely through the ongoing work of the United Nations, the universality of human rights has been clearly established and recognized in international law. Human rights are emphasized among the purposes of the United Nations as proclaimed in its Charter, which states that human rights are "for all without distinction". Human rights are the natural-born rights for every human being, universally. They are not privileges.
- ✓ The Charter further commits the United Nations and all Member States to action promoting "universal respect for, and observance of, human rights and fundamental freedoms". As the cornerstone of the International Bill of Rights, the Universal Declaration of Human Rights affirms consensus on a universal standard of human rights.
- ✓ Universal human rights are further established by the two international covenants on human rights (International Covenant on Economic, Social and Cultural Rights, and International Covenant on Civil

and Political Rights), and the other international standard-setting instruments which address numerous concerns, including genocide, slavery, torture, racial discrimination, discrimination against women, rights of the child, minorities and religious tolerance.

- ✓ These achievements in human rights standard-setting span nearly five decades of work by the United Nations General Assembly and other parts of the United Nations system. As an assembly of nearly every State in the international community, the General Assembly is a uniquely representative body authorized to address and advance the protection and promotion of human rights. As such, it serves as an excellent indicator of international consensus on human rights.
- ✓ Everyone is entitled to human rights without discrimination of any kind. The non-discrimination principle is a fundamental rule of international law. This means that human rights are for all human beings, regardless of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Non-discrimination protects individuals and groups against the denial and violation of their human rights. To deny human rights on the grounds of cultural distinction is discriminatory. Human rights are intended for everyone, in every culture.
- ✓ Human rights are the birthright of every person. If a State dismisses universal human rights on the basis of cultural relativism, then rights would be denied to the persons living under that State's authority. The denial or abuse of human rights is wrong, regardless of the violator's culture.

➢ **Human Rights, Cultural Integrity and Diversity**

- ✓ Universal human rights do not impose one cultural standard, rather one legal standard of minimum protection necessary for human dignity. As a legal standard adopted through the United Nations, universal human rights represent the hard-won consensus of the international community, not the cultural imperialism of any particular region or set of traditions.
- ✓ Like most areas of international law, universal human rights are a modern achievement, new to all cultures. Human rights are neither representative of, nor oriented towards, one culture to the exclusion of others. Universal human rights reflect the dynamic, coordinated efforts of the international community to achieve and advance a common standard and international system of law to protect human dignity.

➢ **Inherent Flexibility**

- ✓ Universal human rights emerge with sufficient flexibility to respect and protect cultural diversity and integrity.
- ✓ The flexibility of human rights to be relevant to diverse cultures is facilitated by the establishment of minimum standards and the incorporation of cultural rights.

- ✓ The instruments establish minimum standards for economic, social, cultural, civil and political rights. Within this framework, States have maximum room for cultural variation without diluting or compromising the minimum standards of human rights established by law.
- ✓ The Vienna Declaration provides explicit consideration for culture in human rights promotion and protection, stating that "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind". This is deliberately acknowledged in the context of the duty of States to promote and protect human rights regardless of their cultural systems. While its importance is recognized, cultural consideration in no way diminishes States' human rights obligations.
- ✓ Most directly, human rights facilitate respect for and protection of cultural diversity and integrity, through the establishment of cultural rights embodied in instruments of human rights law. These include: the International Bill of Rights; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Declaration on Race and Racial Prejudice; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; the Declaration on the Principles of International Cultural Cooperation; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; the Declaration on the Right to Development; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples.
- ✓ Human rights which relate to cultural diversity and integrity encompass a wide range of protections, including: the right to cultural participation; the right to enjoy the arts; conservation, development and diffusion of culture; protection of cultural heritage; freedom for creative activity; protection of persons belonging to ethnic, religious or linguistic minorities; freedom of assembly and association; the right to education; freedom of thought, conscience or religion; freedom of opinion and expression; and the principle of non-discrimination.

➢ **Cultural Rights**

- ✓ Every human being has the right to culture, including the right to enjoy and develop cultural life and identity. Cultural rights, however, are not unlimited. The right to culture is limited at the point at which it infringes another human right. No right can be used at the expense or destruction of another, in accordance with international law.
- ✓ Cultural rights cannot be invoked or interpreted in such a way as to justify any act leading to the denial or violation of other human rights and fundamental freedoms. As such, claiming cultural relativism as an excuse to violate or deny human rights is an abuse of the right to culture.

