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PREFACE

Over the past decade, the scale of humanitarian crises has escalated dramatically. Natural disasters, war, famine or persecution have occurred in locations as diverse as the former Yugoslavia, Afghanistan, Columbia, Rwanda, North Korea and Liberia. These and many other emergencies have demonstrated the importance of humanitarian assistance given to those in need. It has also become clear that humanitarian assistance, in the context of a rapidly changing world, must be planned, organised and implemented on a professional basis. Since the early 1990's, both international and non-governmental organisations have instigated programmes aimed at guaranteeing the professionalism in humanitarian aid, which is essential in ensuring that the victims benefit.

The Network On Humanitarian Assistance (NOHA) was launched in 1993 as a contribution to a new and unique concept of higher level education in humanitarian aid. The project was jointly initiated by the European Community Humanitarian Office (ECHO), which finances the world-wide humanitarian aid of the European Community, and the Directorate General XXII of the European Commission (Education, Training, Youth). With financial support from and under the auspices of the SOCRATES programme, the NOHA programme is currently being taught at seven European universities: Université Aix-Marseille III, Ruhr-Universität Bochum, Universidad Deusto-Bilbao, University College Dublin, Université Catholique de Louvain, University La Sapienza Roma and Uppsala University.

The NOHA programme starts with a ten day intensive programme at the beginning of the academic year in September. This programme brings together all students from the NOHA universities, the lecturers, and representatives of international and non-governmental organisations. In the second part of the academic year, students study at their home universities, while in the third part, they are offered courses at one of the partner universities in the network. Finally, the students complete a practical component as the fourth stage of the programme.

The programme uses a multidisciplinary approach with the aim of encouraging interdisciplinarity in lecturing and research. There are five main areas which are taught in the second part of the academic year and these correspond to the *Blue Book* series, which are also commonly referred to as the *Module Books*. These module books are used throughout the network and contain the basic teaching material for the second period. The first edition was published in 1994. This second edition has been significantly revised, updated and, in parts, completely rewritten as a result of the teaching experience in the first 3 NOHA years. The volumes of the second edition are:

- Volume 1: International Law in Humanitarian Assistance**
- Volume 2: Management in Humanitarian Assistance**
- Volume 3: Geopolitics in Humanitarian Assistance**
- Volume 4: Anthropology in Humanitarian Assistance**
- Volume 5: Medicine and Public Health in Humanitarian Assistance**

In addition to the second edition of the five basic modules, two new modules have been published:

- Volume 6: Geography in Humanitarian Assistance**
- Volume 7: Psychology in Humanitarian Assistance**

All modules have been written by NOHA network professors, teaching at either their home university or other network universities. All NOHA universities, both past and present, have substantially contributed to the development of the *Blue Book* series. For each module at least two network university professors worked together to ensure a certain homogeneity of the text, although each author was responsible for a specific part. The table of contents outlines the specific contributions.

Special thanks go to all the authors and in particular to *Dr. Horst Fischer* from the Institute for International Law of Peace and Armed Conflict (IFHV), Ruhr-Universität Bochum, who has undertaken the role of editor throughout the whole process of producing this second edition *Blue Book* series. His staff, and in particular, *Mr. Guido Hesterberg*, prepared the manuscripts and layout of the books.

Information on the NOHA network and the *Blue Book* series can be obtained by accessing the ECHO's internet homepage (<http://europa.eu.int/en/comm/echo/echo.html>) or the IFHV internet homepage (<http://www.ruhr-uni-bochum.de/ifhv>).

As the NOHA course seeks to bridge the gap between theory and practice, I hope that these reference books will help to improve the quality of work for those involved in humanitarian assistance, especially because efficiency in the field is measured not only in financial terms, but above all, in number of human lives saved.

Alberto Navarro
Director of ECHO

NOTES ON THE CONTRIBUTORS

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CHAPTER 1

ADVICE

On the basis of its experience in the field of humanitarian aid, and faced with a gap in high level training in this subject, the European Community Humanitarian Office (ECHO) gave the necessary impulse in co-operation with the Task Force for Human Resources, Education, Training, and Youth, for the creation of a European diploma, specialised in Humanitarian Aid.

Within a very short time span, the European Commission using every means available to it, initiated the creation of this post-graduate multidisciplinary university degree in five universities of the European Union: Aix-Marseille III (F), Bochum (D), Deusto-Bilbao (E), Université Catholique de Louvain (B) and Oxford (UK). The European Commission thus intends to contribute to the development of international education in the field of humanitarian aid in order to meet the problem of training needs in this field of activities.

The organisation of studies is included in a full ERASMUS programme amongst the five universities of the network (exchanges between students as well as lecturers, intensive programmes, common teaching development).

This one-year course would be divided into four phases :

1. A two-week intensive programme in one of the European network universities where students can meet their counterparts from other European Union Member States;
2. A general course in the university of origin from 1st October until the end of January;
3. A specialised course in one of the relevant Universities from 1st February until the end of April; each university will develop its own specialisation;
4. A professional traineeship in either a specialised international organisation, an NGO, or an appropriate administration, from 1st May until the end of June.

A dual-degree system has been envisaged :

- ◆ a national degree from the university of origin;
- ◆ a complementary degree or certificate from the university where the student has spent three months as part of the ERASMUS programme.

This diploma (courses start from the beginning of September 94), deals with five major issues of International Humanitarian Aid: Law, Geopolitics, Administration-Logistics, Anthropology and Medicine-Epidemiology.

In each subject area, a reference handbook has been prepared by specialists who come from two universities of two different Member States. The first part of these handbooks which have been edited in four languages by the European Commission services, sets out a scientific presentation dealing with methodology, basic concepts and scope. The second part provides a selection of references and documents.

Resulting from the co-operation developed between the "Ruhr-Universität Bochum" and the "Universidad de Deusto - Bilbao" the handbook dealing with the "International Law and Humanitarian Assistance" has been drawn up by :

- ◆ *Dr. Horst Fischer*, Akademischer Direktor, Ruhr-Universität Bochum, (with particular reference to chapter I; III, section 2 ;IV, section 1 and V, section 1)
- ◆ *Prof. Jaime Oraá Oraá*, Universidad de Deusto Bilbao, (with particular reference to chapter II; III, section 1; IV, section 2 and V, section 2).

CHAPTER 2

GENERAL INTERNATIONAL LAW AND HUMANITARIAN ASSISTANCE

The main task of humanitarian assistance (or humanitarian aid) is to rescue the victims of natural disasters, emergencies and armed conflicts and to ensure their survival. The delivery of food to people starving is only one example for humanitarian assistance. The crucial questions for humanitarian aid are, among other things, of political, medical, organisational and financial nature. Some of the most important issues belonging to this area are discussed in the other six modules of this series. However, any international aid operation also has to meet the general and specific requirements of national and international law applicable in humanitarian aid operations. Which rules are applicable is determined by the law itself. There are differences between national and international law rules. But some of the criteria determining the application of the rules are similar. Some of the important ones among many different criteria are the type of disaster - being it natural or man made -, the sort of aid delivered and the organisations and individuals.

International law as the law applicable between states has been mainly developed since the middle of the 19th century. Today there are certain parts of international law dealing with specific areas of the relation between states. These parts contain almost all of the rules embodied in treaties and customary law which are governing such a specific area. For example the law of diplomatic relations consists of several treaties and customary rules dealing with the most important aspects of diplomatic exchange, representation of states in other states etc. The law of the sea deals with the use of the high seas and territorial waters. Although no particular branch of international law for humanitarian assistance has been established as yet, numerous rights and duties have evolved for the implementation of aid operations. These rules are contained in treaties dealing with situations encompassing humanitarian assistance situations but not necessarily restricted to humanitarian assistance as such. One of the special rules for example is the right to provide assistance in international armed conflicts under Article 70 of Protocol (I) of 12. 12. 1977 Additional to the Geneva Convention of 1949. Humanitarian assistance is only one element being regulated in this treaty developed to be applied in international armed conflicts. The Additional Protocol I belongs to a branch of international law which is commonly known as international humanitarian law. Also rules in other branches of international law do relate to humanitarian assistance. For example, the right of innocent passage through international straits, which facilitates the transport of aid by sea, can be of essential importance for the delivery of food by ships crossing international straits, de-

spite the fact that the law of the sea contains no specific rules on humanitarian assistance as such. The main provisions applicable specifically for humanitarian assistance operations are presented and expounded upon in sections 2 to 5. These sections are preceded by a brief sketch of those principles of international law necessary for understanding the special provisions. Thus, among other things, the function of international law, the subjects of international law and the preconditions for the sources of law will be explained.

A. International Law – Functional Approach

In contrast to national law, which creates the framework of the relations between citizens within a state, international law regulates the relations between the subjects of international law, particularly states. The subjects of international law create the law and they apply it and they create the mechanisms to deal with violations and enforcement. Today one distinguishes between two main functions of international law: The regulatory function and the instrumental function.¹

The regulatory function is mainly determined by the challenges the international community had to face since the beginning of this century. One of the essential functions of international law is to ensure peace and the containment of armed conflicts. The protection of the individual in conflicts is another function the direct relation of which to humanitarian assistance is obvious. In order to fulfil its regulatory task, international law sets out rights and duties which, among other things, prescribe specific forms of conduct for the subjects of international law or grant them particular powers. The right to exercise its sovereignty on its territory is a specific right of states. The rule not to use force in their relations embodied in art. 2 no. 4 of the Charter of the United Nations is a specific and important obligation manifesting the function to maintain peace and security among states. The right to self defence of art.51 of the Charter of the United Nations is aiming at the same function. Not to torture human beings or to attack civilians directly in armed conflicts are further examples of specific duties to guarantee the protection of the individual against actions of the subjects of international law.

The instrumental function of international law is fulfilled in three ways. International law determines the procedures required for lawmaking, provides procedures for co-operation between the subjects of international law concerned and creates institutions to maintain this co-operation. The rules embodied in the Vienna Convention on the Law of Treaties on how to make treaties by negotiations and agreement confirmed in a written document are examples for the instrumental function of international law. Exchange of information and mutual consultations are examples how states sustain their co-operation, while the creation of international organisations such as the United Nations, the European Union or UNESCO are Standing negotiating bodies, monitoring commissions show the differences in institutions created to maintain the co-operation. The creation of international humanitarian aid organisations is a further example of the instrumental function of international law. It should already mentioned here that ensuring the appli-

¹ Cf. *Ipsen*, Regelungsbereich, Geschichte und Funktion des Völkerrechts, § 3, para. 14-23, in: K. *Ipsen*, Völkerrecht, 3rd ed. 1990.

cation of the law is one of the most interesting but also considerably criticised elements of the instrumental functions of international law. The creation of courts and tribunals is used to fulfil this function. Shortcomings in the implementation of humanitarian aid in armed conflicts are frequently cited in order to generally criticise the means of international law enforcement. In section F we shall therefore examine these mechanisms more closely. In principle, every criticism of the effectiveness of international law has to take into account the role played by politics and national interests in its creation and application. Only after states have decided to put their political relations on a legal basis, it is possible to assess their conduct in the particular domain by the standards of international law. Regardless of the political and socio-economic interests of states at the time of any violation, the structure of international law requires strict compliance with international legal obligations. It is obvious, however, that states will occasionally decide to give preference to their current political interests instead of abiding by international law. Yet such conduct is no reason for calling into question the system of international law as such. On the one hand, there is no better basis for an international order. On the other hand, it is possible to conceive of means which would give more effect to respecting the law in the event of a conflict between national political interests and international legal obligations. In the field of humanitarian assistance, for instance, a greater use of "Revolving aid funds" under the control of international aid organisations might be one way of making humanitarian efforts more independent of political considerations.

B. The Subjects of International Law

States and international organisations are the typical subjects of international law. While they are involved in the process of international lawmaking, they are also the addressees of rights and obligations in international law. As a subject of international law, the state is defined by three elements: people, territory and government. With these three criteria being fulfilled, the state automatically becomes part of the matrix of rights and obligations under international law. Some of the basic rights have been summarised by judge *Oda* of the International Court of Justice in the provisional measures proceedings in the *Lockerbie-Case* in 1992 by stating:

*"In my view it is important to bear in mind that the rights susceptible of protection in a given case must lie within the scope of the object stated in the Application. Now, on the one hand, Libya instituted proceedings against the United Kingdom in respect of a dispute over the interpretation and application of the 1971 Montreal Convention. On the other hand, it is a matter of general international law that, while no State (unless by virtue of any convention) is obliged to extradite its own nationals, any State may exercise criminal jurisdiction over crimes committed in its own territory or may claim criminal jurisdiction over acts done abroad by aliens which are prejudicial to its security or certain offences recognized by the community of nations as of universal concern. This does not necessarily relate to the rights granted by the Montreal Convention, which are the subject of the present case and fall to be clarified in the merits phase. The rights of which Libya claims protection in its request for interim measures cannot, thus, be assumed to constitute rights under the Montreal Convention and to fall within the scope of the Application, but are rather sovereign rights under general international law."*²

² I.C.J. Reports 1992, p. 3.

This does not require the recognition by other states. Even in the event of secession, the three elements - government in particular - have to be present if the part of the state seeking independence as a new subject of international law is to enter the community of international law. Cases of secession are of great practical relevance for humanitarian aid, as they are generally accompanied by heavy fighting and emergency situations affecting the population. If the party to the conflict which is not a state is wholly or partly bound by international law, humanitarian organisations can utilise special rights for their operations. The situation in Bosnia-Herzegovina since 1992 exemplifies this problem. The fact that the conflict in Bosnia-Herzegovina has been classified as an international conflict in numerous resolutions of the UN Security Council since 1991 indicates the great significance the international community attaches to an international legal definition of such situations which is as comprehensive as possible, in order to protect the victims of the conflict.³

An international organisation in terms of international law is established if it is founded by two or more states on the basis of an international treaty and if it has at least one organ authorised to take action. The contracting parties of the constitutive treaty may also be international organisations. The "founding fathers" of such organisations can therefore be both states and other international organisations. The constitutive treaty sets out the framework of the international organisation's permitted activities under international law. Many different features are used for classification, e.g. the geographical scope or sphere of activity or the powers of the organisation vis-à-vis member states. Humanitarian organisations may be universal as well as regional. In terms of their sphere of activity, they are, as a rule, specifically designed for humanitarian aid or are sub-divisions of an organisation with more general aims. Humanitarian international organisations serve almost exclusively as instruments of co-ordination of their member states.

International organisations have to be distinguished from non-governmental organisations. Although the latter may well be international in their structure, they can not claim to be subjects of international law, as they lack a constitutive treaty under international law. Despite the fact of their international structure, global activity and humanitarian goals, organisations such as Save the Children, Oxfam or the Federation of the National Red Cross and Red Crescent Societies do not bear rights and responsibilities under international law. Nevertheless, for certain humanitarian assistance operations such organisations conclude treaties with states or international organisations arranging the specific elements of the operation. If the parties wish such treaties, though not being treaties between subjects of international law, can be interpreted and applied as regular international law treaties.

Some organisations have partial international legal personality, either traditionally or by virtue of international treaties. This applies, for instance, to the International Committee of the Red Cross,⁴ which has been granted special rights under the Geneva

³ Cf. the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, International Legal Materials, Vol. XXXII, 1993, p. 1159.

⁴ Hereinafter ICRC.

Convention and Additional Protocol I, e.g. the right to visit prisoners of war and internment camps. These rights of the ICRC, which have to be respected by parties to conflicts, have been repeatedly confirmed in the recent practice of the UN Security Council.⁵ Scholars in this field are debating the question of whether and to what extent individuals can be subjects of international law. Some international treaties, like the International Covenant of Civil and Political Rights or the Geneva Conventions of 12.8.1949,⁶ have granted rights to the individual. Most of those treaties, however, lack enforcement procedures available to individuals. Thus, it still has to be presumed that the individual is a subject of international law only to a limited extent. For this reason, the enforcement of the law by states in the event of infringements of fundamental rights of individuals is of great importance.

C. Sources of International Law

Just as domestic law appears in many different forms, e.g. laws and statutory instruments, international law has various sources. In this context, the term "source" means the form of the law's creation, proof of existence, application and binding character of the law.

The principal sources of international law are treaties and customary law.⁷ According to article 1 of the Vienna Convention on the Law of Treaties a treaty is defined as:

"an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation".

International law treaties are negotiated between two or more subjects of international law such as states, signed and then usually rendered binding by ratification. Besides the substantive rules the parties to the treaty can include in the text also specific rules e. g. on the interpretation, modification, invalidity, termination and suspension of the treaty. If there are no such rules usually the general rules of the Vienna Convention on the Law of Treaties can be applied.

States can express their will to be bound by the treaty differently and according to the determination of the treaty in question. Ratification by the required national authority such as the parliament is one of the possibilities. For the ratification the procedure is different dependent on the national law applicable.

One of the key issues in applying international law treaties is the interpretation of the treaty rules in particular the interpretation with regard to specific cases. This problem was exemplified by the debate in 1991 (The Second Gulf War) and in 1993 (The conflict in Bosnia-Herzegovina) as to whether the protection of prisoners of war and internees from public curiosity under Geneva Convention III and IV includes a prohibi-

⁵ Cf. Resolutions 770 of 13 August 1992, 771 of 13 August 1992 and 776 of 14 September 1992.

⁶ Hereinafter GC.

⁷ Art. 38 para. 1 of the ICJ also mentions the general principles of law recognised by civilised nations and, subject to the provisions of Art. 59 of the Statute, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

tion of live TV coverage of internment conditions. In 1949, when the Geneva Conventions were concluded the technical means to show such conditions live via satellite worldwide on TV were not existent.

The Vienna Convention on the Law of Treaties⁸ provides ways and means of interpretation in order to clarify problems of application. Art. 31 of this convention states that a treaty shall be interpreted in "good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. What constitutes the context is also embodied art. 31. para. 2 of the article list the elements of the context:

"(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty."

There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.

The International Court of Justice several times has reaffirmed the validity of the rules in art. 31 for the interpretation of international law treaties. In its arbitral award decision in the Guinea-Bissau Case in 1989 the court stated:

"An arbitration agreement (compromis d'arbitrage) is an agreement between States which must be interpreted in accordance with the general rules of international law governing the interpretation of treaties. In that respect

'the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words.' (Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950, p. 8.)

