

Md. Anowar Zahid

HUMAN RIGHTS ENFORCEMENT PROCEDURE UNDER THE UNITED NATIONS SYSTEM

I. INTRODUCTION

Initially human rights were a concern of municipal law and individual states guaranteed human rights for their people by different human rights instruments e.g., in the United Kingdom the *Magna Carta* (1215), the Petition of Rights (1628), the Bill of Rights (1688), the Act of Settlement (1701); in the USA the American Declaration of Independence (1776) and Bill of Rights (1776); in France the French Declaration of Rights of Man and Citizen (1789). The havoc and holocaust of the World War II led the contemporary world statesmen to realise that human rights and fundamental freedoms were the concern of the international community. They felt the need of recognition and protection of human rights at international level. That realisation was repeatedly expressed in various declarations of war aims such as, the Atlantic Charter¹ of August 14, 1941 and President

1. In 1940 Mr. Winston Churchill and Mr. Franklin Roosevelt met on board a battle ship in the Atlantic. They formulated a statement of principles which were shared by England and the United States. It was called the Atlantic Charter. These principles were stated eloquently in a speech by Roosevelt on 6 January, 1941: "In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms. The first is

Roosevelt's 'Four Freedoms,'² message to Congress on January 6, 1941. In January, 1942, it was underscored by the Member States in the Declaration of the United Nations that "complete victory over their enemies is essential to defend life, liberty, independence and religious freedoms and to preserve human rights and justice in their own land as well as in other's lands".³ The World War II being over, the United Nations Organisation was established in 1945 and its Charter contained provisions on human rights and thus human rights got for the first time international recognition, being placed in the UN Charter, the world constitution.

The key Charter provisions on human rights are contained in Articles 55 and 56,⁴ which if read together, require that the UN and its members shall have an obligation to promote human rights and fundamental freedom without distinction as to race, sex, language, or religion, and this corresponds to the purposes of the UN set out in

freedom of speech and expression everywhere in the world. The second is freedom of every person to worship God in his own way everywhere in the world. The third is freedom from want. The fourth is freedom from want". Quoted from A. B. Kalaiah, *Human Rights in International Law*, edited by T.R. Subramaniya, Deep Deep Publications, New Delhi (1986) p. 16.n.8.

2. Freedom of Speech and Expression, Freedom of Religion, Freedom from Fear, and Freedom from Want; Finch, *American Journal of International Law (A. J. I. L.)*, 35 (1941), p. 662
3. *A. J. I. L.*, 36(1942), Suppl. p. 191.
4. As regards human rights. Article 55 reads thus : "The United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". Article 56 reads as : "All members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55."

Article 1 (3)⁵ of the Charter. The United Nations has made efforts to fulfil its obligations under Article 55 and has adopted numerous declarations and treaties,⁶ mostly as a result of the work of the UN Commission on Human Rights.⁷ These (declarations and treaties) indicate the meaning of human rights in the law of the United Nations, and so far as the treaties are concerned, impose obligations upon the Contracting Parties.⁸

-
5. Article 1(3) proclaims as the purposes of the UN: "To achieve international cooperation in solving International problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."
 6. e.g., The Universal Declaration of Human Rights (1948), The International Covenant on Civil and Political Rights (1966), The International Covenant on Economic, Social and Cultural Rights (1966) and the Optional Protocol to the Covenant on Civil and Political Rights (1966), which were combinedly termed by former UN Secretary-General Kurt Waldheim as the 'International Bill of Human Rights.' For the text of the documents see Ian Brownlie, *Basic Documents in International Law*, Oxford University Press, New York (1983) pp. 250-296.
 7. The Commission on Human Rights established in 1946 is the main United Nations body dealing with human rights. Its creation is provided in the Charter itself. It is at present composed of 43 members. It makes studies on human rights problems, prepares recommendations for action, and drafts United Nations instruments relating to human rights. It undertakes special task assigned to it by General Assembly or the Economic and Social Council (ECOSOC), including the investigations of allegations of human rights violations and handling of communications relating to such violations. It also assists the ECOSOC, its parent body, in co-ordinating activities relating to human rights throughout the United Nations system. See United Nations, *Human Rights Questions and Answers*, New York (1987) pp. 17-18.
 8. D. J. Harris, *Cases and Materials on International Law*, Sweet & Maxwell Limited, London, (1983) p. 533.

Under the human rights declarations and treaties adopted in pursuance with Articles 55 and 56 of the Charter the United Nations protects human rights through different mechanisms provided for therein. Other than those mechanisms there are some other means which the UN utilizes to protect human rights in some cases. Recent examples have concerned apartheid in South Africa, the exercise by South Africa of its powers as mandatory in South West Africa/Namibia and the rebellion in southern Rhodesia. In such cases jurisdiction has often been founded more upon the United Nations peacekeeping role than upon Articles 55 And 56.⁹

An attempt is made in the following to examine how human rights are enforced both under the international human rights instruments and outside those instruments.

II REDERESS OF HUMAN RIGHTS VIOLATIONS UNDER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

A. The United Nations Charter¹⁰ and the Universal Declaration of Human Rights (1948)¹¹

Though the UN Charter for the first time internationalises human rights, it contains no indication as to the contents of such rights. The

9. *ibid.*

10. The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organisation, and came into force on 24 October, 1945. The Statute of the International Court of Justice is an integral part of the Charter.

11. The Declaration was adopted by Resolution 217(III) of the General Assembly on 10 December 1948, with forty-eight votes in favour, none against and eight abstentions (the Soviet bloc, South Africa and Saudi Arabia). A. H. Robertson, *Human Rights in the World*, Manchester University Press, Manchester, New York, (1989) p. 26.

Universal Declaration of Human Rights (1948) gives the answer. It elaborates on the charter and gives a definition of substance.¹² It lays down a catalogue of rights in 30 Articles, which are regarded by Professor L. B. Sohn as a statement of General principles spelling out in considerable detail the meaning of the phrase 'human rights and fundamental freedoms in the Charter of the United Nations'¹³ And this is why the Declaration is considered as "an authoritative interpretation of the Charter of the highest order".¹⁴

The Universal Declaration is not a treaty. It was adopted by the UN General Assembly as a resolution having no force of law.¹⁵ However, the fact that it has been accepted by so many States has given it considerable moral weight. Its provisions have been cited as the justification of numerous United Nations actions, and have inspired or been used in many international conventions. In 1968, the United Nations International Conference on Human Rights agreed that "the Declaration constitutes an obligation for the members of the international community". The Declaration has also exercised a significant influence on national constitutions, on national laws and in some cases on courts decisions.¹⁶ And thus it has become a part of international customary law. In the words of Sir Humphery Waldock, "The constant

12. Dieter N. Drost, *Human Rights as Legal Rights*, Leyden, A. W. Sijthoff (1965) p.33.

13. See, A. H. Robertson, *op. cit.*, p.27.

14. *ibid.*

15. Thomas Buergenthal, *International Human Rights*, St Paul, Minn-West Publishing Co. (1988), p.29.

16. *Human Rights Questions and Answers*, *op. cit.*, pp. 4-5.