- ✓ There are legitimate, substantive limitations on cultural practices, even on well-entrenched traditions. For example, no culture today can legitimately claim a right to practice slavery.
- ✓ Similarly, cultural rights do not justify torture, murder, genocide, discrimination on grounds of sex, race, language or religion, or violation of any of the other universal human rights and fundamental freedoms established in international law. Any attempts to justify such violations on the basis of culture have no validity under international law.

➢ **A Cultural Context**

- ✓ The argument of cultural relativism frequently includes or leads to the assertion that traditional culture is sufficient to protect human dignity, and therefore universal human rights are unnecessary. Furthermore, the argument continues, universal human rights can be intrusive and disruptive to traditional protection of human life, liberty and security.
- ✓ When traditional culture does effectively provide such protection, then human rights by definition would be compatible, posing no threat to the traditional culture. As such, the traditional culture can absorb and apply human rights, and the governing State should be in a better position not only to ratify, but to effectively and fully implement, the international standards.
- ✓ Traditional culture is not a substitute for human rights; it is a cultural context in which human rights must be established, integrated, promoted and protected. Human rights must be approached in a way that is meaningful and relevant in diverse cultural contexts.
- ✓ Traditional cultures should be approached and recognized as partners to promote greater respect for and observance of human rights. Drawing on compatible practices and common values from traditional cultures would enhance and advance human rights promotion and protection. This approach is not only encourages greater tolerance, mutual respect and understanding, but also fosters more effective international cooperation for human rights.
- ✓ Recognition and appreciation of particular cultural contexts would serve to facilitate, rather than reduce, human rights respect and observance.

Section two: Globalization and Human Rights

- ✓ The word globalization is now used widely to sum up today s world order. It means they increasingly integrate the world into one capitalist political economy operating under a neo-liberal free market ideology.
- ✓ Economic globalization as witnessed in the world today is not a new phenomenon. It has been evolving for the past several years and gaining momentum day by day. The trend, at present, is a shift from a world economy based on national market economies to a borderless global market economy

increasingly governed by one set of rules. In this context, globalization means global economic liberalization, developing a global financial system and a transnational production system which is based on a homogenized worldwide law of value. The demise of the Cold War helped the emergence of a new aggressive competitive global economic order.

- ✓ Although globalization and market liberalization have made some progress in terms of economic growth in certain countries, it has also had many negative impacts in developing societies.
- ✓ Richard Barnet of the Institute of Policy Studies describes globalization in terms of four increasing webs of global commercial activity: *global cultural bazaar, the global shopping mall; the global financial network; the global workplace.*
- ✓ The **global cultural bazaar** promotes the notion of uniform cultural values and products across the world.
- ✓ The cultural bazaar and shopping mall intersect through the vehicle of advertising. Media has become a powerful player in the globalization process. In fact, globalization of economies has also led to the globalization of media. Media is used to impose the culture and power of the wealthy nations from the global North.
- ✓ The global financial market has created a new atmosphere to search for quick profits.
- ✓ In an article titled The Human Rights Debate in an Era of Globalization: Hegemony of Discourse, Nikhil Aziz describes two kinds of globalization based on Richard Falks theory on the making of Global Citizenship. He argues that we can see globalization in different perspectives: Globalization from Above (GA) and Globalization from Below (GB).
- ✓ At the political level, GA manifests itself in its action of the Western countries, particularly the United States of America, and global financial institutions in pressuring countries of the South to democratize. This translates as the adoption of a Western-style liberal democratic system of governance.
- ✓ They closely tie economic Globalization from Above to the political aspect in that (1) the source of pressure for change is the same, and (2) close links are alleged between the ideologies of free markets and free societies. Economic Globalization from Above entails countries of the South to accept - within the parameters of the dominant World capitalist system - the imposition of structural adjustment programs neo-liberal economic policies, including the wholesale liberalization of domestic economies, to allow unrestricted entry to transnational capital. On a cultural level, GA arises from the control of the global information and communication networks by Western media corporations; and the spread of modern technologies of a consumerist culture, and western cultural expressions as the global culture.