The rule of interpretation according to the natural and ordinary meaning of the words employed "is not an absolute one. Where such a method of interpretation, results in a meaning incompatible with the spirit, purpose and context of the clause or instrument in which the words are contained, no reliance can be validly placed on it." (South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 336.)⁹

In its decision on the territorial dispute between Lybia and Chad in 1994 the court has illustrated plausibly how the interpretative methods are applied. With regard to the treaty in question the court stated:

⁸ United Nations Treaty Series, Vol. 1155, p. 331.

⁹ Judgment, I.C.J. Reports 1991, p. 53.

"Reading the 1955 Treaty in the light of its object and purpose one observes that it is a treaty of friendship and good neighbourliness concluded, according to its Preamble, 'in a spirit of mutual understanding and on the basis of complete equality, independence and liberty'. The parties stated in that Preamble their conviction that the signature of the treaty would 'serve to facilitate the settlement of all such questions as arise for the two countries from their geographical location and interests in Africa and the Mediterranean', and that they were 'Prompted by a will to strengthen economic, cultural and good-neighbourly relations between the two countries'. The object and purpose of the Treaty thus recalled confirm the interpretation of the Treaty given above, inasmuch as that object and purpose led naturally to the definition of the territory of Libya, and thus the definition of its boundaries. Furthermore the presupposition that the Treaty did define the frontier underlies Article 4 of the Treaty, in which the parties undertake to take 'all such measures as may be necessary for the maintenance of peace and security in the areas bordering on the frontiers'. It also underlies Article 5 relating to consultations between the parties concerning 'the defence of their respective territories'. More particularly Article 5 adds that 'With regard to Libya, this shall apply to the Libyan territory as defined in Article 3 of the present Treaty'. To 'define' a territory is to define its frontiers. Thus, in Article 5 of the Treaty, the parties stated their own understanding of Article 3 as being a provision which itself defines the territory of Libya."¹⁰

In all cases, however, the contracting parties are the subjects of interpretation and it is difficult to enforce the interpretation of one state party or a group of states. Apart from exceptional cases in which courts or arbitrary tribunals have jurisdiction on the case and in which they can render a judgement, there is no authority prescribing an interpretation binding on the parties to the treaty.

A second important issue with regard to the application of treaties is the right of parties to a treaty to make reservations, when signing, ratifying, accepting, approving or acceding to a treaty. When the state making the declaration at these specific points purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State the declaration is a reservation. A recent example of a reservation is the British reservation with regard to reprisal prohibition in art. 51 para. 6 Additional Protocol I. When ratifying on January 28, 1998 the United Kingdom declared:

"The obligations of Articles 51 and 55 are accepted on the basis that any adverse party against which the United Kingdom might be engaged will itself scrupulously observe those obligations. If an adverse party makes serious and deliberate attacks, in violation of Article 51 or Article 52 against the civilian population or civilians or against civilian objects, or, in violation of Articles 53, 54 and 55, on objects or items protected by those Articles, the United Kingdom will regard itself as entitled to take measures otherwise prohibited by the Articles in question to the extent that it considers such measures necessary for the sole purpose of compelling the adverse party to cease committing violations under those Articles, but only after formal warning to the adverse party requiring cessation of the violations has been disregarded and then only after a decision taken at the highest level of government. Any measures thus taken by the United Kingdom will not be disproportionate to the violations giving rise there to and will not involve any action prohibited by the Geneva Conventions of 1949 nor will such measures be continued after the violations have ceased. The United Kingdom will notify the Protecting Powers of any such formal warning given to an adverse party, and if that warning has been disregarded, of any measures taken as a result."¹¹

The effect of the reservation is dependent on the reaction of the other parties to the treaty. If they accept the reservation the treaty will be applied in the way declared by the reserving state. Each parties can prevent the application of the rule to which the reserva-

¹⁰ Judgment, I.C.J. Reports 1994, p. 6.

¹¹ International Review of the Red Cross no 322, p.186-190.

tion was made between itself and the reserving state by objecting to the reservation. In such a case the treaty relations to other state parties of the treaty are not affected. A State may not formulate reservation if:

- (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 sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.¹²

It is disputed among scholars what the effects of a reservation incompatible with the object and purpose is. The wording of art. 19 of the Vienna Convention on the Law of Treaties signifies no effect at all for such type of reservation. State practice in contrast shows that states even when having stated that a reservation is incompatible with the object and purpose still do accept the application of the treaty concerned with the state reserving its rights. The International Law Commission of the United Nations is working on a proposal how to overcome the difficulties in such a case.

The third important area of treaty relations deals with the invalidity of treaties. States may agree to suspend the treaty relations or to finish them. The Vienna Convention on the Law of Treaties embodies the basic rules, which can be applied if the treaty in question does not contain more specific rules. A material breach by a party to a multilateral treaty entitles according to art. 60 of the Vienna Convention on the Law of Treaties:

- (a) *the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:*
 - (i) *in the relations between themselves and the defaulting State, or*
 - (ii) *as between all the parties;*
- (b) *a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;*
- (c) *any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.*

Customary international law arises from state practice accepted as law. The state practice has to be of certain duration and uniformity, and be of widespread acceptance. Conditions fulfilling these criteria in all cases have yet to evolve. Nowadays, all three elements of practice are examined in the light of the circumstances of the individual case. The acceptance as law is established only if states consider themselves to be legally bound.

Geneva Convention

One problem of customary law is proving the existence and validity of a certain rule. In principle, this requires a thorough and comprehensive analysis of state practice and proof of acceptance as law. The existence of a rule is often disputed between states as there is no uniform and globally accepted specific assessment procedure available for

¹² Article 19, Vienna Convention on the Law of Treaties.

measurement state practice. In the East-Timor Case in its dissenting opinion judge Weeramantry referred to the practice of the General Assembly of the United Nations in determining the customary law rule applicable to the case:

"The foregoing observations have a bearing on the definitive effects of General Assembly resolutions regarding Portugal's status, East Timor's status as a non-self-governing territory, and East Timor's right to self-determination. Additionally, since the General Assembly is the appropriate body for recognition of the Power holding authority over a non-self-governing territory, the absence of any General Assembly resolution recognizing Indonesia's authority over East Timor is also a circumstance from which a legal inference may be drawn. The General Assembly resolutions also have a bearing on the responsibility of all nations to cooperate fully in the achievement of self-determination by East Timor. The various resolutions of the General Assembly relating to this right in general terms, which have helped shape public international law, and are an important material source of customary international law in this regard 1, are specifically strengthened so far as concerns the situation in East Timor, by the particular resolutions relating to that Territory."

However, there are also cases in which the validity of a customary rule is so far beyond dispute that not even serious violations can call it into question. For instance, despite frequent violations, the old established rule prohibiting direct attacks on civilians in an armed conflict is not disputed. Despite the continuous violation of the general prohibition on the use of force since the Second World War the customary validity of the rule has only been questioned by few states until today.

In how far treaties and custom are applicable to a specific situation must be determined according to the circumstances of the case. Rules from both sources with the same content might be applicable or only one source provides for an applicable provision. But it is rather doubtful that conflicting obligations from both sources are applicable at the same time. As judge *Shahabuddeen* from the ICJ in the *Jan Meyen* Case in his separate opinion has pointed out:

"The substitution of the 1982 definition of the continental shelf for the 1958 definition could not have come about through a treaty displacement, since the 1982 Convention is not in force. Could it have come about through the customary international law effect of the new definition on the old? At least in relation to the normal continental shelf of 200 miles (which is what this opinion is concerned with), the better view would seem to be that the new limit operates at the level of customary international law. If the 1958 rule is regarded solely as a treaty rule, the position is that 'a later custom ... prevails over an earlier treaty ...' (Paul Reuter, Introduction to the Law of Treaties, 1989, pp. 107-108, para. 216). But, of course, the same rule may exist autonomously under customary international law as well as under conventional international law 2. The limit prescribed by Article 1 of the 1958 Convention was regarded as being also expressive of customary international law (Tunisia/Libya, I.C.J. Reports 1982, p. 74, para. 101, referring to the North Sea cases). Considered on this basis, it would clearly be superseded by the different limit prescribed by later customary international law as expressed in Article 76 of the 1982 Convention."

D. Basic Rights and Duties with Respect to Humanitarian Aid

The state may carry out humanitarian aid operations independently, in association with other states or through international organisations. The state is also affected by humanitarian aid operations if they take place on its territory or if the state permits transit of aid transports. In all these cases, irrespective of the special rules for humanitarian aid, the

states concerned have the basic rights and duties deriving from general international law. One of the most important of these is the right of each state to demand from other subjects of international law to uphold all rights to which the state is entitled to by treaty or customary law in order to carry out the operation. This could imply, for example, the right to permit humanitarian aid or compliance with the right to use open spaces, like the high seas. If its own nationals participate in aid operations on the territory of another state, the home state has the right to require the host state to respect the rights of these aid workers. In this case, the home state invokes the so-called diplomatic protection for its nationals.

If humanitarian aid is to be provided on the territory of a state, it is necessary to observe the right of the state to regulate the access of aliens and to determine the conditions of residence. In this respect, the special rights of aid workers mentioned in section D are based mainly on special agreements in treaties. The states providing humanitarian aid have to respect the rights of the state concerned.

In addition to these rights directly affecting humanitarian aid, there is a whole range of other rules of international law which indirectly affect humanitarian aid. Among these are the provisions of Article 2 of the Charter of the United Nations stipulating the sovereign equality of states, the duty of strict compliance with the general prohibition of the use of force and the obligation to settle disputes by peaceful means.

E. State Responsibility

In principle, states are responsible for their conduct. Every internationally wrongful act of a State entails the international responsibility of that State. The prerequisites for state responsibility are the attribution of the conduct of an organ to a subject of international law, a breach of an international legal obligation and the absence of any justification. The position of the organ within the state is irrelevant: "The conduct of an organ of the State shall be considered as an act of that State under international law, whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international or an internal character, and whether it holds a superior or a subordinate position in the organization of the State."¹³ It is also irrelevant whether the organ has acted outside its competence or contrary to instructions concerning its activity. Attribution can also be determined if entities have acted empowered to exercise elements of the government authority or individuals have acted on behalf of the state.

In principle, the state is neither liable for the acts of private persons nor for the compensation of damage arising therefrom. However, acts or omissions of the state in respect of acts of private persons are imputed to the state. If such an act is a breach of international legal obligations, this establishes a duty of satisfaction or compensation. Thus the blocking of a humanitarian aid convoy by private persons is not imputable to the state. However, failure to provide security for the convoy may be imputed to the state, which could therefore be held responsible if such security is required under international law (e.g. in armed conflict) and there is no justification. The grounds for justification as

¹³ Article 6, ILC-Draft on State Responsibility, A/CN.4/L.524.

designated by the International Law Commission of the UN in its draft report on state responsibility include the consent of subjects of international law concerned, reprisals,¹⁴ self-defence and national emergency.¹⁵

¹⁴ Cf. Chapter V in particular.

¹⁵ "Circumstances Precluding Wrongfulness"

Article 29

Consent

1. The consent validly given by a State to the commission by another State of a specified act not in conformity with an obligation of the latter State towards the former State precludes the wrongfulness of the act in relation to that State to the extent that the act remains within the limits of that consent.
2. Paragraph 1 does not apply if the obligation arises out of a peremptory norm of general international law. For the purposes of the present draft articles, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Article 30

Countermeasures in respect of an internationally wrongful act

The wrongfulness of an act of a State not in conformity with an obligation of that State towards another State is precluded if the act constitutes a measure legitimate under international law against that other State, in consequence of an internationally wrongful act of that other State.

Article 31

Force majeure and fortuitous event

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act was due to an irresistible force or to an unforeseen external event beyond its control which made it materially impossible for the State to act in conformity with that obligation or to know that its conduct was not in conformity with that obligation.
2. Paragraph 1 shall not apply if the State in question has contributed to the occurrence of the situation of material impossibility.

Article 32

Distress

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the author of the conduct which constitutes the act of that State had no other means, in a situation of extreme distress, of saving his life or that of persons entrusted to his care.
2. Paragraph 1 shall not apply if the State in question has contributed to the occurrence of the situation of extreme distress or if the conduct in question was likely to create a comparable or greater peril.

Article 33

State of necessity

1. A state of necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act of that State not in conformity with an international obligation of the State unless:
 - (a) the act was the only means of safeguarding an essential interest of the State against a grave and imminent peril; and
 - (b) the act did not seriously impair an essential interest of the State towards which the obligation existed.
2. In any case, a state of necessity may not be invoked by a State as a ground for precluding wrongfulness:
 - (a) if the international obligation with which the act of the State is not in conformity arises out of a peremptory norm of general international law; or
 - (b) if the international obligation with which the act of the State is not in conformity is laid down by a treaty which, explicitly or implicitly, excludes the possibility of invoking the state of necessity with respect to that obligation; or
 - (c) if the State in question has contributed to the occurrence of the state of necessity.

There are four main legal consequences of state responsibility: Reparation, Restitution in kind, compensation and satisfaction.¹⁶ In the decision in the Case the International Court of Justice stated:

*"[U]nless the Parties otherwise agree, Hungary shall compensate Slovakia for the damage sustained by Czechoslovakia and by Slovakia on account of the suspension and abandonment by Hungary of works for which it was responsible; and Slovakia shall compensate Hungary for the damage it has sustained on account of the putting into operation of the "provisional solution" by Czechoslovakia and its maintenance in service by Slovakia.."*¹⁷

International organisations may also be held responsible under international law for the conduct of their organs. If this conduct violates international legal obligations of the organisation, then, in the absence of justification, a duty of compensation or satisfaction arises. Also, if a humanitarian aid operation is carried out in breach of the parameters agreed upon with the state concerned, a humanitarian organisation may be liable for compensation, unless it is justified. Hence international organisations always have to bear in mind their responsibility under international law for the misconduct of their organs.

If groups of people, like parties to the conflict and insurgents, have the status of subjects of international law temporarily or partially, they also may be responsible for their conduct under international law. In these cases, misconduct towards the personnel of international organisations may also result in, *inter alia*, claims for compensation. The responsibility of individuals can only arise in case of a breach of a rule of international law imposing particular fundamental obligations on the individual, e.g. the prohibition of the torture of civilians in an armed conflict. In these cases, offence and prosecution fall within the domain of the so-called international criminal law.

Article 34

Self-defence

The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations."

¹⁶ See ILC draft art. 41 - 46.

¹⁷ 25 September 1997 Case Concerning the Gabcikovo-Nagymaros Project (Hungary/Slovakia)

CHAPTER 3

INTERNATIONAL HUMANITARIAN ORGANISATIONS AS HUMANITARIAN ACTORS

The main protagonists of humanitarian aid are, beyond any doubt, international organisations with humanitarian aims. To achieve a better understanding of this subject, we will first of all consider the humanitarian organisations in the strict sense, starting with the United Nations and its family of specialised agencies and organisations. Then, given the fact that the European Union has become the world's largest aid donor, we will examine the central role played in the organisation of aid by the European Community Humanitarian Office (ECHO). Finally, we will look at the legal status of NGOs and their growing importance in this domain.

A. The United Nations Family and Its Organisations

The United Nations Organisation has emerged through a long and difficult process. Its antecedents include the League of Nations, the Allies' London Declaration of June 1941 and the Atlantic Charter of August of the same year.

The Declaration of the United Nations, signed by 26 nations on 1 January 1942, laid the foundations which were to support foreign policy and the new world order.

The Moscow Declaration of 30 October 1943 spoke of perpetuating in time of peace the community of great powers which was set up in time of war, as well as of establishing an international organisation with the task of maintaining world peace.

The last two declarations would give rise to the San Francisco Conference of April-June 1945, from which emerged the Charter of the United Nations, which was originally signed by 51 states. In this way, the United Nations officially came into being on 24 October 1945.

The international organisations which co-operate with the UN are separate and autonomous organisations, working with the UN and between themselves through the co-ordination of the Economic and Social Council. They have a universal character and are intended to carry out specific aims. Some of them are attached to the UN through agreements which confer on them the status of specialised agencies. These organisations are characterised by having been created by an agreement between states, by having full

competence in certain specific matters and, above all, by being linked to the UN through an agreement.

In order to ensure that international co-operation is effective, there has to be a real system of co-ordination to provide for the needs of the specialised agencies. The basis of the system is the agreement. Co-operation can also derive from the Charter of the UN itself or from the practice of the organisation.

With regard to the legal nature of these organisations, it might be said that they are autonomous organisations which, save for matters of control and co-ordination, have their own legal structure distinct from the UN.¹⁸

B. European Union Humanitarian Aid

The European Community has been active in the field of humanitarian aid for more than two decades and, during recent years, has become the biggest aid donor in the world. In 1992, it granted humanitarian aid worth ECU 1.2 billion to over 40 states. These sums were managed by a number of departments. In April 1992, the European Community Humanitarian Office (ECHO) was established to bring these enormous resources under the co-ordination of a single department. The aim was to rationalise efforts and resources and to entrust their management to experts, in the belief that humanitarian aid should be administered by specialised personnel. (It is no coincidence that the UN established its own Department of Humanitarian Affairs at the same time - cf. Annex 1).

ECHO provides humanitarian assistance free and without charge of any kind to any state outside the Community affected by natural disasters (drought, earthquake, flood, hurricane), man-made catastrophes (war) and any other sort of emergency. Aid is distributed directly to the victims impartially, without distinction as to race, religious belief or political opinion. The activities of ECHO cover five areas:

1. General humanitarian aid, usually for those affected by long-running civil wars.
2. Emergency food aid: supplying foodstuffs (cereals, rice, powdered milk, sugar) for communities and groups threatened with starvation or facing serious shortages of food.
3. Aid for refugees and displaced persons: including aid both for humanitarian assistance and for repatriation in certain cases or rehabilitation and integration in the country of origin.
4. Emergency humanitarian aid: financing crisis management with the aim of ensuring the survival of the victims of natural catastrophes or civil wars.
5. Disaster Preparedness: covering early warning systems and financing and co-operating with high-risk states in order to improve systems for forecasting and preventing disasters and controlling the consequences.

¹⁸ See the structure of the United Nations organs and the specialised agencies in Annex 10. See also the major inter-governmental organisations working in emergencies in Annex 8.