and widespread recognition of the principles of the Universal Declaration has clothed it with the character of customary law.¹⁷

Though the UN Charter does not specify "human rights and fundamental freedoms" guaranteed by it, its provisions form parts of international law and the Universal Declaration is the authoritative interpretation of it. Therefore, at national, regional and international levels the provisions both of the Charter and the Declaration are applied by the municipal courts, regional courts and the World Court respectively. Thus in the *Anglo-Iranian Oil Company* case¹⁸ Levi Carneiro, J., quoted Article 17¹⁹ of the Universal Declaration of Human Rights, which relates to the right of property. Judge *ad hoc* Guggenheim while giving dissenting judgement in the *Nottebohm* case²⁰ considered that dissociation of diplomatic protection from nationality would be contrary to the basic principle embodied in Article 15 (1)²¹ of the Declaration. The World Court does also uphold the human rights provisions contained in the UN Charter. In its advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa)*²² the International Court of Justice held :

"Under the Charter of the United Nations, the former Mandatory had pledged itself to observe and respect, in a territory having an

17. Sir Humphery Waldock, "Human Rights in Contemporary International Law and the Significance of the European Convention", *International and Comperative Law Quarterly*, Supp. Publ. No. 11 at 15 (1965).

18. (1952), I. C. J.

19. Article 17 of the Declaration provides:

1. Every one has the right to own property alone as well as in association with others, and

2. No one shall be arbitrarily deprived of his property.

20. (1955) I. C. J.

21. Article 15 (1) of the Universal Declaration reads thus 'Everyone Has the Right to a Nationality'.

22. Advisory Opinion, I. C. J. Reports 1971, p. 16.

international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colours, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter".

The Court's opinion that certain actions "constitute a denial of fundamental human rights" and that they amount to a "flagrant violation of the purposes and principles of the Charter", makes it clear that the UN Charter does impose legal obligations on the member States in the field of human rights.

The municipal courts also cite and apply the provisions of the UN Charter and of the Declaration. Of particular importance in this regard is the judgement of the U.S. Court of Appeals in the case of *Filartiga v. Pena Irala*²³ in which it was held that the prohibition of torture "has become part of customary international law, as evidenced and defined by the Universal Declaration of Human Rights". In *Wilson v. Hacker*,²⁴ the owner of a bar sought an injunction to prevent the picketing of her bar by various unions, of which the Bartenders League of America did not allow females to join. The plaintiff contended that if she was to agree to hire only union members, the effect of such an agreement would be that she would have to fire all of her barmaids, an act which would constitute unlawful discrimination. The Court in its judgement found for the plaintiff, citing the Universal

23. 630 F. 2d. 876 (1980). 19 I. L. M. 966 (1980) U.S. Circuit Court of Appeals, 2nd. Circuit.

24. 200 Misc. 124, 101 N. Y. S. 2d. (Sup. Ct. 1950).

Declaration's prohibition against distinction based on sex.²⁵ In the case of *Re Drummond Wren* (1945) a Canadian Court set aside a restrictive covenant in a Private contract on the ground that it discriminated, on racial grounds, against one section of the community. In view of the court, to uphold the contract would have run counter to the obligations undertaken by Canada under Articles 1 and 55 of the Charter to promote universal respect for and observance of, human-rights and fundamental freedoms without distinction as to race, sex, language or religion. The Appellate Division of the Supreme Court of Bangladesh observed in *Abdul Latif Mirza v. Government of Bangladesh*²⁶ that the court while interpreting a provision of law shall construe it harmoniously with the United Nations Declaration of Human Rights.

Neither the United Nations Charter nor the Universal Declaration provides for any procedure for implementation of human rights; their provisions may, however, as seen above, be applied/invoked by the International Court of Justice, the regional courts or the municipal courts as principles of international law of human rights.

B. International Covenants of Human Rights (1966) and the Optional Protocol (1966)

The Universal Declaration of Human rights (1948), as seen above, lacks binding force. To fill this lacking two Covenants and an

25. Article 2 Para 1 provides: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

26. Reported in 1978 (2) : *Bangladesh Supreme Court Report*, 141;

Optional protocol based on the Declaration were adopted so that the ratifying States may be bound to obey the provisions contained therein. These three documents are :

- (a) The International Covenant on Civil and Political Rights;
- (b) The International Covenant on Economic, Social and Cultural Rights; and
- (c) The Optional Protocol to the International Covenant on Civil and Political Rights.

All the three documents were adopted in 1966 and entered into force in 1976²⁷ and have been ratified by a good number of States.²⁸

The International Covenant on Civil and Political Rights (1966) and the Optional Protocol (1966) Thereto

The system of implementation of the International Covenant on Civil and Political Rights centres upon an 18-member Human Rights

27. Both Covenants and the Optional Protocol were adopted and opened for signature and ratification or accession by the General Assembly on 19 December 1966. The International Covenant on Economic, Social and Cultural Rights entered into force on 3 January 1976. The International Covenant on Civil and Political Rights, and the Optional Protocol thereto, entered into force simultaneously on 23 March 1976; United Nations, *The United Nations and Human Rights*, New York (1984) p. 28.

28. By October 1987, The Economic, Social and Cultural Covenant had been ratified by 91 States, the Civil and Political Covenant by 87, and 39 States were parties to the Optional Protocol, *Human Rights Questions and Answers op. cit.*

29. Art. 28 (1), the Covenant.

Committee²⁹ which is appointed from among the States Parties to the Covenant.³⁰ The members are persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.³¹ They do not represent their government rather they serve in their personal capacity.³² The States Parties to the Covenant undertake to submit reports periodically on human rights observance in their respective territory.³³ The Committee reviews the reports, discusses with the State Parties concerned, and addresses general comments to the States Parties and to the Economic and Social Council.³⁴ The Committee held its first meeting in 1977.³⁵

Should two States Parties to the Civil and Political Covenant disagree about whether one of them is fulfilling its obligations under the Covenant, the Human Rights Committee may be seized of the matter.³⁶ This is called optional system of State applications provided for in Article 41 of the Covenant. Under this system, if a State Party to the Covenant considers that another State Party is not giving effect to the provisions of the Covenant, it may, by written communication, bring the matter to the attention of that State Party, which is then required to afford the State sending the communication an explanation or any other statement in writing clarifying the matter, which should include reference to domestic procedures and remedies taken, pending,

30. Art. 28 (2), *ibid.*

31. *ibid.*

32. Art. 28 (3), *ibid.*

33. Art. 40 (1), *ibid.*

34. Art. 40 (4), *ibid.*

35. *Human Rights Questions and Answers, op. cit.* p. 14.