- ✓ The transnational companies are the spearheads of globalization and have become the dominant economic and political force in the world economy. Increasing competition and pressure on transnational companies to increase profits leads to a relentless search for cheap labor markets. Many of the companies from the developed and the Newly Industrialized Countries (NIC) have shifted their manufacturing and service industries to developing countries.
- ✓ There may be short-term advances in the living standards of a small group of workers. Nevertheless, when some workers elsewhere lead the race to the bottom, those jobs may disappear.
- ✓ Globalization has substantially contributed to the intensification of debt, poverty and economic crisis in the developing world.
- ✓ The Structural Adjustment Programs (SAP) designed and imposed by the global creditor institutions is a typical instrument to create a favorable atmosphere for globalization, which ultimately affects developing countries. In order to meet the mandates set by the SAP, a country spends less by cutting back government expenditures, social services, and economic investments so that resources can be placed elsewhere. More money is being spent on export orientation, which results in local economies becoming dependent on the integration with the world economy.
- ✓ Globalization has created a situation where the role and importance of nation-state is becoming irrelevant.
- ✓ Several other Asian countries are also witnessing the emergence of a few - rich and middle class people at the expenses of many poor. These new-rich and middle class are really the products of globalization and they provide the market for imported products and further strengthening the economy of the developed countries.
- ✓ Well, one group is considering this an achievement of globalization. On the other hand, the reality is that, globalization requires the humiliation of hundreds of millions of people keeping them in constant insecurity, pitting them against one another in a competitive struggle for survival. The Human Development Report of 1997 says; Globalization can also shift patterns of consumption. Luxury cars and soft drinks can rapidly become a part of daily life, heightening relative deprivation. The pattern can increase absolute poverty by undermining the production of goods on which poor people rely. A flood of imported wheat can shift consumption away from sorghum or cassava, making them scarcer in loyal markets.

Globalization, Development and Human Rights

- ✓ The relation between globalization, development and human rights raises policy and legal questions. One such question is whether globalization of market-oriented economic system is essential for development and protection of human rights?

- ✓ Human rights have become an integral part of the process of globalization in many ways. The Western countries are increasingly using their view of human rights concept as a yardstick to judge developing countries and to deal with economic and trade relations to extend development assistance. At the same time globalization intensifies impoverishment by increasing the poverty, insecurity, fragmentation of society and thus violates human rights and human dignity of millions of people.
- ✓ Development or economic development is widely perceived as a historical process that takes place in almost all societies characterized by economic growth and increased production and consumption of goods and services. Development is also often used in a normative sense as a multi-valued social goal covering such diverse spheres as better material well-being, living standards, education, health care, wider opportunities for work and leisure, and in essence the whole gamut of desirable social and material welfare. But, in today□s globalization, the concept of development itself is interpreted differently and the concept of right to development is not taken seriously.
- ✓ The Preamble of the Declaration of the Right to Development, adopted by the UN General Assembly in 1986, describes □development as a comprehensive economic, social, cultural and political process that aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of resulting benefits□.
- ✓ The 1990 UN Global Consultation on the Right to Development as a Human Right, stated that the right to development is an inalienable human right with the human being as the central subject to the right and that all the aspects of the right to development set forth in the
- ✓ Declaration of the Right to Development is indivisible and interdependent, and these include civil, political, economic, social, and cultural rights. It was further maintained that the right to development is the right of individuals, groups and peoples to participate in, contribute to, and enjoy continuous economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.
- ✓ A development strategy that disregards or interferes with human rights is the very negation of development.
- ✓ The aims and objectives of the so-called development models promoted by different governments or international development agencies are not compatible with human rights standards. A new model of development ideology is being promoted that is based on the market and its logic. Several decades of discussion on alternative development model is withering away and a dominant model of market-oriented development taking roots in that place.
- ✓ As a result of the globalization process, more negative effects are visible now. Global integration of

the structures, processes, and ideologies produce injustice, oppression, exploitation and mal-development in society. The systematic integration of the forces that are dominant in the globalization process intensifies human rights violations.

- **Development Aid and Human Rights**

✓ It has long been accepted by the United Nations and in most international forums that developed countries should provide aid in the form of grants and loans to the developing countries.

✓ The General Assembly has, by consensus resolutions, called for such development aid to reach 0.7 per cent of the GNP of developed countries. Actually less than half of that target has been attained. For example, the United States gives only less than 0.2 per cent, instead of 0.7 per cent.