ECHO will act quickly to mobilise and distribute aid, whether in the form of goods (food, medicines, medical supplies, fuel, etc) or in the form of services (teams of doctors, water treatment experts, logistical support, etc). For these purposes, ECHO will:

- ◆ co-operate with the aid agencies, private companies, UN agencies (e.g. the UNHCR), the Red Cross and various non-governmental organisations (NGOs). To this end, nearly 200 organisations have signed ECHO's Framework Partnership Contract. The intention is to bring about responsible and effective joint efforts based on mutual confidence. In 1996, non-governmental organisations administered 59.4% of ECHO funding, UN relief agencies administered 28.6% and members of the Red Cross family and similar organisations 9.4%. In addition, ECHO has been striving to lead the way in co-ordination between the agencies, operations and systems of humanitarian aid of the Member States.
- ◆ develop its own operational capacity. ECHO intends to carry on creating its own system of acting on the ground, independently and without intermediaries, in the exceptional case where this may be necessary.

Humanitarian Aid and the Foreign Policy of the European Union

"Humanitarian aid is indispensable but it is not a complete answer and nothing can be achieved without political action in the fullest sense.

'Unlike other forms of international solidarity, humanitarian aid does not seek to transform societies but rather to help its members through periods of crisis'.¹⁹

"To say this is not to belittle such efforts. On the contrary, the struggle to save lives, to respect human dignity and to return the power of decision to peoples is undoubtedly of the highest value, as public opinion clearly shows. However, in our aid activity, we have to take great care not to forget our political obligations towards these peoples. This would not only mean neglecting our obligation but would discredit the humanitarian effort in the eyes of everyone by attributing more power to it than it has".²⁰

C. Non-Governmental Organisations

Traditionally, international relations were established between a state and one or more other states while, since the Second World War, they are also established with international organisations. It is only natural that there should always have been relations between persons, organisations or private groups (commercial, professional, religious or cultural), which might also serve as pressure groups. However, it was not until the end of the Second World War that these non-governmental groups began to acquire legal form and an increasingly important presence in international relations. This applies above all to a very special type of grouping, that of *Non-governmental Organisations*.

NGOs now have an undeniable relevance in sectors as important as the building of peace, development co-operation, the environment and human rights. NGOs have originated and drawn up some international treaties on human rights and are crucial to

¹⁹ Brauman.

²⁰ Jacques Delors, president of the Commission.

the development and effectiveness of the control systems which implement the undertakings given by states in these areas.

It is very difficult to give a full and precise definition of NGOs as they form a heterogeneous and changing group. Moreover, their legal status varies from country to country: charities in the Netherlands, non-profit-making organisations in Portugal and public interest associations in Germany. However, in general terms, NGOs may be defined, following *M. Merle*, as

"entities, associations and/or movements constituted permanently on the margins of government action with the aim of achieving non-profit-making goals".

On the international level, NGOs were recognised for the first time in the Charter of the UN, Article 71, of which allows the Economic and Social Council (ECOSOC)

"to make appropriate rules to carry out consultations with non-governmental organisations concerned with matters falling within the competence of the Council".

In accordance with their distinct consultative status in ECOSOC, NGOs are divided into three levels with different degrees of presence and capacity for action. These are as follows: category A, which can take part in the proceedings of the Council; category B, which can present written materials; and category C, which are entered in the register and can contribute to the work of the Council by means of special consultations.

The same division into three categories of consultation is used by the specialised agencies of the UN, such as UNESCO. In addition, we can classify NGOs according to other criteria: religious or secular; geographical (local, state, international region, global); field of interest (human rights, ethnic minorities, development, matters relating to profession, religion, culture, etc).

During the last four decades, NGOs concerned with development co-operation (DNGOs) have carried out work of the highest importance, whether acting as the critical conscience of the society which controls the activity of governments and international organisations in this field or as active subjects of this policy, designing and executing projects financed by their own means or with contributions from public administrations. It has to be said, however, that until recently NGOs did not enjoy vast resources. Even when these became available, their contribution amounted to no more than 2% (or in exceptional cases 10%) of the sums which states allocate to development co-operation, normally in the form of bilateral aid.

Emergency humanitarian aid is provided by specialised NGOs (e. g. Médecins sans frontières) and also by some DNGOs. Indeed, the DNGOs may well find it easier to obtain funds for emergency aid than for their regular development projects, as disasters and emergencies have a greater impact on public opinion.

The NGOs recognise that they have to improve in two areas: professionalisation and co-ordination. Perhaps the biggest co-ordination effort of the NGOs in the field of humanitarian aid was the Coordinating Committee for Emergency Actions of the NGOs (CCEA-NGO), created on 31 January 1984 by 22 NGOs. Originally established for one year and with a scope limited to Mali, the CCEA-NGO expanded its geographical and

temporal scope and became a stable interlocutor of the EC and managed and distributed the Community's emergency funds during the second half of the 1980s.

In March 1992, ECHO was founded to centralise all the humanitarian aid of the European Union in a single bureau. ECHO has concluded agreements with almost 200 NGOs for the distribution of funds on the ground (though it has come in for some criticism for concluding agreements with the NGOs separately rather than as a whole) and spent almost ECU 700 million on humanitarian aid in 1995. In 1996, almost 60% of ECHO resources were managed by NGOs.

The NGOs enjoy a recognised independence and have a good image with both the donors and the recipients of aid. They also have direct contacts with NGOs in the receiving states. In addition, their administrative and management costs are relatively low. All of this makes them the most suitable means of managing the bulk of humanitarian aid, a fact which has been recognised by the General Assembly of the UN:

"the speed and effectiveness of aid often depend on the cooperation and help of NGOs acting strictly for humanitarian ends".²¹

Nevertheless, the NGOs will always be limited in their action and will need support or even at times direct intervention by ECHO, intergovernmental agencies, the States or the UN itself.

²¹ Resolution 43/131 of 8 December 1988.

CHAPTER 4

RIGHTS AND PROTECTION OF VICTIMS

The protection of victims and their fundamental rights in emergency situations is a crucial issue in current international law and is of considerable importance with regard to humanitarian aid. These rights are covered by two major areas of law: international human rights law (that is, laws that oblige States to guarantee the fundamental human rights of all individuals under their jurisdiction, usually in times of peace), and international humanitarian law (that is, laws that protect the individual in times of armed conflict). Obviously, these two areas are closely related and sometimes overlap. However, for greater clarity, we shall analyse them separately. Firstly, we shall look at international human rights law (with special attention being given to human rights in emergency situations, the protection of minority groups and refugee law) and secondly, we shall look at the protection of the individual under international humanitarian law.

A. Disaster and Emergency Situations

I. International Protection of Human Rights

1. Introduction

We can define human rights as

"all the facilities and institutions which, at a given moment of history, give concrete form to the human requirements of dignity, liberty and equality, which must be positively recognized by national and international law".²²

We can then say that human rights have a particular form in a "given moment of history" and, as we have known them in our time, perhaps reflect the "approach of a particular political outlook: that of parliamentary democracy". This approach has to be complemented and enhanced - and indeed has been, at least partially - by other traditions, including other cultural, social, political and economic realities (especially those of the Third World). This should not, however, lead us to forget that human rights are universal and objective, since "their basis is recognition of the intrinsic human dignity and equal, inalienable rights of

²² Perez Luño, 1979.

all members of the human race". This is a notion that was reaffirmed by the UN Conference on Human Rights in Vienna in 1993.

Human rights are usually divided into three groups: *first generation* rights, which are the civil and political rights also known as formal liberties; *second generation* rights, which are economic, social and cultural rights; and *third generation* rights, which are rights concerning collective goods, such as the right to peace, the right to share in the resources that are the common heritage of mankind, the right to enjoy a healthy environment, the right of peoples to self-determination and the right to development.

2. The United Nations System

International human rights law as we know it today began to develop rapidly after the Second World War, owing to the very severe and widespread violation of human rights that had taken place at that time, the conviction that many of these violations could have been prevented if there had been an effective international system to protect human rights and, the belief that such protection was a necessary requisite for the maintenance of peace.

3. The UN Charter

The San Francisco Charter did not include any provisions that contained a list of human rights, despite the contrary opinion of some States (and particularly Panama), who wanted a founding Charter that included a charter of human rights, in a single instrument. But this did not happen because it did not suit any of the four major conquering powers to set up a truly effective system of protecting human rights: the period of the most severe Stalinist repression was beginning in the USSR; there was still both actual and legal racial discrimination in some states of the USA; and the UK and France wanted to preserve and freely behave in their colonial empires.

The San Francisco Charter nonetheless contained some general rules that served as the legal and conceptual basis for the later development of the protection of human rights. These were:

- ◆ Article 1.3, which mentions that promoting and encouraging respect for human rights and for fundamental freedoms without discrimination is one of the main purposes of the United Nations.
- ◆ Article 55, according to which, "*the organization shall promote universal respect for human rights*", and Article 56, whereby "*all members pledge themselves to take measures, together or separately, in cooperation with the organization, to implement the aims set out in Article 55*".
- ◆ and other parts, such as the Preamble and Articles 13, 62, 68 and 72.

The UN Charter grants international status to the protection of human rights. Articles 55 and 56 are not mere recommendations, they are legal obligations that are binding on States. This means that, by signing the Charter, member States are stating that human rights are a matter of international interest and not an issue subject solely to national ju-

risdiction (which does not mean that any individual violation of human rights justified international interference in the national jurisdiction recognised in Article 2.7).

4. The International Charter of Human Rights

In 1946, the recently created UN Economic and Social Council - ECOSOC - set up the Commission on Human Rights, which it made responsible for drawing up a Charter of Human Rights. The Commission began to meet officially in early 1947 and soon decided that the charter would have three parts: a) a Declaration; b) a Convention, whose contents would be legally binding; and c) implementation measures, that is, an application, supervision and monitoring system. It also decided that it would be more realistic and effective in the long term to develop the charter gradually, section by section, beginning with the Declaration.

5. The Universal Declaration of Human Rights

The Declaration was approved on 10 December 1948 (10 December has been International Human Rights Day ever since) by the General Assembly - Resolution 217 (III) - with 48 votes in favour, 8 abstentions and no votes against. The Declaration contains *civil and political rights* (the right to life, liberty and security of persons, the prohibition of slavery, torture and inhuman or degrading punishment or treatment, arbitrary detention and exile, retroactive effect of penal law and arbitrary deprivation of freedom or property; freedom of thought, conscience, expression, religion, organisation, association, movement, etc; procedural rights and guarantees, etc) and *economic, social and cultural rights* (social security, work and fair pay, rest time, protection against unemployment or illness and the right to the establishment of an international social order in which the rights and freedoms proclaimed in this Declaration can be fully effective).

The last two articles allow for restriction of the exercise of the rights proclaimed only to ensure recognition and respect of the rights and freedoms of others and to satisfy the just requirements of morality, public order and general well-being (Article 29.2); rights may not be exercised in contradiction with the principles and aims of the United Nations (Article 29.3) or to perform acts that may lead to the suppression of any of the rights and freedoms proclaimed (Article 30).

The Declaration is not a covenant or treaty that States have signed or ratified; it does not directly give rise to any obligations for States; it is a resolution of the General Assembly and, as such, is a recommendation without any binding legal force. This notwithstanding, modern legal literature agrees that this Declaration has acquired positive legal status that creates obligations for States. There are two ways of explaining this development:

- ◆ some authors believe that the Declaration is the development or *authentic and authorised interpretation* (there was not a single vote against it in the General Assembly) of the obligations included in the Charter with respect to "*human rights and fundamental freedoms*" (Articles 55 and 56), which States have legally undertaken;

- ◆ other authors think that constant reference to the Declaration, both in national constitutions and laws and in international legal documents, is evidence of the international community's belief (*opinio iuris*) that the Declaration has acquired the status of customary international law and that it is therefore legally binding on all States. This position will have to be clarified, since, although most of the Articles have acquired such status, not all of them have.

6. International Human Rights Covenants

There are two international human rights covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. They were adopted by the General Assembly in Resolution 2200 A (XXI) of 16 December 1966; they received 105 and 106 votes in favour, respectively, and there were no abstentions or votes against in either case. A whole decade passed before they came into force, being ratified by 35 States. The two covenants contain some common provisions: Article 1.1, on the right of peoples to self-determination; Article 1.2, whereby all peoples may freely dispose of their natural resources and wealth; Article 2, against discrimination on grounds of race, colour, sex, language, religion, origin or political opinion; and Article 3.

1. The International Covenant on Civil and Political Rights is a more extensive and specific list of civil and political rights than the one contained in the Declaration. It includes some new rights but excludes the rights to property, asylum and nationality for stateless persons which are included in the Declaration. The Covenant contains a derogation clause that allows, in certain serious situations and under certain conditions, the derogation of some rights, though it declares (in Article 4) the non-derogability of seven rights: the right to life (Article 6); the right not to be subjected to torture or to cruel, inhuman or degrading punishment or treatment (Article 7); the prohibition of slavery (Article 8); the prohibition of imprisonment for failure to comply with a contractual obligation (Article 11); the prohibition on the retroactive application of penal laws (Article 15); the right to recognition of the legal personality of the person (Article 16); and freedom of thought, conscience and religion (Article 18). This Covenant has been ratified by 133 States and comprises two protocols: the first, which recognises the right of individual complaint has been ratified by 88 States and the second, more recent, protocol on the abolition of the death penalty which has been ratified by 29 States.
2. The International Covenant on Economic, Social and Cultural Rights contains a very extensive and specific list of economic, social and cultural rights. States undertake "*to take steps [...] to the maximum of its available resources with the view to achieving progressively the full realization of the rights*".²³ The Covenant includes the right to work, protection of the family, education, health, to take part in cultural life, etc. This covenant has been ratified by 134 States.

²³ Article 2.

7. Other UN Human Rights Treaties

There are many other international human rights treaties, including the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly in 1948; the International Convention on the Elimination of All Forms of Racial Discrimination of 1966; the International Convention on the Elimination of All Forms of Discrimination against Women of 1979; and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in 1984.

8. The European System

The European system for the protection of human rights was set up by the Council of Europe. The Statute of this international organisation, which was signed in 1949, lays down the respect and development of human rights as one of its fundamental principles, to the extent that its Article 3 requires of the States that to meet membership conditions, *"any person coming under their jurisdiction must enjoy human rights and fundamental freedoms"*. In 1992, when the first Eastern European countries began to join, there were already 27 Member States of the Council of Europe, and in 1995 there were 32 Members.

Signed in Rome on 4 November 1950, the European Convention on Human Rights (ECHR) came into force on 3 September 1953. Almost all the Member States of the Council of Europe have signed the Convention. The Convention has been amended and developed by a set of protocols, with the first dating from 1952 and the eleventh being signed in May 1994 (ratified by 17 States, but not in force yet). It is then reasonable to claim that the ECHR is a *"legislative process"*²⁴ that is developing over the years, with the system being improved and new rights being added.

The ECHR lists the rights it protects in its Articles 2-14. They are civil and political rights and are protected in much the same way as they are by the International Covenant on Civil and Political Rights.

The First Protocol (1953) added the right to property, the right of parents to choose their children's education in accordance with their religious or philosophical beliefs, and the right to free elections; the Fourth Protocol (1963) added the prohibition on the deprivation of liberty merely on the ground of inability to fulfil a contractual obligation, the right to freedom of movement and election of residence, the right to enter the State of which one is a national and the prohibition on collective expulsions of aliens; the Sixth Protocol (1983) is the one *"concerning the abolition of the death penalty"*, which prohibits the death penalty, with the sole exception being for acts committed during war time; the Seventh Protocol (1984) added the right of an alien lawfully resident in the State not to be expelled without due legal and procedural guarantees, the right to appeal, the right to indemnity in the event of judicial error, equality between spouses and the right not to be judged twice for the same crime in one country.

The ECHR contains a derogation clause (Article 15) to cover *"war or any other public danger that threatens the life of the nation"*, though Articles 2, 3, 4 and 7 cannot be derogated

²⁴ Robertson.

from in any event (Article 15.2). In times of peace, Article 16 provides for certain limitations of the rights of aliens (expression, association, etc) and Article 17 states that rights cannot be exercised for the destruction of the rights and freedoms set forth in the Convention.

The European system for the protection of human rights is supplemented by the European Social Charter, which establishes a system for the protection of economic, social and cultural rights. The Charter, whose structure is quite unique, was signed in Turin on 18 October 1961 and came into force on 26 February 1965. It has been ratified by virtually all the Member States of the Council of Europe. An additional protocol introducing new rights was signed in 1988 and entered into force on 4 September 1992. There are two more protocols that have been signed but have not entered into force; the Protocol amending the European Social Charter from 21 October 1991, and ratified by 10 States; and the Additional Protocol to the European Social Charter for providing a system of collective complaints from 9 November 1995.

There is a European Convention for the Prevention of Torture and other Degrading Punishments or Treatment, from 1987, which was drawn up by a committee of experts including the Red Cross and Amnesty International and which is preventive rather than judicial, being based on the Committee for the Prevention of Torture, which will conduct visits to examine the treatment that prisoners receive in the signatory States. This Convention entered into force on 1 February 1989, and has been ratified by 30 States.

9. Other Regional Systems

America and Africa also have their own regional systems for the protection of human rights. The inter-American system, within the framework of the Organization of American States, is based on the American Convention on Human Rights of 1969 and there is a Commission and a Court responsible for its application. The African system, developed by the Organization for African Unity (OAU), has a Charter on Human and Peoples' Rights of 1981 and a Commission of Human Rights.

II. Human Rights in States of Emergency

One of the major issues concerning the international protection of human rights is the identification of rules governing these rights in emergency situations. Situations of public emergency are a serious problem for States who have to overcome the emergency and restore an altered public order in the country, while at the same time still respecting the fundamental rights of individuals.

The derogation clause of the major international human rights treaties establishes the rules governing this crucial issue. This derogation clause has been described as the

"cornerstone" of the entire system for the protection of human rights and as the most important provision of human rights treaties.²⁵

There are two further reasons which make this topic highly relevant. First, because, in the past few decades, the most serious violations of human rights have occurred in the context of states of emergency. In these situations, States have often used the state of emergency as an excuse to deny application of the basic standards and have taken exceptional measures that have been utterly excessive and in violation of international treaties on human rights. Thus, to be aware of the precise content of the protection accorded by international treaties, it is fundamental to make a careful examination of the rules contained in them, in the light of the case law of international bodies whose mission is to apply these legal instruments.