36. *ibid.*

or available in the matter,³⁷ but if the matter is not adjusted to the satisfaction of both States Parties, either State shall have the right to refer it to the Committee.³⁸ After the Committee is satisfied that local remedies³⁹ have been exhausted,⁴⁰ it shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the Covenant.⁴¹ The Committee must, within twelve months, submit a report indicating the facts and the solution reached or, if no solution has been reached, indicating just the facts and attaching to its reports the submission of the two parties.⁴² If no solution is reached, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* 5-member Conciliation Commission and good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution.⁴³ If no settlement is reached through the Commission, it (Commission) shall make a report stating the facts and indicating its views on the possibilities of an amicable settlement.⁴⁴ The report of the Commission is not binding⁴⁵ and the States Parties concerned shall, within three months of receipt of the

37. Art. 41 (1) (a), the Covenant.

38. Art. 41 (1) (b), *ibid*.

39. The European Commission of Human rights has taken "local remedies" to mean those required at customary international law. Thus in *Ambatielos Arbitration*, 23 I.L.R. 306(1966) the Tribunal rejected Greek claim, *inter alia*, on the ground of non-exhaustion of local remedies. Only effective remedies need be exhausted. See Harris, pp. 479, n36, 464.

40. Art. 41 (1) (c), the Covenant.

41. Art. 41 (1) (e), *ibid*

42. Art. 41 (1) (h), *ibid*

43. Art. 42 (1) (a), *ibid*

44. Art. 42 (7) (c), *ibid*

45. Harris, *op. cit.* p. 550.

report, notify the Chairman of the Committee whether or not they accept the contents of report of the Commission.⁴⁶ The Human Rights Committee is to include everything in its annual report submitted to the General Assembly through the Economic and Social Council.⁴⁷ It is, however, noted that no State applications have been brought so far.⁴⁸

"The real test of the effectiveness of an international system for the protection of human rights is whether it permits an individual who believes that his rights have been violated to seek a remedy from an international institution".⁴⁹ Unlike the Civil and Political Covenant the Optional Protocol Thereto allows individuals to seek remedy from international forum against their government for violation of human rights. Under that Protocol, the Human Rights Committee set up in Part IV of the Covenant is enabled to receive and consider "communications from individuals claiming to be victims of violation of any of the rights set forth in the Covenant."⁵⁰ Individuals who claim that any of their rights under the Covenant have been violated may submit written complaint to the Committee provided they have exhausted all available domestic remedies.⁵¹ In *Donnelly v. United Kingdom*,⁵² the European Human Rights Commission, however, held that local remedies do not have to be exhausted where the applicant is a "victim" of a violation of the Convention attributable to an "administrative practice" and the existence of the practice has rendered local remedies ineffective.

46. Art. 42 (7) (d), the Covenant.

47. Art. 45, *ibid.*

48. Harris, *op. cit.* p. 550.

49. Robertson, *op. cit.* p. 54.

50. Preamble to the Optional Protocol to the International Covenant on Civil and Political Rights (1966).

51. Art. 2, the Protocol.

52. 16 Y.B.E.C.H.R. 212 at p. 262 (1973).

However, the Committee shall consider inadmissible any communication under the Protocol which is anonymous, or which it considers to be an abuse of the rights of submission of such communications, or to be incompatible with the Covenant.⁵³ Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.⁵⁴ The Committee shall consider "communications in light of all written information made available to it by the individual and by the State Party concerned⁵⁵ and shall formulate its 'views' on the question whether a breach of the Convention has occurred and send them to the State and the complainant⁵⁶. Thus in the *Weinberger case*⁵⁷ the Human Rights Committee acting under Article 5(4) of the Optional Protocol found that the State Party (Uruguay) had committed violations of Articles 7 and 10 (1), 9(3), 9(4), 14(1), 14(3), 15(1), 19(2), 25 of the Covenant on Civil and Political Rights and expressed its views that "the State Party is under an obligation to provide the victim (Ismael Weinberger) with effective remedies, including his immediate release and compensation for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future".⁵⁸

53. Art. 3, the Protocol.

54. Art. 4(2), *ibid.* When the State concerned does not respond fully to requests for information and legal argument, the Committee's approach is to accept as true allegations that were not denied or were denied only in very general terms: *Weinberger Case*; *the Motta Case*. See Harris, *op. cit.* p. 552.

55. Art. 5 (1), the Protocol.

56. Art. 5(4), *ibid.*

57. 1981 Report of the Human Rights Committee, G A O R, 36th Session, Supp. 40, p. 114

58. The Committee gave decisions on merits in sixty-four cases. Among other cases the cases of *Simones*, *Conteris*, *Wight*, *Swarez de Guerrero*, *Hartikainen*, *Ameeraddy-Cziffra*, *Hertzberg*, *Lovelace*, are worth mentioning, see Robertson, *op. cit.* pp. 60-65.

The "views" of the Committee are published as annexes to the Committee's annual report. There is no conciliation stage comparable to that in the European Convention. The Committee's "views" are not binding and there is no provision for a court or any other body to take a binding decision.⁵⁹

After the Human Rights Committee has submitted its annual report required to be submitted to the General Assembly under the International Covenant on Civil and Political rights containing its activities which include views in cases dealt with by it both under the Covenant and the Protocol, the Assembly may pass resolutions condemning and asking States Parties concerned to comply with the recommendations⁶⁰ and ultimately may report to the Security Council which may also censure and ask for compliance.⁶¹ The Council may even impose sanctions on a recalcitrant State.⁶²

International Covenant on Economic, Social and Cultural Rights (1966)

This Covenant "protects the economic, social and cultural rights listed in the Universal Declaration of Human Rights (Arts. 22-27). The Covenant recognises that realisation of such rights, to a much greater extent than is the case with civil and political rights, is dependent upon economic resources. The guarantee is, therefore, a progressive one. By Article 2, Economic, Social and Cultural Rights Covenant, each party 'undertakes to take steps ... to the maximum of

59. Harris, *op. cit.* p. 552.

60. Art. 10, the U. N. Charter.

61. Art. 40, *ibid.*

62. Art. 41, 42, *ibid.*

its available resources, with a view to achieving progressively the full realisation ... of the rights in the Covenant."⁶³

The system of implementation for the Covenant of Economic, Social and Cultural Rights consists solely of a system of reports. According to that system, States Parties send reports to the UN Secretary-General on measures which they have adopted and the progress made in achieving the observance of the rights recognised in the Covenant.⁶⁴ The Secretary General shall transmit those reports to the Economic and Social Council (ECOSOC) and the pertinent specialized agencies.⁶⁵ In 1985 the ECOSOC established a Committee on Economic, Social and Cultural Rights, composed of 18 members, to study and discuss those reports with the States Parties and make recommendations of a general nature to the ECOSOC.⁶⁶ And the ECOSOC may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the Covenant.⁶⁷

Unlike the Civil and Political Covenant, the Economic, Social and Cultural Covenant has provided for no strong system of implementation of rights recognised therein, nor has it even made the

63. Harris, *op. cit.* p. 553.

64. Art. 16 (1), the Covenant.

65. Art. 16 (2), *ibid.*

66. *Human Rights Questions and Answers, op. cit.* p. 14.