✓ Overseas Development Aid (ODA) presents debatable issues from the perspective of human rights. For example, it raises the question whether aid should be directed mainly to reducing poverty and providing social services to the needy or whether priority should be given to economic growth and strengthening infrastructure. Another key question of a legal political characteristic is whether the recipient government or the donor state should have a decisive voice.

✓ The developing states emphasize their primary responsibility for development of the country and their right to self-determination in respect of the economy and resources. Donor countries tend to emphasize their narrow concepts of human rights as a prerequisite to sanction development assistance. They also emphasize the pragmatic political fact that aid is not likely to be provided if the beneficiary states violated basic human rights. According to Mikhail Assize, human rights have become another arsenal of Western countries in their bid to bring recalcitrant Third World nations to heel in their New World Order.

✓ The question whether aid should be given to countries where human rights are substantially or systematically violated has been analyzed by Katherine Tomasevski in the following statement. *Donor governments and agencies are continuously making decisions which country to assist, how much and what for, because aid needs are much larger than available aid. Human rights have entered the already numerous criteria for allocating aid fairly recently. this entry has been neither easy nor smooth because no general criteria have been developed by donors and consequently decisions have been made on case-to-case basis. Moreover, these decisions have been limited to some human rights violations in some aid-receiving countries. Thereby human rights terminology has often been used to justify decisions to provide aid or to terminate it; while human rights criteria - to the extent that there is such a thing in the aid policy of any donor - have been confined to the search for those human rights violations which could justify cutting off aid.*

- **Trade and Human Rights**

- ✓ Global trade is being liberalized and opened up in this era of globalization. A set of new rules and regulations have been promoted through international firms like WTO and new initiatives have been taken through the formation of regional economic trading blocs.
- ✓ At the same time several developed countries in the world have been trying to inter-relate trade policy with human rights policy.
- ✓ Under the Generalized System of Preferences (GSP) which provides for trade benefits for developing countries, the USA has withdrawn or threatened to withdraw preferences from some countries that violate human rights.
- ✓ Some developed countries are pressing for trade sanctions against states found to violate human rights, especially human rights standards that are generally based on the Conventions and Recommendations of the International Labor Organization. They have tended on the whole to oppose trade liberalization treaties such as NAFTA and currently WTO. The developing countries have generally objected to such measures since they would reduce their comparative advantage through cheap labor and constitute a major barrier to their industrialization. From their point of view, workers rights enforced by trade barriers would contribute to greater poverty in their countries.
- ✓ A UN Commission on Transnational Corporations devoted about 15 years of study and negotiation on a draft Code of Conduct for Transnational Corporations that included a general provision requiring transnational corporations to respect human rights and fundamental freedoms in the countries where they operate and more detailed provisions on observance of laws on labor relations and involvement of trade unions. Objections of the USA and a few other countries have prevented its adoption.
- ✓ The TNCs which have gained strength in the post-globalization era is the main actor in several developed countries in formulating new foreign policies to shape a new global order. This trend has been highlighted in a recent study that the emerging global order is spearheaded by a few hundred corporate giants, many of them bigger than most sovereign nations. By acquiring earth-spanning technologies, by developing products that can be produced anywhere and sold everywhere, by spreading credit around the world, and by connecting global channels of communication that can penetrate any village or neighborhood, these institutions we normally think of as economic rather than political. Private rather than public, are becoming the world empires of the twenty-first century.
- ✓ The impact of these global giant□s operations have negative impact on human rights. Virtually all developing countries at the present time seek private foreign investment for development. Such investment now greatly exceeds loans or grants from official sources. The growth of Transnational Corporations - now numbering about 35,000 with 1, 50,000 foreign affiliates - is evidence of the increased role of the private sector and of market economies in developing countries. New

technologies have transformed the nature of production and facilitated re-location of firms.

Impact of Globalization on Human Rights

- ✓ Globalization has its winners and losers. With the expansion of trade, market, foreign investment, developing countries have seen the gaps among themselves widen.
- ✓ The imperative to liberalize has demanded a shrinking of state involvement in national life, producing a wave of privatization, cutting jobs, slashing health, education and food subsidies, etc. affecting the poor people in society.
- ✓ In many cases, liberalization has been accompanied by greater inequality and people are left trapped in utter poverty. Meanwhile, in many industrialized countries unemployment has soared to levels not seen for many years and income disparity to levels not recorded since last century. The collapse of the economies of the Asian Tigers is examples of this.
- ✓ The Human Development Report of 1997 revealed that poor countries and poor people too often find their interests neglected as a result of globalization. Although globalization of the economy has been characterized as a locomotive for productivity, opportunity, technological progress, and uniting the world, it ultimately causes increased impoverishment, social disparities and violations of human rights.