Secondly, because several States who are members of the international community are not party to these international treaties on human rights, which establish a special legal framework for emergency situations. This means that the standards laid down in the treaties are not applicable as such to States who are not party to the treaties. This, together with the notable absence of studies on the issue, has created a dangerous uncertainty as to the fundamental principles that govern human rights in emergency situations under general international law. This uncertainty is reflected in the practices of the UN bodies responsible for monitoring human rights. At the same time, some international treaties on human rights do not contain any derogation clause (e.g. the African Charter and some ILO conventions relating to human rights). This means that the rules applicable in these cases remain uncertain. For all these reasons, a careful analysis of the general principles governing this issue under general international law is of great importance. In this respect, as has recently been demonstrated,²⁶ some of the principles of the derogation clause of international treaties have been, or are in the process of being, converted into principles of international common law.

The treaties that need especially to be examined because they contain a derogation clause with specific rules for emergency situations are the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECPHRFF) of 1950, the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the American Convention on Human Rights (ACHR) of 1969.²⁷

These three treaties are considered the most important ones in so far as they establish a general and complete regime for civil and political rights. The question of the impact of states of emergency on economic, social and cultural rights is rather more complicated, and this for two reasons. Firstly, because most of the treaties on these rights do not contain any derogation clause, but merely a general limitation clause (for example, Article 4 of the International Covenant on Economic, Social and Cultural Rights of 1966). And secondly, because, since these rights are of a programmatic nature and the

²⁵ See the commentary on this question by *Prado Vallejo*, member of the UN Committee on Human Rights, in CCPR/C/SR. 351 (1982), p 8, paragraph 32. See also the commentary of the Attorney General of Ireland in the *Lawless* case before the European Court of Human Rights (Counter-Memorial of the Government of Ireland), Series B: Pleadings [...], p 224.

²⁶ See *Oraá, J.*, *Human Rights in States of Emergency in International Law*, Oxford, 1992.

²⁷ ECPHRFF, Article 15; ICCPR, Article 4; and ACHR, Article 27.

application mechanisms established in these treaties are very weak, there has been no relevant case law in this area.²⁸

For the fundamental principles of the Treaties and of general international law see Annex 3.

III. Protection of Special Groups – Minority Rights

Even before the international community began to consider human rights, there was a form of international protection for certain groups, or in other words, a protection for human beings, not as individuals but as members of a particular social, ethnic, religious, linguistic or national group.

These groups had to be protected internationally. Their safety and even their survival were not being guaranteed by the State to which they belonged, since they were suffering a situation of domination within that very State. In other words, these were minority groups, in terms of their situation with respect to power. There has been some discussion as to whether a group has to be also inferior in number to be considered a minority, and even whether it has to be numerically inferior in relation to the majority group (*Deschênes*) or in relation to the entire population of the State in question (*Capotorti*).

The special need for protection for these minorities began to be addressed by bilateral treaties as early as the seventeenth century (Treaty of Westphalia, 1648) and by multilateral treaties in the nineteenth century (Final Act of Vienna, 1815, in favour of Polish minorities in other States; the Hatt-i Hümayun (Imperial Edict) of 1856; and the 1858 Paris Convention on the protection of religious minorities in Turkey).

The end of the First World War brought a change in the map of Europe. New States emerged, with complicated ethnic, linguistic and religious situations: Poland, Czechoslovakia, Hungary and Yugoslavia. Other States increased their domestic diversity by extending their borders: Greece and Rumania. The international community took this problem very seriously and devised a varied system of measures to protect these minority groups, who were potentially under threat, under the direction and supervision of the League of Nations, which included respect of the rights of minority groups among the conditions of the peace treaties imposed on the defeated nations.

The Charter of the United Nations, after the Second World War, did not make any reference to minority groups. There were two fundamental reasons for this: the excesses committed in the name of national minorities by the Nazis, and the innovative force of the doctrine of human rights. However, this omission was, to a certain extent, rectified by the UN.

In this respect, Article 27 of the Covenant on Civil and Political Rights of 1966 recognises that: in States where there are ethnic, religious or linguistic minorities, people belonging to these minorities shall not be denied the right to which they are entitled, in

²⁸ Although the European Social Charter of 1961 does contain a derogation clause in its Article 30, it has not, for the very reasons mentioned here, given rise to much relevant case law. For a good analysis of the effects that states of emergency may have on economic and social rights, see *States of Emergency: their Impact on Human Rights*, International Commission of Legal Experts, Geneva, 1983, pp 417-424.

the same way as other members of their group, to conduct their own cultural life, to profess and practise their own religion and to use their own language.

Several specific treaties have also been drawn up, including the Convention on the Prevention and Punishment of the Crime of Genocide (1948) and the International Convention on the Elimination of All Forms of Racial Discrimination (1963); and numerous recommendations and resolutions have been agreed, including the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Conscience of 25 November 1981 and the Declaration on the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities of 18 December 1992, not to mention the many measures that have been taken by the specialised agencies of the UN (e.g. the UNESCO Convention against Discrimination in Education of 14 December 1960). On 5 November 1992, the Council of Europe adopted the European Charter of Regional or Minority Languages, whose purpose is to protect and promote such languages. This Convention has been ratified by 3 States and it is not in force yet. On 1st February 1995 the Council of Europe also approved a Framework Convention for the Protection of the National Minorities. The Convention defines the principles applicable to preserve the identity of minorities in Europe. The provisions of the Framework Convention are not directly applicable, and the States have an important margin of appreciation to adapt their legislation to the provisions of the Convention.

Over recent years, the UN has created various special institutions, including:

- ◆ the *Committee on the Elimination of Racial Discrimination*, which was set up under the 1963 Convention to ensure compliance with the Convention by producing regular reports, conducting inter-State communications and, from 1982, conducting individual communications. This Committee comprises 18 individual members;
- ◆ the *Special Reporter*, to examine State measures and incidents which are incompatible with the provisions of the 1981 Declaration. This institution was set up by the Commission on Human Rights in 1986;
- ◆ the *Subcommittee on the Prevention of Discrimination and the Protection of Minority Groups* (26 members), which was set up in 1947. From the start, this Subcommittee has been characterised by its effectiveness and its innovative, active and militant spirit.

Outside the UN system it is worth mentioning, though more for the recognition of the relevance of national minorities in international relations than for the explicit content of its provisions, the Final Act of the Helsinki Conference on Security and Cooperation in Europe (1975).

All these documents recognise minority groups' right to their existence and to the maintenance of their uniqueness, as well as their right not to be discriminated against. This recognition is manifested in rights such as the right to use one's own language, to education and to perform religious practices.

Minorities are the groups most affected by emergency situations, in which in many cases, their very existence is placed under threat by starvation, forced displacement, mass expulsions, ethnic cleansing and other forms of genocide.

Indigenous peoples are in a particular delicate situation, which means they need additional protection: rights to land, natural resources, energy resources, protection of

the environment, etc. The ILO has adopted a Convention (No. 169), which has recently come into force, on the protection of indigenous peoples. The UN is also concerned with the indigenous peoples' rights and in 1982, the ECOSOC established a Working Group of Indigenous Populations, with the mandate of examining the situation of indigenous peoples in the world and developing new international standards for the protection of indigenous peoples. The Working Group has elaborated a Draft Declaration on the Rights of Indigenous Peoples. This Draft Declaration was adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities on 26 August 1994, and was submitted to the Commission of Human Rights for further action. The Draft Declaration assumes that the indigenous peoples remain threatened by the dispossession of land and resources and their survival requires the recognition and protection of their particular way of life. In order to obtain an effective protection, the Draft Declaration recognises, the right to self-determination, land rights and control over natural resources, development, health education, and the protection in situations of armed conflict, among others.

IV. International Refugee Law

1. International Protection of Refugees

Legal provisions relating to refugee status are a product of the recent history of the West. However, individuals' search for protection in a country other than their own is as old as humankind. References to asylum can be found in texts as old as those from the Greek philosophers or the Bible, and throughout history the ideas of religious, territorial and diplomatic asylum have developed.

During the 20th Century the crisis produced by mass displacement across European borders brought a response from the League of Nations under whose auspices several agreements and conventions for the protection of certain categories of refugees were signed.²⁹ The requirements to be recognised as a refugee were that the person was outside his or her country of origin and did not enjoy the protection of the government of that State. These agreements did not include a universal definition of a refugee, but they protected certain categories of people on the basis of their nationality: Russian, Armenians, or Assirians, *inter alia*.

During the Second World War and afterwards, new agencies were established whose objective was to provide international aid and protection to refugees and displaced persons, like UNRRA or the International Refugee Organisation. The mandates of these agencies specified certain categories of persons in need of assistance, like the victims of the fascist regimes, certain people of Jewish origin, or those already considered refugees before the Second World War, among others. The IRO expressly recognised that individuals could have valid objections to return to their countries of origin, including

²⁹ For instance, the Agreement on the Extension of Certificates of Identity for Russian and Armenian Refugees of 12 May 1926, or the Convention on the Status of Refugees Coming from Germany of 10 February 1938.

persecution or a reasonable fear of persecution on the grounds of race, religion, nationality or political opinion.

In the current international context, the grant or refusal of protection is a fundamental feature of refugee status. It is the duty of the international community to compensate with its own protection the protection that the country of origin cannot or is not willing to give. Therefore, it is necessary to distinguish refuge from asylum. The latter is a *faculty* that a State has to grant someone protection against the jurisdiction of another State. Its content and meaning are complex. Its granting is an act of State sovereignty, whose content may vary: permanent or temporary residence, freedom of movement or confinement in camps, leave to work or State welfare, etc. Refugee status as such, however, does exist from the very moment in which the requirements established by international instruments are fulfilled. Its recognition is merely a declaration, and does not imply an absolute legal obligation to grant legal refugee status. On the other hand, States have always been against the acceptance of the existence of a right to asylum binding on the State at the demand of individuals.

The refugee protection that the international community carries out falls under the following headings:

1. **International Institutions:** Since 1921 there have been several agencies devoted to assuring the application of the intergovernmental agreements taken in favour of refugees.³⁰ The more recent are the UNRRA, the IRO and the United Nations High Commissioner for Refugees in 1950, whose objective is to assure the international protection of refugees and the search for permanent solutions to the problem. Thus, UNHCR will promote the conclusion of international conventions for the protection of refugees and will supervise their application; it will promote through special agreements with governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection; and it will promote the admission of asylum applications. UNHCR must also co-operate with the ECOSOC and with the General Assembly in the search for solutions.
2. **General International Law:** It provides for a minimum standard of protection, that includes the prohibition of slavery and racial discrimination, the protection of fundamental rights, the meeting of the basic needs of refugees, the respect for the family unit, the protection of minors, and so on.
3. **International Treaties:** The States that have ratified treaties related to refugees are bound by them, although in some cases, like in the 1951 Convention, there are no rules that provide for the legal incorporation of the treaty into domestic law. The problem is hence that of the effective application of the provisions contained in the treaty.

³⁰ Like the High Commissioner for Russian Refugees in 1921, the Office of the High Commissioner for Refugees Coming from Germany in 1933, the Office of the High Commissioner for All Refugees in 1938, and the Intergovernmental Committee for Refugees in 1938.

2. United Nations System

After the Second World War, there was a movement of renewed attention and respect for human rights that had been so badly damaged during the preceding period. In this context the Universal Declaration on Human Rights of 1948 finds its place. Its article 14 proclaims the right to *seek* asylum as a fundamental right, although it does not establish a parallel duty for States to grant it.

a) United Nations High Commissioner for Refugees (UNHCR)

UNHCR was established in 1950 to assure the legal protection of refugees and to seek permanent solutions to such problems. Its Statute includes under its competence (Article 6):

1. Refugees covered by previous Treaties and Agreements.
2. Refugees as a consequence of events that took place before 1st January 1951, that are outside their country of origin and cannot or are not willing to avail themselves of its protection due to a well founded fear of persecution.
3. *Any other person* outside their country of origin, or being stateless out of their country of residence, that cannot or is not willing to avail himself of the protection of such State due to a well founded fear of persecution on the grounds of race, religion, nationality or political opinion.

This definition has a universal scope, with no limits of time or place, and its importance lies in the fact that it establishes who remains under the protection of United Nations.

During the last 30 years (after the independence of the African colonies), the situations in which UNHCR has had to intervene have increased. Since in 1957 the United Nations General Assembly authorised UNHCR for the first time to give assistance to refugees that were not completely covered by the Statute, the mandate of UNHCR has increased through UNGA resolutions. Thus, UNHCR's mandate covers mass influx across international borders, in which an individual analysis of claims is not possible, as well as those groups or categories of persons that, having crossed an international border, are presumed not to have the protection of their State of origin.

b) The 1951 Geneva Convention Relating the Status of Refugees and the 1967 Protocol

Due to the great number of people displaced as a consequence of the war, States adopted the 1951 Geneva Convention Relating the Status of Refugees. The Convention was written between 1948 and 1951 by a group of UN organs and representatives of States.

The Convention, in its article 1(A) defines the refugee as a person who:

1. has been considered a refugee under the previous agreements.
2. As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of nationality and is

unable or unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence as a result of such events, is unable or, owing to such fear is unwilling to return to it.

The main features of the Convention definition are its strategical conceptualisation and its eurocentrism. The definition is applied to individual cases. This is, persecution must be carried out against a real person and it is not sufficient to belong to a group that is threatened in general terms. Persecution must exist in each case. In practice, until the fall of the communist world, a priority was given to cases in which the flight was related to a Western ideology. The Convention establishes the possibility of limiting its application to refugees as a consequence of events that took place in Europe, although it gives States the choice to include in their protection refugees from other parts of the world (Article 1(B)). Fifteen years later, the 1967 Protocol on Refugee Status put an end to the time limit, thus allowing the application of the benefits of the Convention to refugees because of events which occurred after 1 January 1951, and it did not contain a geographical limit (except for the existing declarations made by States that were already Parties to the Convention).

The Protocol obtained the formal universalisation of the definition, but not a substantive one: only persons that emigrate due to a fear of persecution based on a civil or political status have a place in the system of protection under the Convention. Therefore, mass migration from Third World countries is presumed to be more a consequence of economic causes than because of "persecution" in the sense in which it is understood in the Western context. Although situations of general political and economical instability can produce a genuine fear and a need to seek refuge, those persons whose persecution is not rooted in a political or civil status are excluded from the system of rights established in the Convention.

The system under the Convention established the prohibition of discrimination, equality of treatment with nationals as regards to freedom of religious practice and instruction, the right to intellectual property, free access to the courts of law, access to basic education and public assistance, pay and social insurance at work, freedom of residence and movement, etc. Refugees will be treated in the same way as aliens as regards access to property, the right of association and the right to education other than basic education, among other things.

c) Regional Systems

aa) 1969 OAU Convention on the Problems of African Refugees

The 1969 OAU Convention was the first regional agreement in this matter.

Since the 1951 Convention, refugee status has evolved to respond to the political and social changes. The initial concern for the *de iure* refugee has evolved to become a concern for the *de facto* refugee.

The OAU refugee definition, contained in its Article 1 is based in that of the 1951 Geneva Convention and the 1967 Protocol, although it has been extended in a realistic way to cover those persons affected by any man-made disaster, that is to say, all those

persons forced to leave their country of origin due to external aggression, foreign occupation or domination, or events that seriously disturb public order.

The definition represents an important conceptual adaptation of the 1951 definition, since it adapts the core of the refugee status to the reality of the developing world:

1. It recognises that the abuses in any given State may come not only from the acts of that State, but also from external factors. Therefore, an asylum application must be analysed from a factual perspective and not only from a formal one.
2. It recognises the legitimisation to flee in general circumstances of danger.
3. It leaves the door open to State that the basis of the injury might not be particularly established: the individual must not demonstrate the existence of a relationship between his personal status and the reason for his flight.
4. It allows the search for refuge outside the country of origin even before first trying in secure areas within the country itself, since the African reality is highly unstable.

The relevance of the OAU definition in the so-called Third World has turned it into an instrument of great influence. It has contributed to an increase in the activities of UNHCR in Africa, it has inspired a great number of regional and national agreements on refugee protection, and it has been proposed as a general criterion applicable to situations of mass influx. Its concrete legal implications, however, must be taken into account.

bb) Latin American System

It is in Latin America where the practice of diplomatic asylum has had a wider application, and where the concept of political crime as a limit to extraditions was developed. The existence of numerous treaties on extradition, political asylum, territorial asylum, and diplomatic asylum is completed by the provisions contained in the instruments for the protection of human rights, such as the American Declaration on Human Rights and Duties of 1948. Its Article 27 establishes the right of every person to search and also to receive asylum in foreign territory. Article 22 (7) of the Inter-American Convention on Human Rights of 1969 contains the same provision. The inclusion of the right to *receive* asylum implies a development from the 1948 Universal Declaration of Human Rights, and also from the 1966 International Covenant on Civil and Political Rights, that does not even include the right to seek asylum. Later on, the Cartagena Declaration of 1984 established a wider refugee concept than that of the 1951 Convention which is more flexible in order to be adaptable to the Latin American reality, since it includes war or social instability as valid causes which produce refugees. Despite the fact that it is not legally binding, it has become a moral standard that cannot be questioned.

cc) European System

There is no treaty within the European area that deals specifically with the problems affecting refugees, although a certain degree of protection can be obtained through docu-

ments relating to extradition, or through the Council of Europe Declaration on Territorial Asylum of 1977. However, the European Convention on Human Rights, whose system includes the widest guarantees for the protection of fundamental rights, does not expressly include the right to asylum. Despite this, the Court and the Commission have produced important case law in the cases in which the issues regarding aliens and refugees do affect other rights that are protected by the Convention, especially article 3 (prohibition of torture and inhuman, cruel or degrading treatment), article 8 (the right to respect for family life), and article 14 (prohibition of discrimination).

At present, there is a movement in Europe to restrict access to the territory of the States that form the European Union, which has serious consequences for the protection of the rights of refugees, in an attempt to control migratory fluxes in general. In this context, the Schengen and Dublin Conventions were signed.

B. Armed Conflict and Complex Emergencies

I. History and Function of International Humanitarian Law in Armed Conflicts

While the subject of the previous sections was disasters and emergency situations occurring in times of peace, this section deals with the protection of victims during war and complex emergencies. The law applicable in such situations is called international humanitarian law. Previously the term laws of war was also used. In all humanitarian law treaties, the aims are the same for every type of armed conflict. Where the state is no longer capable of protecting its citizens, international humanitarian law is supposed to restrict arbitrary armed acts and to prevent absolute barbarism. Thus international humanitarian law is a type of emergency law to control complex situations of armed conflict where the ordinary means available to the State are no longer sufficient.