67. Art. 21, the Covenant.

reporting system of implementation effective. According to one commentator : "It has hardly made an encouraging start. The examination of reports has been cursory, superficial, and politicised. It has neither established standards for evaluating reports nor reached any conclusions regarding its examination of reports."⁶⁸

C. Other UN Human Rights Treaties

(a) *International Convention on the Elimination of All Forms of Racial Discrimination 1966 (CERD)*⁶⁹

The enforcement system provided for in the International Convention on Elimination of All Forms of Racial Discrimination (CERD) is based on the Committee on the Elimination of Racial Discrimination of eighteen independent experts.⁷⁰ The Committee receives biennial reports from the States Parties on the implementation of the CERD and makes its own annual report to the General Assembly which may contain such suggestions and general recommendations on the reports from the States Parties as the Committee thinks fit.⁷¹

68. See Harris *op. cit.* p. 553.

69. The Convention was adopted and opened for signature and ratification by the General Assembly of the United Nations in resolution 2106A(XX) of 21 December 1965, and entered into force on 4 January 1969. As at 31 December, 1987, 124 States had become parties to the Convention: *United Nations Action in the Field of Human Rights*, United Nations, New York (1988) p. 38 para. 75

70. Art. 8, the CERD.

71. Art. 9, *ibid.*

Apart from the reporting procedure, there is a compulsory system of inter-state claims,⁷² but "so far no State has made an application".⁷³ According to that system, any State Party may bring an alleged violation of the Convention by another State Party to the attention of the Committee and then allegation is communicated to the State concerned, which then has three months to provide the Committee with a written explanation or statement clarifying the matter. If the matter is not resolved to the satisfaction of both parties, either State has the right to refer it to the Committee again⁷⁴ and the Chairman must then appoint an *ad hoc* Conciliation Commission⁷⁵ which, after considering the matter, submits to the Chairman of the Committee its findings and recommendations for the amicable settlement of the dispute.⁷⁶ The findings and recommendations that result from this process are not binding upon the States concerned.⁷⁷ There is also provision for an optional system of individual application.⁷⁸ According to this system an individual can bring an application for enforcement of rights under the Convention alleging racial discrimination by State. Such an application is considered, together with any reply by the State Party concerned, by the Committee which may forward its suggestions and recommendations, if any, to the State Party concerned and the petitioner.⁷⁹ The Committee has no power to take binding decision. Even so, the system of implementation is

72. Art. 11, *ibid.*

73. Harris, *op. cit.* p. 554.

74. Art. 11, CERD.

75. Art. 12, *ibid.*

76. Art. 13, *ibid.*

77. Harris, *op. cit.* p. 554.

78. Art. 14, CERD.

79. *ibid.*

stronger than that in either of the 1966 Covenants.⁸⁰ Article 22 provides for compulsory reference of disputes to the International Court of Justice, but it was "the subject of considerable disagreement. A large number of Contracting Parties, including most of the Soviet bloc, have made reservations to it."⁸¹

(b) *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)*⁸²

Measures of implementation of this Convention are set out in Part II,⁸³ which provide for the establishment of a Committee against Torture which is empowered to consider reports from States Parties on steps they have taken to give effect to the Convention.

The Committee against Torture is intended to perform the following functions. Firstly, as seen above, it will receive, and consider reports from the Parties as to the measures they have taken to give effect to their undertaking under the Convention.⁸⁴ Secondly, it may receive and consider complaints from one State Party that another State Party is not living up to the terms of the treaty.⁸⁵ Thirdly, the Committee is empowered to consider complaints from individuals that the Convention's provisions have been violated.⁸⁶ Lastly, it may

80. Harris, *op. cit.* p. 555.

81. *ibid.*

82. The Assembly in resolution 39/46 of 10 December 1984, adopted the Convention, opening it for signature, ratification and accession. It was entered into force on 26 June 1987. As at 31 December, 1987 it had been ratified or acceded to by 28 States. See, *United Nations Action in the Field of Human Rights, op. cit.* p. 45. Paras, 130, 132.

83. Articles 17 to 24, the Convention.

84. Art. 19, *ibid.*

85. Art. 21, *ibid.*

86. Art. 22, *ibid.*

receive 'reliable information' that torture is being systematically practised in the territory of a Party, and then it may invite the State to cooperate in examining the information and, whether cooperation is forthcoming or not, initiate a confidential enquiry.⁸⁷ This procedure, unlike those laid down in Articles 21 and 22, is not subject to specific acceptance from the State concerned.

(c) *The Convention on the Elimination of All Forms of Discrimination against Women (1979)*⁸⁸

Under the Convention a 23-member Committee on the Elimination of Discrimination against Women had been established.⁸⁹ The main functions of the Committee are two-fold: (1) The Committee may consider reports submitted by the States Parties on the measures which they have adopted to give effect to the provisions of the Convention;⁹⁰ (2) The Committee may make suggestions and general recommendations based on the examination of reports and information received from the States Parties.⁹¹ Robertson evaluates the effectiveness of the committee as follows :

" ... the use of a reporting procedure to monitor States' compliance with their obligations is a form of supervision which leaves a good deal to be desired. It is, of course, excellent that

87. Art. 20, *ibid.*

88. The Assembly, by resolution 34/180 of 18 December 1979, adopted and opened for signature, ratification and accession the Convention on Elimination of All Forms of Discrimination Against Women: *United Nations Action in the Field of Human Rights, op. cit.* p. 43. para. 112. The Convention came into force on 3 September 1981 and has already been accepted by ninety-four States; Robertson, *op.cit.* p. 93.

89. Art. 17., the Convention.

90. Art. 18, *ibid.*

91. Art. 21, *ibid.*

supervision is carried out by a group of independent experts. However, it is a matter for regret that there is no provision authorising the Committee to deal with complaints by States, nor any procedure to enable it to deal with communications from individuals".⁹²

There are other United Nations human rights treaties which include, *inter alia*, the 1949 Genocide Convention, the 1953 Convention on Political Rights of Women, the 1973 Convention on the Crime of Apartheid, the 1990 Convention on the Rights of Children.

III REDRESS OF HUMAN RIGHTS VIOLATIONS OUTSIDE THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

A. Through Peace-Keeping Role of UN

The United Nations, acting mainly through the General Assembly and the Security Council, has sometimes acted to protect human rights through its peace-keeping role in the world and the following are the two notable instances in this regard.

Members of the Security Council have shown increasing concern about the apartheid policies of the Government of South Africa, as witnessed in an ongoing process of deliberations and in the adoption of resolutions issued under various agenda items (1970, 1972, 1976, 1977, 1980, 1984, 1985, 1986, 1987, 1988). The resolutions containing increasingly explicit condemnation of racial discrimination policies, called upon the South African Government to abandon the policy of apartheid and appealed to the international community to take

92. Robertson, *op.cit.* p. 93.

concrete measures in the campaign against the racist regime.⁹³ South African Government may ultimately put an end to their nasty policies under international pressures created under the leadership of the United Nations Security Council.