CHAPTER FIVE: RESPONSES TO GRAVE VIOLATION OF HUMAN RIGHTS

- ✓ It is clear that human rights are to be respected and protected by States through all appropriate measures. States shall also make remedies available at domestic level to any one claiming his/her rights were violated.
- ✓ Sometimes violations may be committed grossly & systematically that the normal procedures become not enough to address them.
- ✓ Mostly, the systematic & serious violations were/are committed by State officials as an instrument of achieving some policy, e.g., crushing opposition & sustaining their power, maintaining territorial integrity & the like.
- ✓ The serious & systematic violations in Chile during the Pinochet regime, Uganda during the Id Amine regime, South Africa during the Appartied regime, in Ethiopia during the Dergue regime were all committed as part of State policy to achieve some result. Millions of people in these countries were victims of State-sponsored systematic violations. It is also important to remember the systematic & gross violations committed during international and internal wars. Millions have suffered because of

the horrific acts committed during WWII, the civil war in Former Yugoslavia, & Rwanda. The horrors being committed in Darfur, Sudan, are an example of an ongoing systematic violation of human rights. Some sources have presented Statistical data showing that millions of people across the world have been victims of State violence.

- ✓ Amnesty International has commented that the twentieth century was perhaps the bloodiest in history. Millions of people were victims of genocide, crimes against humanity, war crimes, torture, extra judicial executions and "disappearances." These crimes were committed throughout the world during international and civil wars and in conditions of "peace". The 21st century is also witnessing similar cruelties and injustices

Section One: National responses -Transitional Justice

- ✓ It is an accepted principle that violations of rights shall first be addressed at national level. This holds true even in case of systematic & gross violations. Thus, the perpetrators of such violations/crimes shall be brought to justice at national level. The international system of addressing such violations becomes relevant if the domestic system is unable/unwilling to provide remedies.
- ✓ Usually, the question of addressing such violation at national level doesn't arise if the rights violating regime holds power. This is simply because the perpetrators are State officials, or members of armed forces or security forces, or the police, and the like. Thus, the system can't be expected to hold the perpetrators accountable. It rather protects them, and even allows them to continue to carry out their crimes, and the perpetrators are likely to continue to do so in the knowledge that it is extremely unlikely that they would be brought to justice. Thus, a regime change has to happen first.
- ✓ Regime change is a prerequisite for putting the national mechanism of responding to such violations. This regime change may result in many ways, for e.g., armed struggle, negotiation & others. Thus, it is a requirement that the rights violating regime be substituted by a regime that is committed to the values of human rights & democratization, and thus bringing a transition within the society. At this period of transition, the need to address past violations would arise. This need is addressed through what is usually referred to as transitional justice.
- ✓ The term transitional justice has two meanings. In one sense, it means justice at the time of transition. It may also be understood as justice in transition it self, i.e., referring to the idea that our conception of justice is not static but dynamic. We use the first meaning for the purpose of this teaching material. We use the term transitional justice broadly to signify the mechanisms by which societies in transition deal with past violations. It thus represents the various modalities of addressing past violations.

- ✓ Transitional justice has to address the needs of societies in transition. Societies in transition may have variety of needs/concerns related to past violations. The three main needs that arise in societies in transition are the following:

(1) **The need for justice.** Victims of violations or their relatives and the society at large need to see the perpetrators of the violations are brought to justice. It is thus necessary that transitional justice should provide a mechanism by which this need may be satisfied.

(2) **The need to know the truth.** The society in general, and victims or relatives in particular, wants to know who among its members did participate in the violations. As the past violations were committed systematically & grossly, the society, even victims/relatives, may not know all that happened & all the perpetrators & the degree of their participation. Above all society needs to know why the violations happened. Thus, the need to know *who did what & why* is one of the basic issues that may arise at the time of transition. It is claimed that knowing the truth about the past is crucial to build a viable, rights-respecting & democratic society as well as to ensure that violations wouldn□t happen again. Some commentators, however, argue that knowing the truth about is not desirable as it may lead to further suspicion & animosity between those that claim to be victims & their relatives on the one hand and alleged perpetrators, who are usually former officials, & their relatives (& even supporters) on the other hand, and thereby motivating revenge & leading to further conflict. They thus suggest it is better to forget the past & move forward. Others criticize this by arguing society cannot move forward without knowing the past. Some rather propose □you shall never forget but forgive□.