The development of international humanitarian law started in 1864 when the first Geneva Convention for the Protection of Wounded and Sick on Land was concluded at a state conference after Henry Dunant and the other members of the Geneva group of four had established the International Committee of the Red Cross. The first Geneva Convention laid down the obligation for the state parties to take care of the wounded and sick, in particular to protect them and not to punish medical personnel engaged in humanitarian work. The Red Cross was accepted in this Convention as emblem for the protection of the medical personnel engaged in the work for the wounded and sick. The wounded and sick Convention have been adapted to the situation at sea in 1899 with the acceptance of the Convention on the Protection of Wounded and Sick at sea. In 1929 the First Geneva Convention on the Protection of Prisoners of War had been concluded developing rules already embodied in the Hague Rules of 1907 on Land Warfare. All three Geneva Conventions developed between 1864 and 1929 were then revised and expanded in 1949 creating with the additional convention on the protection of the civilian population the famous four Geneva Conventions (The first two dealing with the wounded and sick, the third with the prisoners and the fourth with the civilian population). One of the most important rule in the Geneva Conventions is art. 3, which is com-

mon to all conventions. This rules reflects the basic standards for the treatment of human beings in war:

"Art. 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*
 - (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
 - (b) taking of hostages;*
 - (c) outrages upon personal dignity, in particular humiliating and degrading treatment;*
 - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*
- (2) The wounded and sick shall be collected and cared for."*

The International Court of Justice in its judgement in the Nicaragua-case in 1986 stated that common art. 3 must be applied in war and peace.

While these conventions ,also known as the Geneva Law, were dealing with the protection of victims of armed conflicts, the so called Hague Law dealt with restrictions for the use of methods an means of warfare. The first Hague Peace conference in 1899 originally planned as a conference to agree about limitations to wage war finally adopted three conventions dealing with the law applicable in armed conflicts. The so called Hague rules on land warfare set limits for the conduct of warfare. The Second Hague Peace conference in 1907 developed the general framework for the conduct of warfare pronouncing a first catalogue of prohibited methods and means of warfare. Besides the famous Martens-clause stating that the right of belligerents to adopt means of injuring the enemy is not unlimited Articles 22 to 25 of the rules include rules refer to means of injuring the enemy, sieges, and bombardments:

"Art. 23

In addition to the prohibitions provided by special Conventions, it is especially forbidden

- (a) To employ poison or poisoned weapons;*
- (b) To kill or wound treacherously individuals belonging to the hostile nation or army;*
- (c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion;*
- (d) To declare that no quarter will be given;*
- (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;*
- (f) To make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;*
- (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;*
- (h) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party. A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.*

Art. 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

Art. 25

The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited."

One of the most important treaties concluded after the first world war has been the so-called Geneva gas protocol prohibiting the use of chemical weapons and biological agencies in war. Before the second world war despite numerous efforts of the International Committee of the Red Cross more detailed provisions regulating the conduct of warfare could not have been established. For example had it been impossible to develop rules on the protection of the civilian population against bombardment from the air. Proposals such as embodied in the resolutions of the International Red Cross Conference in 1936 were not accepted by the states. After the second world war and also after the conclusion of the four Geneva Conventions the International Committee of the Red Cross tried again to develop rules for the protection of war victims against the effects of hostilities. At the Red Cross conference in New Delhi in 1956 a proposal was put forward restricting the use of certain weapons and prohibiting certain effects of attacks on the civilian population. Though the New Delhi rules were also not accepted by the states they set a precedent for the format of a treaty dealing with the modern conduct of warfare. In 1977 to protocols Additional to the Geneva Conventions of 1949 were adopted merging the two traditional branches of international humanitarian law: the Geneva and the Hague law. The protocols developed not only certain aspects of the Geneva law but they include restrictions for the conduct of warfare in particular for indiscriminate attacks.

Conventional weapons were not specifically mentioned in the two Additional protocols. The states in 1977 had agreed to deal with the conventional weapons at a later stage. Under the umbrella of the United Nations the so-called UN-weapons convention of 1980 restricts in particular the use of anti-personnel landmines and incendiary weapons. The use of both types of weapons was not completely prohibited. Therefore the international community tried to develop the rules relating to conventional weapons in the years following. In 1996 the revised version of the UN-weapons convention not only set more restrictive rules for the use of anti-personnel landmines. And additional fourth protocol has been concluded prohibiting the use of lasers against personnel. With the so-called Ottawa convention concluded in 1997 the use, production, stock piling and transfer of anti-personnel landmines was prohibited. Existing stocks of anti-personnel landmines must be destroyed.

Similarly to the development on the level of conventional weapons in the last thirty years new rules were developed to restrict the use of weapons of mass destruction. The 1971 biological weapons convention prohibits the use, production, stockpiling and transfer of such weapons. The 1925 Geneva gas protocol had been updated in 1993 in Paris with the new chemical weapons convention not only prohibiting the use but regulating in detail the production of chemical agencies of a type to be able to be used as weapons. It is a substantial development of the 1993 Paris convention also to require of the state parties to the treaty to destroy already existing chemical weapons. For the purpose of monitoring in particular the destruction of the chemical weapons an international organisation had been created. The ODCW with its seat in The Hague monitors the destruction proc-

ess already going on. No similar rules were developed with regard to nuclear weapons. Despite existing multilateral treaties dealing with the testing of nuclear weapons, the proliferation or the establishment of nuclear free zones such as the Tlateloco treaty no specific treaty prohibiting the use of nuclear weapons was agreed upon by states. It has been argued quite convincingly that the general rules of international humanitarian law and specific prohibitions on indiscriminate attacks do prohibit the use of nuclear weapons. Nevertheless, the nuclear weapons states have not unanimously agreed to such logic. The International Court of Justice in an advisory opinion demanded by the General Assembly of the United Nations on the threat of and the use nuclear weapons in 1996 decided by seven votes to seven, by the President's casting vote:

"It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law; However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake".³¹

International humanitarian law does not fulfil its functions in the same way for every conflict, because essential protective provisions only apply to certain types of conflicts. International armed conflicts must be distinguished from the so-called non-international armed conflicts. The former category comprises wars and armed conflicts between States. The vast majority of the treaties of international humanitarian law apply solely to conflicts of this nature. The Geneva Convention, the Additional Protocol I of 1977 and the Mines Protocol of the UN Weapons Convention of 1980 are examples of treaties designed for international armed conflicts.

On the other hand, the term "non-international armed conflict" comprises conflict situations within States. This type of conflict is covered by relatively few provisions of international law, and their scope varies. The Second Protocol of 12.12.1977 Additional to the Geneva Convention of 1949³² contains the largest number of humanitarian protective provisions for such conflicts. However, it becomes applicable only if the armed conflict within a State has reached a certain level of intensity, the particular preconditions of which are laid down in the Protocol³³ In contrast to Additional Protocol II, common Article 3 of the Geneva Conventions, which lays down the most fundamental humanitarian duties, is applicable in every type of conflict within States. Some of the modern treaties developed since the beginning of this decade do not differentiate between the types of conflict and are applicable in all armed conflict situations. The amended mines protocol of 1996, the Ottawa-treaty of 1997 as well the Paris Convention of 1993 do regulate explicitly also non-international armed conflicts. A typical example of how the scope of application is defined is included in the 1996 amended mines protocol:

"Article 1 - Scope of application

³¹ A/51/218, 105.

³² Hereinafter AP II.

³³ Art. 1 AP II states that a party to a conflict which is not a state has to be an organised armed group which, under the control of leaders bearing responsibility, control part of the territory of the High Contracting Party in a way enabling them to conduct co-ordinated military operations and to apply AP II.

1. *This Protocol relates to the use on land of the mines, booby-traps and other devices, defined herein, including mines laid to interdict beaches, waterway crossings or river crossings, but does not apply to the use of anti-ship mines at sea or in inland waterways.*
2. *This Protocol shall apply, in addition to situations referred to in Article 1 of this Convention, to situations referred to in Article 3 common to the Geneva Conventions of 12 August 1949. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.*
3. *In case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the prohibitions and restrictions of this Protocol.*
4. *Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State."*

The term "complex emergencies" is not defined in any of the major treaties. For the purpose of this chapter it denotes circumstances in which natural catastrophes or other emergency situations coincide with wars. A typical example is famine in a country suffering from civil war. Whereas in armed conflicts individuals are protected primarily by international humanitarian law, in complex emergencies, international humanitarian law as well as the international law of peace may apply. In concrete terms, this may imply that civilians are protected by the provisions of both international humanitarian law and the general international law of peace, depending on their place of residence and distance from the combat zone.

Of the numerous provisions of international humanitarian law, only those which are of particular relevance to humanitarian aid shall be elucidated here. Problems for example relating to certain weapons, the status of combatants or civil defence will not be dealt with in detail.³⁴

II. The Principle of Distinction as the Essential Basis of International Humanitarian Law

International humanitarian law is based upon the so-called principle of distinction. The implications are twofold. First of all, the parties to the conflict have to distinguish between combatants and the civilian population. As a rule, combatants are the members of the armed forces engaging in military operations authorised to fight. If captured combatants obtain the status of a prisoner of war. They cannot be punished for lawful acts of war. The definition of combatant is included in the Hague rules on land warfare, but also in Geneva Convention III and Additional Protocol I. Art. 43 of this protocol states:

- "1. The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct or its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.*

³⁴ For a complete overview cf. *F. Kalshoven, Restraints on the Waging of War, Leiden 1991.*

2. *Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains*
3. *covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.*
4. *Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict."*

Civilians are all persons who are not combatants.³⁵ They should be attacked. A further distinction has to be drawn between so-called military and civilian objects. The former may be attacked, whereas the latter are subject of a strict prohibition to attack.

In the years since the Second World War, the application of the principle of distinction and thus improving the protection of the civilian population has been discussed almost exclusively from the point of view of so-called "indiscriminate" attacks. This means that permissible attacks against combatants or military targets cause collateral damage to the civilian population.

The use of weapons of mass-destruction is a good example of this problem. Also, some of the major conflicts of the 1990s, e.g. in Somalia, in the former Yugoslavia, Rwanda and Liberia, have shown that in ethnically motivated conflicts, direct attacks on the civilian population are used as method of warfare. The fact that civilians as non-fighting persons do not represent any threat to the other party to the conflict and should therefore be protected is obviously immaterial in conflicts of this kind. Belonging to a particular ethnic group already serves as a reason for attacking and killing, independent of the question of any real threat.

The principle of distinction is also relevant for humanitarian aid. First of all, the civilian population is its target group. Hence the humanitarian aid organisations can utilise the special provisions on the protection of the civilian population expounded hereinafter. This applies to aid transports in particular, which are the subject of special stipulations in Geneva Convention IV and Additional Protocol I. For persons involved in the humanitarian aid directly in the field, the principle of distinction is the basis for the protection of their humanitarian activities. As a foreign driver of an aid convoy, for instance, or as a paramedic in a civil war, aid-workers are protected as civilians against direct attacks.

III. The Protection of the Civilian Population in International Armed Conflicts

For the purpose of international humanitarian law, the term "civilian" applies to all persons not covered by the definition of combatants in the Geneva Conventions and Additional Protocol I. Members of the armed forces are not civilians. In case of doubt, the person concerned has to be treated as a civilian. An adequate description of civilians' rights requires a distinction between two fundamentally different situations of danger. On the one hand, civilians may fall into the hands of the adversary. On the other hand, they may be affected by military operations, e.g. exploding grenades.

The civilian population is in the hands of the adversary if the home territory is occupied, as was the case with the invasion of Kuwait by Iraq in 1990. In situations of this

³⁵ The so-called non-combatants are not civilians, but members of the armed forces.

kind, civilians enjoy a fundamental protection covering not only their physical integrity but also honour, religious beliefs, practices, habits and customs. They have to be treated humanely, and in particular have to be protected against violence or intimidation and insults or public curiosity.³⁶ These fundamental protective provisions form the basis for numerous specific prohibitions. For instance, not only torture and mutilation of civilians are expressly prohibited, but also all other cruelties, whether committed by civil or military agents.³⁷ Civilians are protected against collective punishment, acts of terrorism and looting. Taking hostages as well as individual or group deportation are not permissible in principle. Under certain circumstances, the occupying power has the right of internment of civilians. Geneva Convention IV contains a list of special provisions for this case. Hence in addition to the general protective rules which continue to apply also to internees, the occupying power has to comply with numerous special stipulations on, for instance, the internees' accommodation, sanitary facilities, food rations, clothing and health care.

Two obligations of the detaining power are of great practical importance for the activities of aid organisations. The civilian population's right to communicate does not only imply the possibility of contact with the Protecting Power, the ICRC and the national Red Cross or Red Crescent organisations. Individuals may also turn to any other organisation that may be of assistance to him.³⁸ The occupying power also has to ensure the provision of the population with food and medicine. If the population of an occupied area or of any part thereof is inadequately supplied, the occupying power has to permit relief actions for this population. This also holds true in cases where the civilian population of an unoccupied area is inadequately supplied.³⁹

The protection of prisoners of war is regulated by Geneva Convention III. Every combatant automatically becomes a prisoner of war upon capture and has the right to protection under the Convention. This includes the aforesaid fundamental humanitarian principles protecting the prisoner of war against being killed, tortured and so on. A large part of the Convention deals with the conditions of internment of the prisoners of war. The details of accommodation, food rations, health care and the supply of prisoners of war during shortages are all dealt with exhaustively. Besides, the Geneva Convention III takes into account the interests of the detaining power by permitting, *inter alia*, disciplinary and criminal punishment of prisoners of war under certain circumstances.

The protection of the civilian population against the effects of military operations is based on the principle of distinction. This is why the customary prohibition of direct attacks on civilians and the civilian populations is included in Geneva Convention IV and Additional Protocol I.⁴⁰ The killing of unarmed civilians in Somalia, Bosnia and Rwanda since 1992 was a clear violation of this principle. Additional Protocol I for the first time codified and further developed the rules improving the protection against the effects of military operations. For instance, indiscriminate attacks are expressly forbidden. This in-

³⁶ Art. 27 of GC IV.

³⁷ Art. 32 of GC IV.

³⁸ Art. 30 of GC IV.

³⁹ Art. 59 of GC IV and Art. 69, 70 of AP I. The section on humanitarian relief supplies, which is essential to humanitarian aid, will be dealt with in detail below in Chapter V.

⁴⁰ Art. 51 para. II of AP I.

cludes attacks employing methods or means of warfare which cannot be not directed against a particular military object, or the effects of which cannot be limited according to Additional Protocol I. Area bombing is expressly forbidden. The total destruction of a city is no longer justified, even if it contains military objects. Moreover, every permissible attack is subject to the principle of proportionality. In principle, all reprisal attacks against the civilian population or civilians are prohibited. Thus violations of international law by the adversary can no longer be adduced in order to justify one's own violations of international law directed against the civilian population. The International Court of Justice in its already cited nuclear weapon advisory opinion has reaffirmed the general principle behind these specific rules by stating:

"The cardinal principles contained in the texts constituting the fabric of humanitarian law are the following. The first is aimed at the protection of the civilian population and civilian objects and establishes the distinction between combatants and non-combatants; States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets."

Furthermore, Additional Protocol I specifies the special protection of women and children already laid down in Geneva Convention IV. For instance, women shall be protected explicitly against rape and forced prostitution and any other form of indecent conduct.⁴¹ Children under the age of 15 shall not directly participate in the hostilities and, in particular, shall not be recruited into the armed forces of the parties to the conflict.⁴² Civilians lose the protection under Additional Protocol I only if they directly participate in the hostilities. Employment in a weapons factory does not count as such participation. On the other hand, civilians can not invoke the protected status if they participate in hostilities.

Additional Protocol I lists neither military nor civilian objects. The definition of a military object refers to variable attributes of an object, like location, function and its use for military activities. If an object is not military it is deemed to be civilian. Houses, schools and other buildings with civilian purposes are presumed not to be utilised to effectively contribute to military operations and thus have to be treated as civilian objects. Nevertheless, if a house is used for combat purposes, e.g. by artillery deployed on the roof, it is deemed a military object and may be attacked. The definition of a military object takes account of the rapidly changing circumstances of modern warfare. Yet it also imposes a duty on the parties to a conflict, before they decide upon attacking a military object, to verify thoroughly how this object is used and whether its destruction under the concrete individual circumstances would result in a direct military advantage.⁴³

Additional Protocol I contains two new regulations on supplying the civilian population with food. First, starving the civilians as a method of warfare is prohibited. With few exceptions, it is prohibited to attack, destroy, remove or render useless objects indispensable for the survival of the civilian population, e.g. food, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works.⁴⁴ The 26th In-

⁴¹ Art. 76 of AP I.

⁴² Art. 77 of AP I.

⁴³ Art. 52 of AP I.

⁴⁴ Art. 54 para. II of AP I.

ternational Conference of the Red Cross and Red Crescent in 1995 in Geneva adopted a resolution with regard to the civilian population affected by famine in armed conflict. The Conference

"strongly condemns attempts to starve civilian population in armed conflict; stresses the following provisions of international humanitarian law- the prohibition on using starvation of civilians as a method of warfare and on attacking, destroying, removing or rendering useless, for that purpose, objects indispensable to the survival of the civilian population".⁴⁵

It can be safely concluded that as Cassese has stressed with regard to Article 54 that

"it is declaratory of customary law inasmuch as it forbids starvation of civilians (...). The adoption of the provision by consensus, the lack of any reservation and the implicit acknowledgement of the humanitarian principle that civilians should not suffer unduly from the rigors of war, all indicate that the provision was subject of such broad consensus that it came to be regarded as a rule of general application."⁴⁶

There are not that many statement by the security Council of the United Nations using explicitly the term "starvation". But there is abundant state practice with regard to situations of starving the civilian population in which states or organs of the United Nations including the Security Council have condemned this type of warfare. One of the most recent statements is illustrative in this respect. In 1998, the President of the Security Council stated on behalf of the Council that

"the Security Council is also concerned with the sharp deterioration of the humanitarian situation in several areas in Central and Northern Afghanistan, which is caused by the Taliban-imposed blockade of the Bamyam region remaining in place despite appeals by the United Nations and several of its Member states to lift it (...). The Council strongly urges the Taliban to let the humanitarian agencies attend to the needs of the population".⁴⁷

Other resolutions refer to situations in Bosnia-Herzegowina deploring the rapidly deteriorating situation in the Maglaj area and condemning that the threat it poses

"to the survival of the remaining civilian population. It notes that this intolerable situation has been perpetuated by the intensity of the nine-month siege of the town (...). The Council demands that the siege of Maglaj be ended immediately".⁴⁸

The Security Council in Resolution 908 (1994)

"demands that the Bosnian Serb party (...) remove all obstacles to free access (to besieged Maglaj), condemns all such obstacles and calls upon all parties to show restraint".⁴⁹

⁴⁵ 26th International Conference of the Red Cross and Red Crescent, Resolutions adopted by the Conference on "International Humanitarian Law", Text in Humanitäres Völkerrecht 1995, p. 226, Annex.