The Security Council has devoted significant attention to the examination of the situation in Namibia. This included a determination in 1971, based on an Advisory Opinion of the International Court of Justice, that South Africa's mandate over South West Africa had been terminated and that the authority to administer the territory had reverted to the United Nations. Numerous subsequent resolutions condemned South Africa's obstinate defiance of the will of the United Nations and suggested various measures, including a transition plan, to bring independence to Namibia (1968, 1969, 1971, 1972, 1974, 1976, 1978, 1983, 1985, 1987). In April 1978, five Western members of the Council (Canada, France, the Federal Republic of Germany, the United Kingdom and the United States of America), which later came to be known collectively as the "contact group" or the Western Five", formulated a proposal for a peaceful settlement of the Namibian question on the basis of free and fair elections under the supervision and control of the United Nations, in accordance with Security Council Resolution 385 (1976)⁹⁴. According to this settlement plan Namibia ultimately got independence through free and fair election in 1990.

93. *United Nations Security Council*, the United Nations (1989), p. 9.

94. *ibid.* p. 14.

B. United Nations Commission on Human Rights and "1503" Procedure⁹⁵

"The United Nations Commission on Human Rights now spends much of its time considering allegations of human rights violations in particular situations on the basis either of State initiatives, or of individual petitions. In the former case, the Commission has sometimes, on the proposal of a member, appointed an *ad hoc* Working Group to investigate the situation and report back to the Commission. Three situations which the Commission has considered in this way are the conduct of Israel in occupied Arab territories, apartheid in South Africa and South-West Africa/Namibia, and the control of opposition within Chile. All three of these "defendant" States have been strongly criticised. The weakness of such a procedure is that although attention may be focused beneficially on situations of real concern for protectors of human rights, politics clearly determine the choice and treatment of situations considered. There are also no mandatory powers to enter to conduct investigations or to hear witnesses and any recommendations made are not binding in law. In 1970, a procedure was established by which the Commission on Human Rights may deal with some of the thousands of petitions that reach the United Nations every year alleging the violations of

95. It was matter of debate in different UN organs whether the Commission on Human Rights could take any action about human rights complaints from individuals and non-governments. On 27 may 1970 these finally led the Economic and Social Council to adopt its resolution 1503 (XLVIII), which authorises the Commission to examine communications, together with replies of governments, if any, which appear to reveal a consistent pattern of gross violations of human rights. This system is known as '1503 procedure'. See Robertson, *op.cit.* pp.55, 74-78; *United Nations Action in the Field of Human Rights, op.cit.*, pp. 317-321.

human rights. Until then the practice had been to file them without comment on the basis that the United Nations lacked jurisdiction to examine them. In Resolution 1503 (XXVIII), ECOSOC authorised the Commission on Human Rights Sub-Commission on the Prevention of Discrimination and protection of Minorities (a body of eighteen independent experts) to appoint a working group to examine in private individual petitions received by the Secretary-General and to report to the Sub-Commission on those which appear to reveal a consistent pattern of gross and reliably attested violations of human rights. Acting under Resolution 1503, the Sub-Commission has, after much procedural wrangling, referred several situation - including that in Uganda - to the Commission. The latter has not established any *ad hoc* working group of the sort used to investigate allegations of human rights violations resulting from State initiative or acted in any other way on the situations referred to it. Instead the Commission has discussed the situations in secret but taken no effective action. So far, therefore, Resolution 1503 has proved ineffectual".⁹⁶

C. Role of the UN Secretary-General

The Secretary-General of the United Nations may play an important role when there is any violation of human rights in the world. Under Article 98⁹⁷ of the UN Charter he has now been given a general mandate to exercise his good offices in the field of human rights. Thus when basic human rights and fundamental freedoms provided for in the Chilean Constitution were being violated by the

96. Harris, *op.cit.*, pp. 533-534.

97. According to Article 98 of the Charter, the Secretary-General shall perform all such functions as are entrusted to him by the General Assembly, Security Council, Economic and Social Council and Trusteeship Council.

Chilean authorities, the Secretary-General on request from the General Assembly Resolution 3219 (XXIX) of 1974 met the Permanent Representative of Chile to the United Nations and urged him to restore and safeguard those rights and freedoms provided for in the Constitution of his country. As to what should be the guiding principle in the exercise of good offices, former Secretary-General Kurt Waldheim said :

For my part, I have continued to exercise my good offices in specific human rights cases. I feel that any actions must be governed by one overriding criterion, namely, what approach will best serve the welfare of the individuals concerned.⁹⁸

IV. IMPEDIMENTS AGAINST THE ENFORCEMENT OF HUMAN RIGHTS

It has been seen above that there are two systems of human rights enforcement at international level — (a) system under the international human rights instruments and, (b) system outside those instruments. It has also been noted that the United Nations Charter and the Universal Declaration of Human Rights do not provide for any enforcement machineries. The provisions contained therein are applied by the International Court of Justice, the regional courts and the national courts as the principles of international law, but not always. In *Sei Fujii v. State*,⁹⁹ the plaintiff (an alien Japanese in USA) appealed from a judgement declaring that certain land purchased by him in 1948 had been escheated to the State. It was contended that the United States

98. See B. G. Ramcharan, *Humanitarian Good Offices in International Law*, Martinus Nijhoff Publishers, The Hague (1983) p. 66.

99. 242 p. 2d. 617 (1952).

land law had been invalidated and superseded by the provisions of the UN Charter pledging the member nations to promote the observance of human rights and fundamental freedoms without distinction as to race. He relied upon statements in the Preamble and in Articles 1, 55 and 56 of the Charter which contain provisions relating to human rights. The Supreme Court of California held that the Preamble and Article 1 of the Charter state the general purposes and objectives of the United Nations and do not purport to impose legal obligations on the individual member nations or to create rights in private persons. It was further held that Preamble, Articles 1, 55 and 56 are not self-executing and, therefore, create no rights and duties in individuals.

Since both the United Nations Charter and the Universal Declaration lack in themselves mechanisms for the enforcement of human rights at international level, human rights treaties were adopted so that the ratifying states could be made bound by their provisions and human rights could be enforced against infringing member States and for that purpose they did provide for measures of implementation. But the implementation measures are not so much effective. Under the Civil and Political Covenant the Human Rights Committee's principal function is to examine the reports all States Parties are required to submit on measures they have adopted to give effect to the rights recognised in the Covenant and on the progress made in the enjoyment of these rights.¹⁰⁰ But the Committee lacks the power to verify the State reports by undertaking its own investigation.¹⁰¹ The Covenant also provides for an inter-State complaint machinery, but by ratifying the Covenant, a State is not deemed to have accepted the Committee's jurisdiction to deal with inter-State complaints. This remedy is optional

100. Art. 40(1), the Covenant.

101. Buergenthal, *op.cit.* p.38.

and can be resorted to only by and against States that made separate declarations recognizing the Committee's jurisdiction to receive such complaints. Although the provision of the Covenant permitting this action entered into force after ten States accepted the requisite jurisdiction, no inter-State complaints have been filed to date. The system for dealing with inter-State complaints is extremely weak; it provides neither for adjudication nor quasi-adjudication, and establishes little, more than a formal conciliation machinery.¹⁰² However, though the Optional Protocol has been accepted by a significantly smaller number of States, in dealing with the communications the Committee has been able to develop a valuable body of case law interpreting and applying the Covenant and the Protocol.¹⁰³

Unlike the Civil and Political Covenant the Economic, Social and Cultural Rights Covenant is known, in the words of Robertson, "as a promotional convention, that is to say it does not set out rights which the parties are required to implement immediately, but rather lists standards which they undertake to promote and which they pledge themselves to secure progressively, to the greatest extent possible, having regard to their resources."¹⁰⁴ The E. S. C. Covenant does not establish any inter-State or individual complaints system. It only requires the States parties to submit "reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized".¹⁰⁵

As regards the Charter, the Declaration and the Covenants, therefore, it appears, as noted by Robertson, that the United Nations

102. *ibid.*, p. 39.