(3) **The need for conciliation**. Society may also need to create conciliation among its members. There may be a general understanding that one groups of the society are victims while others are perpetrators or vice versa. This and other factors are likely to cultivate among members of the society a mentality of suspicion, mistrust & even animosity. A society desirous of moving forward should therefore address this mentality. Society should have a mechanism of reconciling its divided members & building trust, confidence & mutual respect among its members. It is commented that it is difficult, if not impossible, for a divided society to break with the past, establish a stable system & move forward.

- ✓ However, we have to make two remarks here. First, these needs are not exclusive of each other. In other words, they may overlap. Secondly, these needs are not exhaustive, i.e., there may be other needs for example, the need for compensation.

The modalities of transitional Justice

- ✓ Each society may use a mechanism/ combination of mechanisms that it deems appropriate to satisfy its needs. There are, however, certain modalities of transitional justice that are well known & well utilized by different socialites.

1. **Prosecution.**
   - ✓ This is one of the modalities of transitional justice often employed by societies to address past violations. This process involves the apprehension, investigation & prosecution of alleged perpetrators, and imposition of penalty if found guilty. Thus, it involves the apprehension of perpetrators, the gathering of evidence, and the filing of criminal charges, judicial hearing and decision according to the law. The main concern here is to maintain the rule of law, which is considered as the cornerstone of democracy.
   - ✓ The rule of law thus requires that no person is exempt from the law. Thus it is a mechanism of fighting impunity. It is important to remember that international human rights law requires States Parties to provide effective remedy to victims of violation.
   - ✓ The duty to prosecute, particularly, exists in relation to grave breaches of the international humanitarian law. In these respects, States have the duty to prosecute or extradite violators for crimes committed anywhere. This obligation of States to prosecute or extradite on the basis of universal jurisdiction is stipulated in the Four Geneva Conventions. Customary international law also requires states to investigate war crimes & prosecute suspects. Thus, states have the duty to apprehend & prosecute suspects that commit such crimes anywhere.
   - ✓ It has also been commented that "like the IHL, certain international human rights treaties oblige a state party to prosecute or extradite persons accused of acts prescribed in the treaty". If states have the duty to prosecute or extradite persons suspected of having committed grave crimes anywhere, they have for stronger reason the duty to prosecute or extradite suspects committing these crimes within their territory. We will consider the principle of universal jurisdiction in the next section. The central point here is, in certain cases, States have not only a right but also a duty to prosecute violations/crimes

2. **Truth & reconciliation.**
   - ✓ This modality is the mechanism by which a society may identify truth about the past & create conciliation among its members. For this purpose, societies may establish truth commissions or truth and reconciliation commissions.
   - ✓ Usually, the commission/authorized organ seeks & documents the truth about the past by this procedure. Members of the society are encouraged to come forward and speak their stories. Thus,

both victims/relatives & perpetrators give their statements and such other information relating to the past.

- ✓ History traces the beginning of the application of this modality to the 1980s, where some states moving forward to democracy after civil war or the end of repressive regime had adopted truth commissions with a hope of achieving successful transition. These include the commissions established in Chile and Argentina whose purpose was □□reveal truths about the past & especially to determine the fate of the thousands disappeared□. Following that we have the South African Truth & Reconciliation Commission in the 1990s. It is commented that this Commission □more than any other truth commission before, sought reconciliation as the basis of nation building□.

3. **Amnesty**.