⁴⁶ A. Cassese, The Geneva Protocols of 1977 on the Humanitarian Law of Armed Conflict and Customary International Law, UCLA Pacific Basin Law Journal 1984, p. 92-93, Annex.

⁴⁷ Statement by the President of the Security Council, S/PRST/1998/9, 6 April 1998, Annex.

⁴⁸ Statement by the President of the Security Council, S/PRST/1994/11, 14 March 1994, Annex.

⁴⁹ UN Security Council, Res. 908 (1994), 31 March 1994, para. 22, Annex.

As a rule, dams, dykes and nuclear power stations shall also not be attacked if their destruction could release dangerous forces causing severe losses among the civilian population.⁵⁰

IV. The Protection of the Civilian Population in Non-international Armed Conflicts

The protection afforded to the civilian population in non-international conflicts is much less extended than that in international armed conflicts. The basic guarantees laid down in Article 3 common to all four Geneva Conventions apply to all internal conflicts. The prohibitions cover not only attacks on life, physical integrity and personal dignity but also the taking of hostages. The minimum standard has been supplemented by Additional Protocol II for the conflicts covered by it with the prohibition of collective punishment and acts of terrorism.⁵¹ Forcible deportation may be ordered only for urgent military reasons or for the safety of civilians. Compared to the rules on international conflicts, the protection of the civilian population against effects of fighting are rudimentary. Although direct attacks, terrorist attacks and attacks against certain objects like irrigation works are expressly prohibited, there are no provisions, as in Additional Protocol I, effectively protecting the civilian population against indiscriminate attacks. The value of these rules has been recently confirmed by the statute of the new International Criminal Court. This statute in art. 8 defines certain crimes which can be committed in non-international armed conflicts. The definition of war crimes under the jurisdiction of the court for non-international armed conflicts refer first of all to the basic prohibitions of common art. 3 of the Geneva Conventions. Paragraph 2 (c) of art. 8 of the statute applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

Other war crimes listed include crimes such as

- "(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;*
- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;*
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the law of armed conflict;"*

In contrast to this broad application clause of the crimes falling under the definition of the prohibitions of common art. 3 the application of the crimes listed in 2 e of the statute is more limited. According to art. 8 para. 2 (f) they only apply to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar

⁵⁰ Art. 56 of AP I.

⁵¹ Art. 4 of AP II.

nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organised armed groups or between such groups. The term "protracted", which is not used in Additional Protocol II, indicates a specific character of the conflict. It will be seen whether the state parties to the statute of the International Criminal Court interpret this term differently from the already existing criteria in art. 1 of Additional Protocol II. If this is the case the application of the definition would have created a new category of non-international armed conflicts.

The problem of combatants is one of the main reasons for deficiencies mentioned. Unlike in international armed conflicts, there is no combatant status in the law of non-international armed conflicts. Thus there is no reference point for the general distinction between persons authorised to participate directly in hostilities and those to be protected as civilians. The vast majority of States has always refused to lay down rules on combatant status, as it would, for instance, preclude the application of national criminal law to insurgents and thus their prosecution. Against this background, it becomes clear why Additional Protocol II does not stipulate the protection of prisoners of war independent of combatant status, but is instead, as mentioned above, confined to granting some basic rights for all persons who have been deprived of their freedom in the course of fighting. As far as humanitarian aid is concerned, it has to be stressed that all detained persons may receive individual or collective aid. In connection with the general right to humanitarian aid, this right includes being supplied by international aid operations.

V. The Problem of Complex Emergencies and Failed States

The stipulations of the Geneva Conventions and of the two Additional Protocols on the material scope of the treaties do not contain special rules on certain sub-regions of the parties to the conflict. Thus the civilian population of one party to the conflict is protected under international humanitarian law from the beginning of the conflict, even if the fighting has not yet affected parts of the population. If in a civil war situation the population is affected by a natural disaster as well, humanitarian aid operations face the problem of which is the applicable law. Is solely international humanitarian law applicable, or do the provisions of international law of peace also apply to natural disasters? While medical personnel treating victims of war are protected by numerous provisions, there are no similar exhaustive provisions on treating victims of the aforesaid situations. The question of the right to provide aid further exemplifies this problem. The parties to the conflict can not generally preclude the provision of aid for the victims. According to the predominant view, providing aid for the victims of natural disasters still depends on the consent of the states concerned. This is explicitly made clear in one of the basic resolutions on humanitarian assistance. General Assembly Resolution A/RES/46/182 of December 19, 1991. This resolution states the basic precondition for humanitarian assistance as follows:

"1. Humanitarian assistance is of cardinal importance for the victims of natural disasters and other emergencies.

2. *Humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality.*
3. *The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country.*
4. *Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, co-ordination, and implementation of humanitarian assistance within its territory."*

If this rule is applied strictly, in a country engaged in civil war, international aid for the victims of a famine in a region far away from the combat zone can be impeded by the government on the grounds that such an operation required approval under the rules on ordinary disaster aid. The government could argue that it was irrelevant for the purposes of international law whether the civil war situation contributed to the famine or even caused it. Taking into account the development since 1991 one can safely conclude that access to people in need independently of the type of the conflict is one of the basic rights under international law⁵².

The complete spectrum of problems associated with complex emergencies was epitomised by the international aid for Somalia in 1992/93. The co-operation of humanitarian organisations with the UN peace-keeping personnel proved to be difficult when new types of peace-keeping operations were carried out which were not based on the consent of the parties to the conflict. Moreover, the relations between the aid organisations themselves in complex emergencies are often difficult. The mandate of some aid organisations is designed for natural disasters or other emergencies. In contrast, other organisations provide aid only in armed conflicts. If both situations coincide, the division of tasks is often complicated and reduces the success of the aid operation. The United Nations have reacted to the new situation by issuing several guidelines for humanitarian assistance operations in complex emergency situations

One other serious problem relates to the application of international humanitarian law to so called failed state situations. Somalia in 1993 and 1994 can be regarded as a failed state. If in a state a conflict breaks out between warring parties and none of the parties belongs to the governmental because of the total breakdown of effective government there is no subject under international law being a party to the conflict and being responsible for the implementation of common art. 3 to the Geneva Conventions or Additional Protocol II. According to the Geneva Conventions and the Additional Protocols it is the state party which for example has to protect the delivery of humanitarian aid. According to reports on violations of international humanitarian law in recent armed conflicts the non-existence of a certain type of authority and the disruption of all society structures is one of the main causes for the growing disregard of basic humanitarian obligations. It has to be stressed that in failed state situations the criminal responsibility of the individual person still exists even if the state under international law is not responsible for crimes committed in the conflict and it has been regularly stressed by the Security Council of the United Nations that those responsible for violations international hu-

⁵² See below chapter 5

manitarian law will be brought to justice. Concerning the situation in Rwanda in 1995 the Security Council stated in this regard:

"Determined to put an end to violations of international humanitarian law and serious acts of violence directed against refugees, and that effective measures be taken to bring to justice the persons who are responsible for such crimes."⁵³

It is obvious that the United Nations responded to the failed state situations in the last decade by interpreting the term "threat to the peace" in art. 39 of the Charter of the United Nations differently from the pasts. Many of the resolutions authorising peace-keeping missions including the use of force were based on a broad and only recently developed understanding of the terms. The Security Council resolution on the situation in the Great Lakes region of November 15, 1996 is a good example of this type of resolution stating:

"Determining that the present situation in eastern Zaire constitutes a threat to international peace and security in the region, Bearing in mind the humanitarian purposes of the multinational force as specified below, Acting under Chapter VII of the Charter of the United Nations, [...]"

- 5. Authorizes the Member States cooperating with the Secretary- General to conduct the operation referred to in paragraph 3 above to achieve, by using all necessary means, the humanitarian objectives set out therein;*
- 6. Calls upon all concerned in the region to cooperate fully with the multinational force and humanitarian agencies and to ensure the security and freedom of movement of their personnel;"⁵⁴*

⁵³ S/RES/978

⁵⁴ S/RES/1080

CHAPTER 5

HUMANITARIAN ASSISTANCE, RIGHTS, DUTIES AND PROTECTION OF ASSISTANCE PERSONNEL

A. Rights and Duties of Humanitarian Organisations and Their Personnel

Despite numerous efforts between states and on the private level, it has so far been impossible to agree upon a comprehensive convention on the provision of aid which would determine the status of humanitarian aid organisations in the field and the rights and duties of their personnel. The model rules for disaster relief operations proposed by UNITAR in 1982 have neither been incorporated into a multilateral agreement nor have they become customary law.⁵⁵ For the special case of nuclear disasters, the 1986 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency set out the international legal framework for providing aid and, *inter alia*, specified privileges and immunities of aid workers.⁵⁶ These problems of status are clarified in many other bilateral aid agreements, too. As a general rule, the rights and duties of aid organisations and their personnel have to be determined in each individual case on the basis of the organisation's concrete function and specific area of operation.

I. The Status of Humanitarian Organisations and Their Personnel

The status of a humanitarian organisation under international law depends on its position as a subject of international law and on the scope of its activities as set out in the charter or constitutive treaties. The question of status has implications in three areas:

- ◆ in relation to the organisation's member states,
- ◆ in relation to its staff,
- ◆ in relation to the states receiving aid.

⁵⁵ Model Rules for Disaster Relief Operations, UNITAR, United Nations Institute for Training and Research, New York 1982.

⁵⁶ Cf. Bundesgesetzblatt 1989 II, p. 441.

The function and role of organisations in relation to their member states is set out in the constitutive treaties of the respective organisations. The details of the particular rights and duties are as various as their range of tasks. This matter has already been expounded under (B). The status of humanitarian aid personnel in relation to their organisation and the state in which the organisation is seated is determined by two contracts. The contract of employment regulates the function and tasks of the employee, which in turn may be subject to principles of international law, e.g. when working abroad. The status of personnel in the state in which the organisation is seated is usually set out in an agreement with this state (*Sitzstaatsabkommen*). This contract often grants special immunities and privileges to the staff of international organisations. These rights, however, are confined to the territory of the state in which the organisation is seated. If a humanitarian organisation is non-governmental, its status is determined by the domestic law of the state in which it is seated, not by international law.

While the legal status of all international organisations and their personnel in the respective states of their headquarters is similar, there is a fundamental difference as to the status of the organisation and its personnel providing aid in other countries. The United Nations and its specialised agencies are subject to a special system of rules based on the Convention on Privileges and Immunities of the United Nations.⁵⁷ This treaty specifies Art.105 of the Charter of the UN, which stipulates that on the territory of any member, the organisation shall enjoy the rights and immunities necessary for the achievement of its aims. This special right of the UN is also applied to its representatives and employees, who are thus entitled to the rights and immunities they need in order to fulfil their tasks for the organisation in absolute independence. While the Secretary-General and other high UN officials enjoy extensive rights and immunities, the status of other employees of the UN and its specialised agencies differs. The most important principle is that officials enjoy immunity in respect of acts carried out in performing their function. In addition, they have special privileges with regard to income tax, duties on household effects imported when commencing work, and others. In the performance of its tasks, the UN and its specialised agencies make frequent use of independent experts. This possibility, which also is of importance for humanitarian aid, is given special attention in the Convention. In addition to the immunity applying to regular personnel, the so-called "experts on mission" enjoy an even more extensive immunity in respect of acts carried out whilst performing their official function. They may neither be arrested nor may their baggage be seized.

International organisations outside the UN and its specialised agencies can utilise the special rules on immunity and privileges of the aforesaid Conventions only if they agree upon them with the state concerned prior to an aid operation, or if these rules are set out in a multilateral convention, as was achieved with respect to nuclear disasters. In the absence of such special agreements, only the so-called "international minimum standard" of protection is applicable to the organisation's humanitarian personnel. At the present time, the international minimum standard includes, among other things, the right to life, physical inviolability and personal safety. States also have to grant foreigners

⁵⁷ Convention on the Privileges and Immunities of the United Nations, UNTS vol. 1, 1946-1947, p. 16.

on their territory equality before the law and the courts, including a fair trial and legal hearing.

ICRC personnel enjoy a special legal status. Although the Committee is a Swiss non-international organisation, it has been granted a special status in international law by the Geneva Conventions and the two Additional Protocols which also affects the status of ICRC delegates. In order to fulfil their functions, the delegates need certain functional immunities, e.g. the protection from being arrested. Without protection of this kind, ICRC delegates would not be able to perform their functions. As neither the Geneva Conventions nor the Additional Protocols provide a list of immunities and privileges, the ICRC seeks to specify the status of its delegates through special agreements with the respective parties to the conflict.

In aid operations abroad, the status of aid workers from non-international organisations is subject to the aforementioned criteria. As long as these aid workers do not work for the UN or its specialised agencies and thereby acquire a special status, they are treated solely in accordance with the international minimum standard.

The 1994 Convention on the Safety of United Nations and Associated Personnel has changed the picture. This convention grants specific rights to personnel engaged in missions under the United Nations umbrella⁵⁸. According to art.7 of the convention the state parties have the duty to ensure the safety and security of United Nations and associated personnel. In particular:

- "1. United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate.*
- 2. States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel. In particular, States Parties shall take all appropriate steps to protect United Nations and associated personnel who are deployed in their territory from the crimes set out in article 9.*
- 3. States Parties shall cooperate with the United Nations and other States Parties, as appropriate, in the implementation of this Convention, particularly in any case where the host State is unable itself to take the required measures."*

The convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in its article 1. By this reference it is made clear that not all humanitarian assistance operations pre se do benefit from the conventions protective rules but only those operations which fall under the definition. According to art. 1 'United Nations operation' means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:

- "(i) Where the operation is for the purpose of maintaining or restoring international peace and security; or*
- (ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation."*

The convention is not applicable in enforcement actions according to chapter VII of the Charter of the United Nations if such action is of a certain type. Only those enforcement

⁵⁸ A/RES/49/59, 9 December 1994

actions do not fall under the convention if the personnel are engaged as combatants against organised armed forces and to which the law of international armed conflict applies.

According to customary international law persons engaged in humanitarian assistance operations have certain basic rights. They cannot be attacked and they should not arbitrarily detained. The basic protective rights of international humanitarian law apply to them. The customary law has been developed during the recent years based mainly on resolutions of the Security Council of the United Nations, the General Assembly and other International Organisations. For example the Security Council of the United Nations has condemned quite frequently attacks on humanitarian assistance personnel, stating e. g. that "*the targeting of humanitarian convoys by the parties to the conflict remains totally unacceptable to the Security Council*".⁵⁹ or "*condemns in the strongest terms all acts of violence against civilians, refugees and international humanitarian personnel*" in Burundi.⁶⁰

II. Special Protective Regulations for Persons Engaged in Humanitarian Assistance Operations

Apart from the aforementioned special agreements, there is no special protection for aid workers employed in natural disasters and other emergencies⁶¹. In the previous drafts of a multilateral aid convention, freedom of movement, the possibility of communication and their protection by national organs, among other things, played an essential role.

In contrast, international humanitarian law has a number of provisions specifying the protection of aid workers in certain functions. Geneva Convention IV on the protection of the civilian population contains stipulations on the protection of personnel of civilian hospitals, personnel of the national Red Cross and Red Crescent Societies and personnel of the ICRC. Moreover, Art. 30 grants representatives of other organisations access to civilians, subject to merely two preconditions. First, the organisation's aim has to be providing spiritual or material help for the persons visited. Second, the detaining state or the occupying power may, under certain circumstances, prohibit these visits - but not for delegates of the protecting powers and the ICRC. Besides visiting civilians, Art. 142 permits performing other functions, e.g. distributing relief consignments and other materials for educational, recreational or religious purposes. This right is expressly granted to organisations of an international kind. However, the detaining state retains the right to restrict the number of societies, organisations and their delegates. No specific reference is made in Geneva Convention IV to the status of the personnel of these organisations. However, it can be concluded from the general principles of international law that this personnel has to be considered as belonging to the civilian population and thus benefits from general stipulations for the protection of the civilian population.

⁵⁹ Statement by the President of the Security Council, no document number, 1 June 1993.

⁶⁰ UN Security Council, Res. 1049 (1996), 5 March 1996.

⁶¹ Cf. the aforementioned IAEA Convention.

Additional Protocol I has confirmed the activities of humanitarian organisations, although without specifying the status of personnel comprehensively for all kinds of relief operations. However, a crucial improvement on Geneva Convention IV was achieved by Art. 71 Additional Protocol I, which expressly stipulates that relief operations may also include the personnel necessary for the transportation and distribution of relief consignments. The deployment of such personnel requires the consent of the party in the territory in which it will conduct its activities. It is expressly laid down that this personnel has to be spared and protected, thus confirming the protection of this personnel deriving from its status as civilians. In case of breaches of the humanitarian mission, the activities of the aid workers may be terminated. The wording of Art. 71 para. 4 has led to the conclusion that in these cases, the personnel may be punished by the party to the conflict. However, taking into account the aim and purpose of Art. 71, it should be construed to exclude punishment in cases where the aid worker is in breach solely of the rules governing the humanitarian mission. In this case, the only permitted course of action is expulsion. This interpretation takes into account the possibility of the detaining power to make the distribution of relief supplies dependent on certain pre-conditions, thereby influencing and shaping the aid personnel's mission.