103. *ibid.*, p. 42.

104. Robertson, *op.cit.*, p.230.

105. Art. 16 (1), the Covenant.

has done much in the realm of promotion and standard-setting but less as regards actual protection and measures of implementation. This conclusion is reinforced when we consider the other activities of the Organisation in the human rights field. Much has been done in standard-setting by the conclusion of other Conventions relating to genocide, war crimes, discrimination, apartheid and so on, but these instruments contain relatively weak provisions for their implementation, if they contain any at all, and other procedures for the protection of human rights, notably those under Resolutions 1235, and 1503, have had rather mixed results.¹⁰⁶ Of Course, Professor Harris terms the system of implementation under the International Convention on Elimination of All Forms of Racial Discrimination (1966) as 'stronger than that in either of the Covenants'.¹⁰⁷

However, whatever may be the enforcement procedure in theory, they cannot be satisfactorily effective in practice because the member States are not sincere in their efforts to put into practice the rights enshrined in different international instruments nor are they prepared to accept the enforcement procedures provided for therein, most of which, as seen above, are not mandatory, rather optional. Also they are not, needless to say, ready to accept any more effective measures. To quote Robertson again, "though the progress made has been remarkable as regards standard-setting, it has been modest as regards measures of implementation, and government's unwillingness to accept more effective measures is the explanation."¹⁰⁸

106. Robertson, *op.cit.*, p.97.

107. Harris, *op.cit.*, p. 555.

108. Robertson, *op.cit.* p.97.

Again, as regards the sanctions to be imposed by the Security Council on recalcitrant States as a last resort for their violations of human rights this last means may be and very often is frustrated by the political tug of war of the five permanent members of the Security Council. And the weapons which they use in their fight is the 'Veto'. This is why action cannot be taken by the Security Council against Israel when the rights of Palestinian people are flagrantly violated by it (Israel) despite the fact that such violations are being regularly reported to and discussed by the General Assembly. Even a resolution condemning Israeli action against Palestinians faces formidable difficulty in the Security Council. The US and its allies prove to be the stumbling block in this regard. Similarly, no action could be taken against the USSR, when it violated human rights in Afghanistan. Thus there are many instances of human rights violations against which the Security Council cannot take action because of the exercise of veto power. The veto is contrary to the principle of the UN : The Organisation is based on the principle of sovereign equality of all its Members".¹⁰⁹

Besides, when a particular State violates the rights and fundamental freedoms of its people (e.g., suppression of democratic movement in the Republic of China) and the United Nations takes move against such unlawful acts, that particular State tries to bypass the UN move alleging that the UN is interfering in its domestic affairs and, breaching, therefore, the principle of the UN, namely, non-interference in internal affairs of any State.¹¹⁰ 'Sovereign equality of States' and 'non-interference in domestic matters'— these two principles of the United Nations are used by the

109. Art. 2 (1), The UN Charter.

110. Art. 2 (2), *ibid.*

member States for their own convenience and interests. According to Nicholas :

The principles of sovereign equality and non-interference in domestic matters are "the brakes on the Organisation—to be relaxed when members feel happy about the Organisation's speed and direction, to be applied whenever they are uneasy."¹¹¹

Professor Harris, however noted that 'One potential stumbling block in the way of action in the form of discussion, investigation, recommendation or decision in such cases (action against States violating human rights) — the domestic jurisdiction clause in Article 2 (7) of the Charter - has despite the protests of the States accused, made little impact."¹¹²

V. HUMAN RIGHTS CONDITION IN THE WORLD

Due to non-ratification of human rights instruments, lack of full adherence to them, or avoidance of human rights enforcement on politically fake grounds human rights have not been possible to be enforced upto optimum level. Let us cite some instances of human rights violations in the following:

Iraq : In breach of the principles of international law Iraq occupied Kuwait, a tiny State on August 2, 1990 and carried on slaughter of people living there, though the precise number of killings by Iraqi

111. H. G. Nicholas, *The United Nations as a Political Institution*, Oxford University Press, London (1975), p. 37.

112. Harris, *op.cit.*, p. 533.

forces during the occupation could not be confirmed.¹¹³ Amnesty International's team was shown alleged mass graves of babies, no reliable evidence that Iraqi forces had caused their death was not found¹¹⁴.

After withdrawal from Kuwait, Iraq faced mass upsurge and committed mass killing "following the recapture of cities and towns in the northern Kurdish and southern Shi'a areas of the country. Some two million Kurds and Arab Shi'a Muslims were forced to flee to Iran and Turkey and tens of thousands more into the United States-occupied region of southern Iraq." Many were reportedly deliberately killed by Iraqi forces as they fled.¹¹⁵

Kuwait : Since the withdrawal of Iraqi force from Kuwait the latter started arbitrary arrests, torture and killings in the country. Most of the victims were Palestinians, among them Jordanian passport holders. They also included Iraqi and Sudanese nationals and members of the "Bidun" community (Stateless persons in Kuwait, denied basic civil and political rights). Victims have been shot in public or tortured and killed in secret. Hundreds were taken from their homes or arrested at check-points, many to be tortured in police stations school and other make-shift detention centres.¹¹⁶

Savage beatings with sticks, hose-pipes and rifle butts and whippings with electric cables were most common methods, but Amnesty International's team catalogued over a dozen forms of

113. *Amnesty International Newsletter*, Amnesty International Publications, London, June 1991 Vol. XXI No. 6. p. 1.