- ✓ The term amnesty refers to an official act, usually through law, prospectively barring prosecutions of a class of persons for a particular set of actions or events.
- ✓ Amnesty is often contrasted with pardons, which usually refer to the exemption of criminals from serving all or part of their sentences but do not expunge the conviction. It is stated that amnesties shield from prosecution and are not pardons. However, it is commented that □these distinctions are inexact; pardons, like amenities, can be used to foreclose prosecutions, and amnesties sometimes cover persons serving prison terms□.
- ✓ Amnesties can be blanket or partial; they may be official, with, for example, the passing of a law, or de facto, where a state simply does not prosecute. We also have the notion of □self-amnesty□ whereby the former regime grant itself amnesty hoping that the future regime will not examine/prosecute them.
- ✓ Support for amnesties rests on a resistance to prosecution based upon the fear that prosecution would destabilize the new government or simply prolong vengefulness exhibited by the former regime. Many believe and have made a call that □to leave the past alone is the best way to avoid upsetting a delicate process of transition or to avoid a return to past dictatorship and reopening the victims□ old wound. However, others contend that neither a society nor a country can move forward & heal through impunity; thus, crimes must be prosecuted. These two viewpoints, nevertheless, do appear to coincide on the issue of serious violations of human rights law/humanitarian law. Such serious crimes must always be prosecuted, and a failure to prosecute them perpetuates a culture of impunity. However, it is also conceded that amnesty should not be ruled out completely as a means of promoting reconciliation or ending conflict or as a means of preventing the destabilization of the fragile new government. Therefore, a distinction has to be made between legitimate amnesties & others.

- ✓ In general, we can say that amnesty is one of the modalities of transitional justice. However, certain forms/types of amnesties are seen with suspicion and even unacceptable in view of the obligation of States under international human rights law /humanitarian law.

Section Two: International Responses

- ✓ The international response is available with respect to certain violations that constitute grave breaches of international law. The international response is premised on the conviction that such violations constitutes crimes against the whole nations/international community, and results from the inadequacy/ non-existence of national responses. Thus, certain crimes do constitute international crimes for which the perpetrators are held individually responsible.
- ✓ The criminal responsibility of individuals under international law contributes to fight impunity, however, limited it is. The underlying idea is that the perpetrators of such crime shall not go free.
- ✓ The mechanism by which international law ensures that has taken different forms. These include: (1) the recognition & application of the principle of universal jurisdiction, (2) prosecution and trial by *ad hoc* international tribunal, and (3) prosecution & trial by a permanent international tribunal called the International Criminal Court. We therefore deal with these mechanisms of enforcement of individual criminal responsibility.

(1) Application of the principle of Universal Jurisdiction.

- ✓ The principle of universal jurisdiction is classically defined as a legal principle allowing or requiring a State to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim. This principle is said to derogate from the ordinary rules of criminal jurisdiction requiring a territorial or personal link with the crime, the perpetrator or the victim.
- ✓ The rationale behind it is broader: it is based on the notion that certain crimes are so harmful to international interests that states are entitled-and even obliged to bring proceedings against the perpetrator, regardless of the crime and the nationality of the perpetrator or the victim. Universal jurisdiction allows for the trial of international crimes committed by anybody, anywhere in the world. There are offences recognized by international law as punishable by any country.
- ✓ Traditionally, piracy on the high seas is regarded as one of the first international crimes, grounded on the violation of international customary law.
- ✓ After the Second World War, the London Agreement of 8 August 1945 establishing the International Military Tribunal at Nuremberg set out international crimes issuing from both treaty law & customary law (crimes against peace, war crimes & crimes against humanity).

- ✓ Later treaties & international conventions specified various forms of prohibited behavior recognized as international crimes. Principle 2 of the Princeton Principles on Universal Jurisdiction reads: (1) for purpose of these principles, serious crimes under international law include (i) piracy, (ii) slavery, (iii) war crimes, (iv), crimes against peace, (v) crimes against humanity, (vi) genocide, and (vii) torture. Paragraph 2 provides the application of universal jurisdiction the crimes listed in paragraph 1 is without prejudice to the application of universal jurisdiction to other crimes under international law.
- ✓ The derogation from the ordinary rules of criminal jurisdiction is traditionally justified by two main ideas. First, some crimes are so grave that they harm the entire international community. Secondly, no safe havens must be available for those who committed them. Even though these justifications may appear unrealistic, they clearly explain why the international community, through all its components-states or international organizations-must intervene by prosecuting and punishing the perpetrators of such crimes. Universal jurisdiction is a matter of concern for everybody.
- ✓ The recognition of universal jurisdiction by the state as a principle is not sufficient to make it an operative legal norm. There are basically three necessary steps to get the principle of universal jurisdiction working:
  - The existence of a specific ground for universal jurisdiction,
  - a sufficiently clear definition of the offence & its constitutive elements, and
  - National means of enforcement allowing the national judiciary to exercise their jurisdiction over these crimes.
- ✓ If one of these steps is lacking, then the principle will most probably just remain a pious wish. In practical terms, the gap between the existence of the principle and its implementation remains quite wide.
- ✓ From a comparative law perspective, States implement the principle in either a narrow or an extensive manner. The **narrow concept** enables a person accused of international crimes to be prosecuted only if he or she is available for trial, whereas the **broader concept** includes the possibility of initiating proceedings in the absence of the person sought or accused (trial in *abstentia).*
- ✓ International law sources refer to the narrow concept, but the decision to refer to the broader concept is quite often a national choice. However, even though some states such as Belgium or Spain have made some efforts to give concrete effect to the principle of universal jurisdiction by amending their penal code, it has in most cases remained unimplemented.
- ✓ Irrespective of its limited application, the principle of universal jurisdiction provides a mechanism by which the international community responds to some systematic violations of rights that constitute international crimes. What types/degree of violations of rights constitutes international crimes within