The 1994 UN-protection conventions spells out some of the basic protective rights of relief workers. According to art. 8 state parties have the duty to release or return United Nations and associated personnel captured or detained except as otherwise provided in an applicable status-of-forces agreement. Moreover, if United Nations or associated personnel are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognised standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

Another problematic case is the party to the conflict refusing to permit a relief worker to leave the country. In view of Art. 71 of Additional Protocol I, preventing or impeding departure would be impermissible in all cases in which the aid worker has not committed any offence. Where Additional Protocol I is applicable or in the aforementioned cases, the possibility in principle of restricting the departure of foreigners set out in Geneva Convention IV has to be immaterial in respect of participants in humanitarian aid operations. Additional Protocol II does not provide comparable rules on non-international conflicts. Yet the development of the law in recent years indicates that the community of states intends to apply the provisions of Additional Protocol I on humanitarian aid to civil wars.

Under international humanitarian law, there is no separate protective sign for relief supplies, transports or aid workers. The protective sign of the Red Cross and the Red Crescent is intended for medical activities, and its use is subject to strict pre-conditions. In contrast, the emblem of the ICRC may be used for any activity and therefore for humanitarian aid. In the practice of operations in recent years, the strict assignment of the protective sign to certain functions has weakened. International organisations marked their relief supplies with the Red Cross and sent them into war zones. The fact that a special protective sign for humanitarian aid has not been developed should not lead to

the conclusion that the relief supplies are unprotected. States are obligated to protect aid consignments in international armed conflict. This also implies protection of aid consignments regardless of how they may be labelled. The population thereby has to be prevented from looting aid convoys. The International Conference for the Protection of War Victims of 1 September 1993 responded in its final declaration to the numerous violations of the use of the protective sign of the Red Cross, particularly in the former Yugoslavia. It called upon states to do everything possible to strengthen respect for the signs which protect, *inter alia*, relief personnel, relief supplies and aid convoys.⁶² It should be noted that also the objects delivered are protected. As the Security Council has expressly stated in a resolution on Liberia in 1996,

*"calls upon the leaders of the factions to ensure the immediate return of looted property, and requests the Secretary General to include in the report (...) information on how much of the stolen property has been returned".*⁶³

III. General and Specific Obligations of Humanitarian Assistance Personnel

The aid workers' duties in international aid operations are set out in the contracts between international organisations and their employees or independent experts. These contracts usually determine the conduct expected of aid workers during the operation. International legal obligations in respect of implementing humanitarian work are embodied by three general principles and a number of special contractual provisions. First of all, the principles of humanity, neutrality and impartiality underlying the relief system of the Geneva Conventions and the Additional Protocols have now become customary law. No aid operations, whether by international or non-governmental organisations, may deviate from these principles, which were confirmed by the UN General Assembly Resolution 46/182 of 19 December 1992.

Some of the concrete legal obligations which can be inferred from these principles are laid down in the provisions of the Geneva Conventions and Additional Protocols. For instance, it is impermissible in principle for a humanitarian aid worker to participate in the hostilities. This does not exclude self-defence against direct attacks. Any other involvement in the hostilities is not permitted, because the activities of humanitarian aid operations are expressly confined to performing the humanitarian mission. In addition, humanitarian aid workers have to take into account the security interests of the party in the territory in which the operation takes place. Obviously, aid workers also have to observe international humanitarian law, as far as it imposes specific legal duties on civilians of parties not involved in the conflict. The 1994 UN-protection Convention refers to the obligations of humanitarian assistance personnel by obligating their respect for laws and regulations of the host country:

"1. Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, United Nations and associated personnel shall:

⁶² International Conference for the Protection of War Victims, Declaration adopted by Plenary Session on September 1st, 1993, International Legal Materials, Vol. XXXIII, 1994, pp. 297-302, 301.

⁶³ UN Security Council, Res. 1071 (1996), 30 August 1996.

- (a) *Respect the laws and regulations of the host State and the transit State; and*
- (b) *Refrain from any action or activity incompatible with the impartial and international nature of their duties."*

In operations following natural disasters and other emergencies, relief personnel have a basic duty to abide by the national law of the state affected by the disaster. There are further obligations, hitherto stipulated only in individual contracts, concerning e.g. respect for the customs of the state affected, respect for its security interests, the necessity for confidential treatment of information obtained in the course of the aid operation.

B. The Right to Humanitarian Assistance

The "right to humanitarian assistance" is a new concept in current international law. Although distinct from it in various ways, it is also undeniably related, as we shall see, to the traditional institution of "humanitarian intervention". This new concept was born of a French initiative taken because of the difficulties that non-governmental organisations, such as Médecins sans Frontières, Médecins du Monde and the Red Cross, were meeting in their humanitarian work. These NGOs alerted international public opinion to the fact that many States were using the principle of State sovereignty and the principle of non-intervention in domestic affairs to deny humanitarian assistance to populations who were in great need as a result of natural disasters or armed conflicts, and to deny NGOs access to their territory. This has happened in countries such as Afghanistan, Ethiopia, Somalia, the Sudan, Liberia and Sri Lanka.

On the other hand, we can see indubitable links between this new concept of the right to humanitarian assistance and the provisions of international humanitarian law, and particularly the provisions contained in the IV Geneva Convention of 1949 (Articles 23, 55, 59, 60 and 61) and in the Additional Protocols of 1977 (Articles 54, 69 and 70 of Protocol I and Articles 14 and 18 of Protocol II), where reference is made to humanitarian assistance for civilian populations and where specific rights and obligations are established within the field of application of each of these international treaties.

Following an international congress in Paris in 1987, which was attended by experts and politicians, including President *Mitterand*,⁶⁴ France proposed to the UN General Assembly that it approve a resolution on this right to humanitarian assistance. Resolution 43/131 (1988) on "Humanitarian Assistance for the Victims of Natural Disasters and Similar Emergency Situations", is a good example of the tensions that are created within the international community when two major legal principles come into conflict: the principle of State sovereignty (and the principle of non-intervention) and the principle of the international protection of human rights. The final text of the resolution was the product of a consensus among the States and, although it is a reflection of the political pressure applied by world public opinion to ensure international action on behalf of the victims of emergency situations, it is also a powerful reaffirmation of the prin-

⁶⁴ See the Acts of the Congress in *Bettati, M. / Kouchner, B., Le Devoir d'Ingérence. Peut-on les laisser mourir? (The duty to intervene. Can we allow them to die?)*, Paris, 1987.

ciple of State sovereignty.⁶⁵ On the basis of these resolutions and recent international practice, the fundamental outlines of this right can be formulated as follows:

1. There is a clear affirmation of the right of the victims to humanitarian assistance. (Nowadays, there is a greater emphasis on the primacy of the right of the victims, rather than on the right of States to offer humanitarian assistance). This right is based on a minimum of fundamental human rights, including the right of all persons to life, physical well-being and health, as reaffirmed by the Universal Declaration and other treaties on human rights. This right can be deemed to constitute a human right of the "third generation". The right would include three aspects: the right of the victims to receive humanitarian assistance; the right to ask for it from the international community; and the right to participate in the distribution of humanitarian aid.⁶⁶
2. At the same time, there is a clear affirmation of the right of all States to grant and offer this humanitarian assistance without any discrimination. Other principles confirmed by the UNGA Resolutions and which must govern all aid are the principles of humanity, neutrality and impartiality. This offer can never be considered an unlawful intervention in the internal affairs of that State.
3. Affirmation of the obligation of the sovereign State in which the emergency occurs to accept this assistance and not to reject it arbitrarily.⁶⁷ This obligation means that the State must give immediate access to aid and, in the case of internal conflict, that all parties to the conflict must permit such access. Similarly, border States are obliged to collaborate by facilitating the passage of humanitarian aid through their territory. International humanitarian law lays down the conditions for authorising the passage of humanitarian aid in the IV Geneva Convention (Art. 23) and in Protocol I (Art. 70).
4. This right of States to offer humanitarian assistance comes into force only in the case of a very serious and urgent emergency.
5. The consent of the territorial State will also be required for this international humanitarian assistance.
6. International aid will be of a subsidiary nature, that is, it will come into play only when the territorial State does not have sufficient means to deal with the emergency

⁶⁵ This resolution was complemented by another with the same title: Resolution 45/100 (1990). Mention should also be made of Resolution 46/182 of 19 December 1991, with an annex that contains the most important "guiding principles" for international humanitarian aid (A/Res/46/182 of 14 April 1992).

⁶⁶ This right as been defined as follows:

"tout être humain a droit à une assistance humanitaire propre à assurer le respect des droits de toute personne à la vie, à santé, à la protection contre les traitements cruels ou dégradants et autres droits de l'homme essentiels à sa survie, à son bien-être et à sa protection dans les situations d'urgence. Le droit à l'assistance humanitaire implique le droit de demander et de recevoir cette assistance et celui de participer à sa mise en œuvre concrète". (Institut International de Droit Humanitaire, "Principes Directeurs Concernant le Droit à l'Assistance Humanitaire").

⁶⁷ Institute of International Law, Resolution on La Protection des Droits de l'Homme et le Principe de Non-Intervention dans les Affaires Intérieures des Etats (The protection of Human Rights and the Principle of Non-Intervention in States' Internal Affairs), IIL Yearbook, Volume 63-II (1990), pp 285-291; Article 5 (1989), pp 395-408.

alone. There is no doubt that the State which has the primary obligation to guarantee the right to humanitarian assistance of the victims is the State in whose territory the emergency occurs.

7. The territorial State has the right of playing the main role in the initiation, organisation, co-ordination and distribution of international humanitarian aid.
8. So far, States have implemented the right to humanitarian assistance mainly through international organisations (rather than involving the action of individual States), especially those of the UN system and the European Union, and with an important participation of NGOs. The implementation through these organisations has the advantage of a better co-ordination and more efficacy because of the long experience of international organisations in this field.

This right to humanitarian assistance, which has been expressively mentioned in several resolutions of the UN Security Council in the late crises, can be said to have become customary international law.

The denial of this right to humanitarian assistance by the territorial State, either by refusing to guarantee directly this right of the victims by its own means, or by refusing to accept international aid offered by other States, could be qualified by the UN Security Council as a "threat to international peace and security" and could justify the adoption (or the authorisation) of the measures foreseen in Chapter VII of the UN Charter, including the use of force, in order to ensure that right.

CHAPTER 6

ENFORCEMENT OF PROTECTIVE HUMANITARIAN RULES

A. Enforcement of International Law

In general, the enforcement of rights and duties is one of the most difficult problems of international law. Law enforcement is essential to humanitarian aid. By the very nature of humanitarian aid, its obstruction causes death or further suffering of many people. Although international law is not endowed with supranational organs for its enforcement, there are a number of enforcement mechanisms available under general international law, human rights law and humanitarian international law. As far as humanitarian aid is concerned, these mechanisms are regularly and sometimes successfully applied in state practice.

I. General Enforcement Mechanisms

First, diplomatic pressure is an unproblematic means of enforcement, whereby a state tries to make an offender discontinue his conduct or make up for it by employing the traditional diplomatic means. Publicising violations of international law by other states is also permissible. The offender may not invoke the so-called prohibition to interfere against these statements, as is nowadays often done in the debates on compliance with human rights standards. As soon as a state concludes a treaty or is bound by customary law and thus enters the level of international law, the other subjects of international law can demand compliance with the obligation undertaken.

A state may also react to a violation of international law by adopting unfriendly measures. This conduct is a so-called retorsion and does not raise any international legal problems, as the responding state acts unfriendly but lawfully. In contrast, the so-called reprisal is conduct of the protesting state contrary to international law which is justified by the preceding breach of international law. Reprisals depend on compliance with certain preconditions and are subject to some limitations. For instance, the reprisal has to be directed towards the offender discontinuing its conduct. The suspension of the contractually agreed delivery of goods is a typical reprisal. In international armed conflict, reprisals are subject to special limitations; reprisals against the civilian population, for example, are expressly forbidden. Unlike in other domains of international law, in the domain

of human rights law, humanitarian law and the law of humanitarian aid, every party to a treaty has to be permitted to employ reprisals, regardless of whether or not the party or its nationals are directly affected by the violation.

International organisations may also employ reprisals, as the European Union did against Iraq after the invasion of Kuwait, and against Serbia during the war in Bosnia. It has to be decided on the circumstances of each individual case which type of reprisal is possible and feasible for an international organisation. Although reprisals are permissible under international law, they are likely to jeopardise the humanitarian work of the organisation in most cases.

At the present time, it is undisputed that armed reprisals contravene international law. In this respect, the permissibility of so-called humanitarian interventions has been debated in recent years. Properly defined, this means the military intervention of one or more states in order to protect the population of another state from human rights violations. Neither the Charter of the UN nor any other treaty have set out such a right. It has often been argued that an existing customary right had been confirmed by the recent state practice following the Second Gulf War. This opinion is based on UN Security Council Resolution 688 of 5.4.1991 - the so-called "Kurds Resolution". Undoubtedly, the action taken by the USA and other states to save the Kurds in Northern Iraq in 1991 was politically and morally justified. However, it can not be based on Resolution 688, because it does not stipulate an express permission to intervene. Similarly, the Security Council Resolutions on Somalia, the conflict in Bosnia or Rwanda are not capable of confirming or establishing the right of an individual state to conduct a humanitarian intervention. The debate about the right of NATO to intervene in Kosovo in 1998 reveals the differences in opinion about such a right. And therefore it is still valid to conclude that such a right for individual states or groups of states does not exist. This conclusion does not mean, though, that states are confined to inactively watch gross violations of human rights. In addition to the special enforcement mechanisms mentioned under 7.4., the right to humanitarian aid in armed conflicts under Art. 70 of Additional Protocol I and Art. 18 of Additional Protocol II has to be taken into account. This right has been consolidated so extensively by the numerous Security Council Resolutions during the conflicts in Somalia and Bosnia that it has to be considered as binding customary law. In case of a conflict or emergency defined under the Protocols, today no party to the conflict is permitted to refuse offers for humanitarian aid.

II. Special Enforcement Mechanisms of the United Nations and Other International Organisations

Like states, international organisations can also utilise diplomatic means, retorsions and reprisals in order to enforce international law. Furthermore, the UN Charter provides special instruments for international law enforcement for the United Nations and the so-called Regional Arrangements. The Security Council, bearing the main responsibility for world peace, is the organ responsible for these special mechanisms. In order to fulfil this function, the Security Council can, for instance, set up sub-organs like enquiry commissions, appoint special rapporteurs or propose solutions to conflicts to the parties thereof.

The unique function of the Security Council, though, is based on its competencies set out in chapter VII of the UN Charter. In the event of aggression, violations of or threats to peace, the Security Council may impose non-military or military sanctions and thus enforce compliance with international law. These decisions are binding on all member states of the UN.

During the first four decades since the Second World War, the Security Council has made but little use of due to the disagreements between its permanent members. In the 1990s, economic sanctions were regularly and the means of military sanctions frequently applied. As far as humanitarian aid is concerned, it is important that the Security Council has classified both the gross violations of human rights in Somalia in 1992/93 and the interruption of relief supplies during the conflict in Bosnia-Herzegovina in 1993 as threats to the peace. The Security Council has thereby given itself access to all ways and means under chapter VII. Most recent developments have shown that the Security Council potentially can utilise a whole range of special means in order to enforce humanitarian aid.

It is undisputed that the Security Council is authorised to intervene in order to protect the population of a state against gross violations of human rights. The most important precondition for this intervention is an evaluation of the concrete situation as constituting a threat to or violation of peace. Economic and military sanctions may then be imposed on the state in question. Sanctions with this aim should properly be called collective assistance. By classifying the situation in question as a threat to peace, the Security Council shifts the problem to the level of international law. Therefore, actions under chapter VII do not constitute an intervention, because the latter requires an interference with internal affairs, which are not subject to international law.

The enforcement of humanitarian aid by means of military sanctions, as occurred to some extent in Somalia and Bosnia,⁶⁸ has been frequently criticised in 1994. This criticism focused on the question of the effectiveness of humanitarian aid. Compulsory enforcement raises a number of international legal questions which have not been sufficiently discussed by the middle of 1994, but which urgently require clarification for the work of humanitarian aid organisations. It is still unclear if and to what extent personnel of international and non-governmental organisations involved in relief operations may be granted military protection without losing the special protection of individuals under international humanitarian law. Another open question is the status of peace-keeping personnel of states participating in the military enforcement of the operation.

A further set of problems relates to economic sanctions of the UN and other international organisations. These measures, which are permissible against violators of international law, have to take into account the humanitarian needs of the civilian population. It has been argued that such concerns are an obligation of the United Nations and individual states under international law and they do merely reflect humanitarian concerns. Thus, the supply of food and medicine for the civilian population has to be ex-

⁶⁸ The mandate of UNOSOM II Somalia as well as that of UNPROFOR in Bosnia contained elements of compulsory enforcement of humanitarian aid. These two operations thus differ from the instruments of international humanitarian law, which are based on the consent of the parties to the conflict and does not include compulsory enforcement by third parties.

empt from embargoes. If individual permission for these supplies is held to be necessary, the control procedure should be designed to enable the provision of aid at the time it is needed. It is not reconcilable with the applicable humanitarian principles that the UN Security Council, on the one hand, demands access of relief supplies to the civilians affected, while, on the other hand, urgent relief for the civilian population of an aggressor state is delayed in administrative procedures for several weeks. The experiences gained from the embargoes against Iraq since 1991 and against Serbia since 1992 have revealed clear shortcomings in the assessment procedures.

A special function within the enforcement of international law is assigned to the so-called Regional Arrangements. The Security Council may employ them for the implementation of sanctions. This was exemplified by the deployment of NATO air force at the request of the UN Security Council in 1994 in order to end the siege of Sarajevo. Besides the NATO, particularly the West European Union (WEU) has declared in the so-called Petersburg Declaration and subsequent statements its willingness to implement humanitarian aid. The implementation of humanitarian aid is also an essential issue at linking the Eastern European countries to the NATO in the so-called Partnership for Peace. Irrespective of the aforesaid willingness of this and other organisations, military sanctions are subject to the approval of the UN Security Council. Without this approval, no Regional Arrangement is permitted to implement military sanctions. Even where the approval has been given or where the Security Council utilises Regional Arrangements, the latter have to observe the aforementioned humanitarian principles in each individual case.

III. The International Court of Justice

The International Court of Justice is the principal judicial organ of the United Nations. With the duty of states to settle their disputes by peaceful means, the ICJ plays the main role in implementing a peaceful solution. In practice, the Court only in few cases dealt with questions of the implementation of human rights, protective provisions of international humanitarian law and humanitarian aid and its implementation. This is partly due to the fact that only states can be parties to ICJ proceedings, and that they must have agreed to submit to the jurisdiction of the ICJ either generally or in the particular dispute. The United Nations can request advisory opinions of the ICJ, but this possibility is not open to other international organisations or even individuals.