114. *Ibid.*

115. *Ibid.*

116. *Ibid.*

torture, including electric shocks, burning with cigarettes, candles and acid, cutting with knives, biting, threats of execution and of sexual assault.¹¹⁷ It is noted that the Kuwait Government admitted the fact of human rights violations immediately after the withdrawal of Iraqi forces.¹¹⁸

Bahrain : "In recent years hundreds of political activists or suspected activists, including prisoners of conscience, have been subjected to arbitrary arrest and torture and sentenced after unfair trials. Many are held for months or years in administrative or pre-trial detention, usually incommunicado, when torture most commonly occurs. Methods of torture include beating, burning with cigarettes, and being forced to stand for many hours without moving. Political cases are tried by the Supreme Civil Court of Appeal, whose procedures do not meet international standards for fair trial."¹¹⁹ All has repeatedly called on the Bahraini government to ratify and implement international human rights treaties.¹²⁰

Mauritania : It was reported that "upto 200 political prisoners had died or been killed in military or police custody — some executed without trial and many others died as a result of torture. The victims were among some 3,000 black Mauritians arrested later last year. The authorities claimed they were conspiring to overthrow the government, which is dominated by a different community, the Moors, but offered no evidence to substantiate this."¹²¹

117. *Ibid.*

118. *Ibid.*

119. *Ibid.* p. 7

120. *Ibid.*

121. *Ibid.*

Indonesia : More than 130 political prisoners from Irian Jaya are currently serving lengthy prison terms for advocating the province's independence from Indonesia. Amnesty International, however, believes that their trials were unfair.¹²² In addition to imprisonment, those believed to have advocated Irian Jaya's independence, whether through peaceful or violent means, continue to be at risk of torture, ill-treatment, "disappearance", and extra-judicial execution by Indonesian security forces.¹²³

China : The People's Republic of China is a socialist state with proletarian dictatorship. Its Constitution declares some political, economic, social and cultural rights for its citizens. The Chinese State authority feel happy over such declaration of human rights among which it is claimed that citizens enjoy freedoms of speech, the press, assembly, association, procession and demonstration.¹²⁴ But the world witnessed with deep sorrow how mercilessly the Chinese State authority cracked down the mass procession and demonstration for democracy in 1989, in which many people lost their valuable lives. Death penalty has been widely used since the pro-democratic movement of 1989. Amnesty International recorded about a hundred death sentences each month since the beginning of 1991 and during 1990 it recorded almost a thousand death sentences, of which at least 750 resulted in executions.¹²⁵

Jammu and Kashmir (India) : Jammu and Kashmir is India's northern State. It is the only Indian State in which Muslims represent a

122. *Ibid.* p. 8.

123. *Ibid.*

124. *Human Rights in China*, Information Office of the State Council, Beijing, China, November 1991, p. 11.

125. *Amnesty International Newsletter. op. cit.*, p. 8

majority. "The State's political status within the Indian union has been a source of considerable controversy and the site of three border wars since the partition of British India into the independent nations of India and Pakistan in August 1947. The legitimacy of Kashmir's accession to India is disputed by Pakistan and by separatist groups in Kashmir, but because of Kashmir's strategic and symbolic importance, India's central government has resisted negotiations on the status of the territory since 1948. Instead, it has sought to retain control over the state by marginalizing nationalist Kashmiri political leaders and engineering electoral victory for parties supporting the centre.

The agreement under which the State of Jammu and Kashmir became part of India promised the State government autonomy in all regional affairs, leaving only foreign affairs, defence, and communications to the central government. Jammu and Kashmir is also the only State in the Indian union with its own Constitution. However, that autonomy never materialized as the central government disregarded constitutional provisions protecting the State's separate status and enacted legislation bringing the State increasingly under the control of the centre. Political leaders in Kashmir who demanded genuine autonomy and who protested the central government's interference in local politics were jailed on charges of sedition. By the mid-1960s, some Kashmiris began to advocate other means to bring about political change, forming militant organizations, a number of which received arms and training from Pakistan."¹²⁶

Violence by these groups escalated after the 1987 State elections, which were widely believed to have been rigged by the ruling

126. *Kashmir Under Siege: Human Rights in India*, An Asia Watch Report, New York, USA May 1991, pp. 1-2.

Congress (I)¹²⁷ and the election in India in 1989 had no *locus standi* in Occupied Kashmir since there was hardly a 2% turnout. In both cases there was lack of legitimacy of the actions of the Central Government and the military crackdown was the inevitable outcome.¹²⁸ As a result, there have occurred "massive human rights violations by the army and the security forces, including extra-judicial executions, disappearances, arbitrary arrests, prolonged detention without trial, and widespread torture. Government troops have also violated the laws of war which prohibit indiscriminate attacks on civilians, summary executions and the wanton destruction of civilian property. Militant groups have executed suspected police informers and have threatened and murdered prominent Muslims and members of the minority Hindu community. Militants have also violated the laws of war prohibiting indiscriminate attacks on civilians targets."¹²⁹

VI. IMPACT OF THE PRESENT WORLD POLITICS ON HUMAN RIGHTS ENFORCEMENT

Till recent past the world community was broadly divided into two blocs—Capitalist and Socialist. Both the USA and the USSR had the veto power in the Security Council of the United Nations and as a result seldom a unanimous resolution could be passed. US move would be frustrated by the Soviet exercise of 'veto' and vice-versa. There was often a deadlock in the world politics. Difference between the two blocs was so acute that the outbreak of Third World War was

127. *Ibid.* p. 2

128. Mushahid Hussain, "Kashmir Issue: The International Dimension," *BISS Journal*, Dhaka, Vol. 12, No. 3 (1991) p. 410.

129. *Kashmir Under Siege*, *op. cit.* pp. 2-3.

apprehended which was likely to cause the destruction of the total universe. The USA, for instance, helped Israel against Palestinians who were ousted from their motherland. No action or move could be taken by the UN against Israel which got safe shelter in lap of the USA. Again, when USSR invaded Afghanistan and violated human rights on a large scale, no action could be taken by the UN. There have been many other cases of human rights violations on the globe under the patronage of the two superpowers. Today, however, the wind of world politics has changed, there is no more the existence of cold war. The 'new world order' has dawned showing the mankind the light of hope for cooperation, progress and prosperity.

Today the world seems to be more co-operative and keen for peace than before. Therefore, when Iraq invaded Kuwait on August 2, 1990, all the five permanent members of the UN Security Council voted for Iraqi withdrawal from Kuwait and thereby to stop human rights violations there. Eventually, the allied forces led by USA fought against Iraq and no 'Veto power' was on Iraqi side. As a result, Iraq was forced to withdraw from Kuwait and Kuwaiti people got back their right to independence. But the scene would be different if the old super power conflict existed in the world. Again, Middle East Peace Conference has been possible recently at the initiative of both the United States and the Soviet Union with a view to bringing about a solution to Palestine problem and this effort for peace is going on. Positive developments in various other regional conflicts including Cambodia and Afghanistan are also attributed to the end of cold war era. Thus today unrest and tension in the world may be replaced by peace and stability by virtue of the new dimension of world politics.

The seven most industrialised nations of the world, known as G-7 (namely, USA, UK, France, Italy, Germany, Canada and Japan) have

today a great influence on world affairs. If these powers are committed to promote and maintain international peace and human rights, violation of human rights in the world can be prevented. For instance, in time of 1990 emergency and suspension of fundamental rights provisions of the Bangladesh Constitution when States including U.K. and Japan threatened to stop financial aid to Bangladesh, if emergency continued, the erstwhile government of the Republic was compelled to submit to the will of the people and to step down. The international opinion was united in favour of imposing sanctions against the authority in Belgrade for its excesses done against republic of Bosnia-Harzegovina. Similar pressures against various other autocratic regimes including that in Myanmar for the persecution of Rohingya muslims may be helpful to a great extent for safeguarding human rights on the globe.