the meaning of international law is something debatable-for example, whether the recent atrocities committed in Darfur constitute genocide has been a point of controversy. The role of the principle of universal jurisdiction, if applied, in the fight against impunity is undeniable.

(2) Prosecution and trial by *Ad hoc* tribunal

- ✓ Until recently, international prosecution has primarily been conducted before ad hoc tribunal.
- ✓ These tribunals have specific/limited jurisdiction over crimes listed under the instrument creating the tribunal.
- ✓ The first among these tribunals is the International Military Tribunal at Nuremberg established by the London Agreement of August 1945. The London Agreement has defined the jurisdiction of the tribunal. Many Nazi officials were prosecuted before this tribunal.
- ✓ Other ad hoc tribunal includes the International Criminal Tribunal for the former Yugoslavia & for Rwanda (ICTY & ICTR respectively). These tribunals are established pursuant to the Decision of the UN Security Council. The Statutes establishing these tribunals set out the crimes that fall with in the jurisdiction of each tribunal. These are ad hoc tribunal established to address certain crimes committed in certain geographic location or during specific period.

(3) The procedure under the ICC

- ✓ One of the most significant developments made in the direction of dealing with grave violations & fighting impunity is the establishment of the International Criminal Court.
- ✓ It is established pursuant to the Rome Statute of the International Criminal Court, which was adopted at a diplomatic conference in Rome, on 17 July 1998. The Statute entered in to force on 1 July 2002 and the Court is now fully functional at its seat in The Hague. Governments, legal experts and civil society all hailed the treaty as the most significant development in international law since the adoption of the United Nations Charter.
- ✓ The Rome Statute provides for the creation of a permanent international criminal court to prosecute people accused of genocide, crimes against humanity and war crimes. The Court will be of particular importance because:

- It will serve as a permanent deterrent to people considering these crimes. In most cases in the last fifty years international mechanisms to prosecute people accused of these crimes have only been set up after the crimes have occurred;
- It will have a much wider jurisdiction than existing ad hoc tribunals. For example, the work of the International Criminal Tribunals for the former Yugoslavia and Rwanda have been limited to crimes

committed in a particular territory while crimes committed in other territories have not been addressed; and

- The Statute contains advanced provisions for the protection of victims from retraumatization as well as provision that the Court may order a convicted person to provide reparation, in the form of compensation, restitution, rehabilitation, satisfaction, guarantees of non-repetition, and any other type of reparation the Court deems appropriate.

✓ As specified under Article 5 of the Rome Statute, the Court has jurisdiction over the most serious crimes to the international community. These crimes are genocide, crimes against humanity, war crimes & war of aggression. However, the court functions as complementary organ. Thus, the Rome Statute embodies the principle of complemntarity.

✓ The principle of complementarity can be defined as a functional principle aimed at granting jurisdiction to a subsidiary body when the main body fails to exercise its primary function. The principle of complementarity in international criminal law requires the existence of both national and international criminal justice systems functioning in a subsidiary manner for curbing crimes of international law: when the former fails to do so, the latter intervenes and ensures that the perpetrators do not go unpunished.

✓ Thus, the ICC has jurisdiction over the stated international crimes when States are unable or unwilling to prosecute these crimes at national level. By so doing it makes sure those that committed grave crimes are brought to justice & contributes to the fight against impunity.