VII. CONCLUSION

In view of the above, suggestions in the following forms for the improvement of human rights enforcement system may be considered:

(i) In the interest of world peace and promotion of dignity of man, protection of civil and political rights, and of economic, social and cultural rights should be ensured both in national and international legal systems. Although first category of rights are in the today's world more or less recognised by States, the latter are seldom recognised. Such partial recognition of human rights cannot bring the desired result i.e., the world peace, long cherished goal of the mankind. Therefore, all UN member States should ratify the International Covenant on Civil and Political Rights (1966) and the Optional Protocol thereto, and also the International Covenant on autocratic regimes including that in Myanmar for the persecution of Rohingya muslims may be helpful to a great extent for safeguarding human rights on the globe.

Economic, Social and Cultural Rights (1966). This need of ratification is exhibited when the General Assembly has invited all States to become parties to these international human rights instruments, which will greatly enhance the ability of the United Nations to encourage respect for human rights.¹³⁰ As the former UN Secretary General Kurt Waldheim observed :

"These historic international instruments will furnish the United Nations and its Members important tools for the achievement of one of the main objectives of the Charter of the World Organisation — the promotion of human rights for all, without discrimination as to race, sex, language or religion."¹³¹

The General Assembly again affirms that all human rights and fundamental freedoms are indivisible and interdependent and that equal attention should be given to the implementation, promotion, protection of both civil and political, and economic, social and cultural rights.¹³² Therefore, there may be devised a procedure for enforcement of economic, social and cultural rights at international level, which may again be similar to that under the Civil and Political Covenant in amended form proposed below; and the Economic, Social and Cultural Covenant should no longer be left merely as a 'promotional convention.'

The implementation measures under the human rights treaties may be improved. For example, the Human Rights Committee under the Civil and Political Covenant should be empowered to verify the State reports on human rights situations by undertaking its own investiga-

130. *The International Bill of Human Rights*, (XXX)United Nations (1978), p.3

131. *ibid.*

132. See, GA Resolution 32/130 of 16 December, 1977.

tions. In every human rights treaty there should be an inter-state complaint system and that should be made compulsory for every State which becomes party to it from the very moment of its ratification without any further need of recognition of the Committee's competence to deal with complaints.

The Committee should first let the contending Parties make adjustment between themselves invoking local remedies. If the Parties fail to reach any mutual adjustment, the Committee should, after being satisfied that local remedies have been exhausted, make available its good offices to the States parties concerned with a view to an amicable solution of the matter on the basis of respect for human rights and fundamental freedoms as recognised in the treaty concerned. If, however, no solution is reached, the Committee should, with the prior consent of the State Parties concerned, appoint a Conciliation Commission, which should also make available its good offices to the States Parties with a view to an amicable settlement. On the Commission's failure to bring about an amicable solution between the Parties, the International Court of Justice should have compulsory jurisdiction over the matter at the instance of any of the Parties concerned or, the Human Rights Committee itself.

(ii) The International Court of Justice (ICJ) should, it may be suggested, have compulsory jurisdiction over human rights matters. World peace is the ultimate aim of the United Nations and protection of human rights is a must for world peace, for if human rights are violated without any check, global peace will be at stake. That human rights are to be respected and protected is the consensus of the whole mankind and there is no dispute among nations in this respect. Human rights thus being the subject of top most priority should be compulsorily enforced through judicial machinery. For this purpose,

like municipal courts the World Court should be equipped with compulsory jurisdiction to take cognizance of human rights matters, it (Court) being the only judicial organ at international level and also being the only forum to which the nations look forward with hopes and aspirations for justice. The Court should determine the question whether a State complained against has committed infringement of human rights. If the State found guilty of violating human rights complies with the ICJ's decision, human rights would be thus respected and protected and world peace could easily be preserved. The Court should be empowered to exercise this jurisdiction in two events. Firstly, it should be empowered to take cognizance of human rights violations at the instance of any State or concerned United Nations organ directly when that violation is made by a State not party to any of the human rights treaties. Secondly, the Court should have the same jurisdiction over human rights violation committed by a State party to any of the human rights treaties only after the remedies available under the treaty concerned have been exhausted. To this effect a new Article should be added to the Statute of the International Court of Justice giving the Court compulsory jurisdiction only over human rights matters and also provision in the UN Charter should be amended in this respect where necessary.¹³³

(iii) Determination of a matter by the ICJ is not enough, its judgment should be enforced. It will be well and good, if a state against which judgement has been given by the ICJ under its proposed compulsory jurisdiction willingly complies with that judgement. But what will be the way-out if the concerned State does not comply with the ICJ judgment pronounced against it in a human rights case? Then

133. Arts. 93,95,96, the UN Charter.

Article 94(2)¹³⁴ of the Charter comes in aid. Under this Article the Security Council's recommendations and decisions require non-procedural vote, i.e., affirmative vote of 9 members including the five permanent members. History testifies that many judgements have failed so far to be enforced by the Security Council only because of lack of consensus among the permanent members resulting from conflict of their political interests. Exercise of 'veto' power by any of them frustrates the enforcement of the ICJ judgments. If the permanent members are left with the veto power to exercise against enforcement of ICJ judgment even in human rights cases dealt with by it under the proposed compulsory jurisdiction, conferment of compulsory jurisdiction on the ICJ in human rights matters will be almost meaningless lacking in compulsory enforcement procedure. The ICJ judgments in human rights cases should, therefore, be compulsorily enforced by the Security Council and to this end the exercise of veto power in the Council may be dispensed with in the event of enforcement of ICJ judgement given under its proposed compulsory jurisdiction. As human rights deserve supreme importance and there is no dispute as to their enforcement on top most priority the permanent members may not exercise their veto power to thwart the enforcement of the ICJ judgment. It is not proposed that the total veto system should be nullified or abolished; rather withholding of such power in the event of enforcement of ICJ judgment under the proposed jurisdiction is being advocated. To this effect the Charter provi-

134. Art. 94 (2) reads thus : "If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to judgment."

sions¹³⁵ should be amended debarring the Permanent Members from exercising their veto power against the enforcement of the ICJ judgements to be passed under its proposed compulsory jurisdiction in human rights cases and requiring them to enforce the judgments on mandatory basis. Only in the interest of human rights protection such amendment appears desirable. This is proposed despite the improved relations among the Permanent Members just to give legal shield against human rights violations.

(iv) Lastly, side by side with the improvement of the enforcement system of human rights economic lot of the peoples of the world is required to be equitably improved so that they may enjoy their rights in the true sense. To quote former UN Secretary-General Javier Perez De Cuellar : "Long-Term solutions require the establishment of equitable international conditions — including a just international economic order and real disarmament — which would enable individuals and peoples to realize their human rights and fundamental freedoms. They also require the enhancement of social justice and larger freedom both at the national and international levels"¹³⁶.

135. Art. 27 (3) *ibid.*

136. See, Preface to *United Nations Action in the Field of Human Rights*, *op. cit.*