Despite the aforesaid functional restrictions, in the *Nicaragua* case of 1986, the ICJ had the opportunity to elucidate some fundamental aspects of international humanitarian law. The Court held that Article 3 common to all four Geneva Conventions represents the minimum standard of humanitarian protection in peace as well as in an armed conflict. This ruling today can not be ignored by any party to a conflict, irrespective of the type of armed conflict and of whether the application of the Article under the treaties is in question.⁶⁹ In 1993, the ICJ pronounced a provisional measure with respect to the conflict in Bosnia-Herzegovina, which had an indirect effect on humanitarian aid organi-

⁶⁹ Reports of the International Court of Justice, Judgements 1986, p. 113, 114.

sations. In its decision of 8.4.1993, the ICJ requested Serbia, *inter alia*, to stop the genocide in Bosnia immediately. On this occasion, it referred to the interruption of humanitarian aid supplies as an act of genocide.⁷⁰ It remains to be seen how this statement will influence the future development of the law.

B. Special Mechanisms of Enforcement

I. Enforcement in Human Rights Law

States have been very reluctant to accept effective mechanisms that enable the international community to monitor their respect of their obligations as regards human rights. However, over time, and largely thanks to the work of the UN, a set of implementation mechanisms has gradually been created to enable more effective enforcement of human rights. We shall look at these application mechanisms in two sections. We shall begin with the mechanisms that have been created by the principal treaties on human rights, that is, conventional mechanisms. We shall then look at those that have emerged as a result of UN practices (mainly through the work of the HR Commission), based on the human rights clauses of the Charter and the Universal Declaration.

1. Conventional Mechanisms

These are the mechanisms set up under human rights treaties to supervise and monitor States' compliance with their obligations. These mechanisms are varied and each treaty comprises one or several of them. Because of their significance, we shall look at the mechanisms set up under the 1966 Covenant on Civil and Political Rights.

a) ICCPR

The Covenant provides for three main types of procedure, all of which involve the Committee on Human Rights, which is the body responsible for monitoring States' compliance with their obligations:

1. *system of periodic reports* (Article 40): States undertake to send a report on the situation of the rights protected under the Covenant and on the measures they have taken to enforce them. They must submit this report within one year of the Covenant coming into force. After this, they must send reports "*whenever the Committee so requests*" (Article 40.1), and the Committee has decided that reports must be submitted regularly, every five years. The Committee (whose 18 members are independent experts elected individually) studies the reports at meetings during which its members can ask questions of the State's representatives. NGOs concerned with human rights, and particularly Amnesty International, play an important role in informing members of

⁷⁰ International Legal Materials, Vol. XXXII, 1993, p. 892.

the Committee and providing information on human rights; without this up-to-date, specific, reliable information, the quest for violations by States would lose much of its effectiveness. The main problem with this system is that States tend not to submit their reports as regularly as requested. The system of periodic reports is the one that is least opposed by States, since it is not an adversarial procedure, which means it is the most common mechanism included in human rights treaties;

2. *inter-State complaint mechanism* (Article 41): the Committee is recognised as having the competence to receive and examine communications in which one State alleges that another State is not complying with the obligations imposed on it by this Covenant. This mechanism can be applied only by and against States that have made the appropriate binding declaration, whereby they accept the system of complaint. It is a system that has not been used, however, and this for two reasons: few States have made the required declaration (45) and States do not consider it a friendly measure. Nevertheless, it is a very effective way of preventing massive violations of human rights in situations of emergency as it has been shown within the European system (i.e. Greece, 1967; Ireland v Great Britain, 1978; Turkey, 1980);
3. *individual communications*: this mechanism can be applied only against States who have ratified the Optional Protocol (87), whereby the State recognises that every person under its jurisdiction has the right to complaint to the Committee. The Committee has to begin by deciding whether the communication is admissible (Article 1). If it is admissible, it sends it to the State in question, which must respond within six months. The Committee then studies the two reports of the parties and gives notice of its conclusions. This is not a judicial procedure: there is no court or sentence. The Protocol lays down some very strict conditions governing the admissibility of communications.

b) The ECHR

The European Convention on Human Rights may be applied under States' national laws (in half of the Member States, the Convention has the status of national law), but there is also a separate system of application governed by two institutions: the European Commission of Human Rights and the European Court of Human Rights in Strasbourg. The Committee of Ministers of the Council of Europe is also of significance in the procedure.

The Commission may receive States reports, inter-State complaints (according to Article 24, which is of major practical importance) and, in accordance with a prior declaration of acceptance that all States must make, individual petitions (Article 25).

The Court has the power to settle disputes (with a special prior declaration by the State in question that it will accept the Court's jurisdiction according to Art. 46). Cases may be brought before the Court by the Commission or by Member States, but not by individuals. Individuals have gradually been gaining a certain legal capacity before the Court and may even, thanks to Protocol IX of 1990, have direct access to the Court and appear in it as party to a case. The Court has produced an impressive jurisprudence of more than 400 sentences, which constitutes an extraordinary important interpretation of

international human rights law. The impact of this jurisprudence goes far beyond the European system.

c) The Inter-American System

The inter-American system has a Commission of Human Rights with broad powers (promotion, investigation, examination, etc), whose reports were of enormous significance with respect to the serious human rights violations of the 1970s and 1980s. The Inter-American Court of Human Rights has consultative powers (which are very extensive by comparison with those enjoyed by the European Court) and the power to settle disputes, but only States and the Commission can bring cases before it. As in the case of the European system, though rather more slowly, individuals are gradually acquiring a certain legal capacity, as are NGOs (see the case of *Velásquez Rodríguez*, in which the Court allowed written submissions by NGOs, as *amicus curiae*).

d) The African System

The African Charter of Human and Peoples' Rights established a human rights commission responsible for promoting human and peoples' rights and for ensuring their protection in Africa (Article 30). The Commission has interpretative powers (which are sometimes close to legislative powers) and deals with both inter-State and individual communications. It also has broad general powers, though these are very vague (Articles 60 and 61).

2. Non-Conventional Mechanisms: the UN Commission on HR

The Commission of Human Rights was set up in 1946 by ECOSOC. Originally, it had 18 member States, but it now has 53 (elected by a system of politico-regional balances). It meets in Geneva once a year for six weeks to discuss and prepare draft recommendations, international agreements or specific questions (torture, disappearances). The Commission is a political body comprising representatives of the member States; this limits its actions but it has had some significant successes, not least of which is the fact that it has placed human rights in an important position on the international agenda and was responsible for preparing the Universal Declaration, the Covenants of 1966 and many other treaties. It has also developed, in response to the ineffectiveness or slowness of conventional mechanisms, certain mechanisms that have been used to deal with human rights violations and whose point of reference is not a treaty but the Universal Declaration. In other words, these are mechanisms of universal application, irrespective of whether or not a State has signed a treaty on the protection of human rights.

From the beginning, the Commission received thousands of individual complaints, but it decided that it could not deal with them because it did not have the legal capacity to do so. However, this principle of lack of competence was beginning to crumble and so, in 1967, ECOSOC passed Resolution 1235, whereby the Commission was permitted to

examine distinct situations of persistent violation of human rights, in particular the apartheid system in South Africa and racial discrimination in Rhodesia, using a rapid, public procedure that did not imply strict conditions of admissibility (i.e. the exhaustion of domestic remedies). Under Resolution 1503 of 1970, the Commission's field of work was extended (to situations which revealed a consistent pattern of gross violations of human rights), but its ways of working were made more discreet, becoming a slow, confidential procedure that requires the consent of the State under investigation and is bound by very strict conditions of admissibility. Because of all this, the Commission prefers to use Procedure 1235 (which is now also applied to some issues: disappearances, torture, extrajudicial executions, etc) because it is public, gives the Commission broader powers for investigation and action and does not require the consent of the State in question. Recently, the Commission has been trying to respond to extreme situations that require an immediate response, using the new system of Urgent Actions, whereby individuals or organisations provide it with urgent information on individual violations of human rights so that the Commission can respond immediately. This mechanism has to date been used only in cases of disappearances, torture or the imminent threat of summary executions.

II. Enforcement in International Humanitarian Law

1. Protecting Power

This institution has its origins in classical international law and was born in response to the difficulty that a State may have in times of war in monitoring application of international conventions through its diplomatic and consular services. Thus, States concerned to ensure minimum protection of their interests and citizens would ask neutral States to represent them before their adversary. This diplomatic representation, which was a method used as early as the sixteenth century, slowly developed to become a clearly defined institution in the Geneva Conventions of 1949.

Originally, protection was set up at various levels: general representation or representation limited to specific questions, temporary or permanent, etc. Similarly, the legal nature of the mandate could range from simple good offices to subrogation of the principal power.

Protecting power as a codified institution was born with the 1929 Geneva Convention on the Treatment of Prisoners of War. But it was nothing more than a non-compulsory guarantee, with very limited functions. It was with the Geneva Convention of 1949 that the institution acquired its real legal existence and its fundamental attributes as regards humanitarian law.

Protecting powers are not simply an agent of the belligerent State, but receive a higher mandate from all the contracting powers to help to apply the Conventions and monitor their observation. They may also take initiatives and intervene beyond the activities outlined by the provisions. They have a mission of general interest. Article 8, which is common to all four Conventions, allows the protecting power to take any initiative to verify application of any provision of the Convention, and to improve upon that application.

Its functions are divided into two main groups:

1. linking or relational functions: transmission of information and lists of prisoners of war and civil internees; notification of judicial proceedings; appeals; good offices to solve specific problems;
2. monitoring functions: visiting places of internment of civilians and prisoner-of-war camps, thus maintaining contact with them, without witnesses. Thereafter, transmitting a report to the principal power.

These significant powers are limited by the Conventions in some cases, because of military requirements. Another limitation is caused by the fact that the protecting power, although conducting a mission of general interest, cannot monitor application of the provisions of the Conventions in relations between one of the parties at conflict and its own nationals. Such action is contrary to its very essence as representative of the interests of the other party, and would imply the immediate relieving of its functions.

The institution is so important that Article 10, which is common to all four Conventions, provides for a substitute should no protecting power be appointed. This substitute may be an impartial body, a neutral State or a humanitarian organisation (such as the International Committee of the Red Cross). There are, however, numerous practical obstacles to such substitution.

Despite the provisions of the Conventions, the mechanism has been used rarely and to little effect. The system was put into operation during the Suez crisis (Great Britain and France on one side and Egypt on the other), the Goa incident (India and Portugal) and the conflict between India and Pakistan. But other attempts to use the mechanism, such as between Iran and Iraq, have failed.

The causes of its failure are varied:

1. the parties do not want to admit the existence of an armed conflict between them;
2. the parties do not recognise each other and fear that the appointment of a protecting power will imply tacit recognition;
3. the parties may not have broken off diplomatic relations;
4. neutral States are few in number and often do not want to perform this function;
5. most wars end before there has been time to appoint a protecting power;
6. the most common armed conflict at present is not of an international nature and is not, therefore, open to the application of this mechanism.

The principal failing of the system is that there is no obligation to appoint a protecting power. This means that there is a need to make the system compulsory.

The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, which began in 1974, concluded with the adoption of two additional Protocols to the Geneva Conventions on 8 June 1977.

Article 5 of Protocol I Relating to the Protection of Victims of International Armed Conflicts does not presume the existence of a protecting power, as had Article 8 of the Conventions, although its aim is to ensure that there is effectively a protecting power in all cases. The wording of Article 5 presumes that the institution of protecting power has

become an obligation for States. Article 5 determines the obligation of the parties in conflict to respect and implement the Conventions and the Protocol by applying the system of protecting power, particularly as regards appointment and acceptance. If this is not possible, provision is made for recourse to a substitute.

However, despite the extension of the activities of the protecting power and its substitutes, the system follows the classical procedure based on the consent of the States involved. The protecting power's ability to act clashes with the sovereignty of those States. They have the final word, which means it is impossible effectively to monitor respect of humanitarian law.

Proposals concerning the establishment of a permanent body or an automatic, independent procedure, as well as regionalisation of the system, have come to nothing, although Article 90 of Protocol I does establish an International Fact-Finding Commission, with the function of investigating allegations of violations of humanitarian law.

In any event, we should not forget that the system has been constantly developing since its inception and that the duties and powers of the protecting power have been extended. This means that it is reasonable to hope that it will continue to develop and become an effective mechanism for the application of humanitarian law.

2. Individual Responsibility

It has been recognised since the late nineteenth century that there are acts and omissions for which international law places responsibility on individuals, and for which individuals can be punished, either by international courts or by national or military courts. Individuals are subject to international law and may, therefore, come under the jurisdiction of an international court that applies international laws.

Crimes against peace were tried for the first time in Nuremberg. The Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (Statute of London) was adopted on 8 August 1945. To this was added the Charter of the International Military Tribunal. Its jurisdiction covered, amongst others, crimes against peace, war crimes and crimes against humanity. The Statute of London is now deemed to be part of general international law.

The Geneva Conventions of 1949 make provision for individual responsibility for serious violations of the obligations laid down in the Convention. The parties to the Convention are required to seek out persons, of whatever nationality, who are accused of having committed or ordered the commission of serious violations of the Convention and to try them before their own courts. Thus, individuals are directly bound by the laws of war. Also, compliance with orders cannot be considered justification for war crimes, since the obligations that international law imposes on individuals cannot be waived simply because individuals seek protection in the sovereignty of States.

A recent example of an attempt to apply international humanitarian law through an international judicial body set up to judge war crimes is the case of the former Yugoslavia and Rwanda.

3. International Criminal Court for the Former Yugoslavia and Rwanda

The massive violations of human rights and humanitarian law in the former Yugoslavia⁷¹ led the Security Council to adopt Resolution 808 of 22 February 1993 which decided to establish an *ad hoc* tribunal to bring to justice those responsible for serious violations of humanitarian law in the former Yugoslavia since 1991. The Security Council requested the Secretary General to submit a report⁷² on this question and in the Resolution 827 of 25 May 1993 the Security Council, following the recommendation of the UN Secretary General, established the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the Territory of the Former Yugoslavia since 1991, and consequently approved the Statute of the International Court. There were three possible legal procedures for the establishment of the Court:

1. a treaty
2. its creation by the General Assembly
3. its creation by the Security Council.

Both *ad hoc* tribunals (former Yugoslavia and Rwanda) were established under a resolution of the Security Council based on a serious threat to peace under Chapter VII. Although it was the most effective way for the creation of Courts (the others were rather lengthy), two objections can be pointed out:

1. The Security Council can abolish these tribunals at any time
2. The normal way in which institutions, and especially judicial institutions, are created is by legislation and not by a political organ⁷³

ICTY's subject matter jurisdiction is set forth in four articles: Article 2 for the grave breaches of the Geneva Convention of 1949, Article 3 for violations of the laws or customs of war, Article 4 for genocide and Article 5 for crimes against humanity. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law, but the international tribunal shall have primacy over national courts, at any stage of the procedure (Art. 9). By 26 July 1995, the tribunal had indicted 46 individuals, including *Radovan Karadžić*, the Bosnian Serb leader and General *Ratko Mladić*, commander of the Bosnian Serb military, but the tribunal has no direct means of compelling national authorities in the former Yugoslavia to arrest and hand over even those who have been indicted.⁷⁴

On 24 May, the UN Commission on Human Rights met in special session and appointed a special rapporteur to investigate the situation in Rwanda. On 1 July, the UN

⁷¹ See Resolution 164 of 13 July 1992, Resolution 780 of 6 October 1992 and Resolution 820 of 17 April 1993.

⁷² UN Doc. S/ 25704.

⁷³ J. Crawford, *The ILC Adopts a Statute for an International Criminal Court*, in: AJIL vol. 89, No. 2, April 1995.

⁷⁴ In the first judgement (30 November 1996) of the ICTY, the Tribunal sentenced *Erdemović* (a Bosnian Serb who participated in the massacre in Srebrenica in 1995) to ten years imprisonment.

Security Council adopted Resolution 935 (1994) and the Secretary General was asked to establish a commission of experts⁷⁵ to investigate the evidence of such grave violations in Rwanda. A preliminary report was made on 30 September, concluding that an International Tribunal should be created to try those individuals responsible for violations of international humanitarian law and crimes against humanity. It concluded as well, that the jurisdiction of the Yugoslav Tribunal should be expanded to include Rwanda.

On 8 November, the International Tribunal for Rwanda was established by Security Council Resolution 955. The Statute of the Rwanda Tribunal represents a compromise between expanding the jurisdiction of the Yugoslav Tribunal and creating a separate court for Rwanda (the two tribunals have separate trial chambers but a common appeal chamber and a common prosecutor). No one of the tribunals can try *in absentia* or impose the death penalty.

The Tribunal has jurisdiction over genocide (Art. 2), crimes against humanity (Art. 39) and violations of Article 3 common to the Geneva Conventions and Protocol II (Art. 4), because the Security Council established that the conflict in Rwanda was a non-international conflict. Neither the International Court for the former Yugoslavia, nor the Court for Rwanda are expected to conduct many trials in the immediate future because of the limited budget available.

Those international tribunals have been seen as a first step towards creating an International Criminal Court of permanent jurisdiction. The UN International Commission recently published the Draft Statute of the International Criminal Court with jurisdiction over the crime of genocide, the crime of aggression, serious violations of the laws and customs applicable in armed conflict, crimes against humanity and crimes under a list of treaties in force. The main obstacles to the establishment of an International Criminal Court are:

1. The affirmation that crimes are an internal issue concerning the parties in conflict and that their punishment is therefore the responsibility of national courts. This argument is refuted in the face of the difficulty of ensuring that national systems are impartial in such issues.
2. The complexity of the process for transferring jurisdiction from national to international courts.
3. The practical difficulties of co-operation between the States involved.
4. The need to convince international public opinion.

4. The Application of Humanitarian Law in Non-international Armed Conflicts

The application of international humanitarian law to internal conflicts implies several problems. States are hesitant to apply international laws in this sphere because they fear that this will have legal consequences in the international arena, such as recognition of the international legal personality of rebels.

⁷⁵ In December 1994, the UN commission of experts reported that 500,000 unarmed civilians had been murdered, but warned that this estimation could be wrong and be even higher.

Thus, Article 3, which is common to all the Geneva Conventions of 1949 and contains minimum international regulations governing non-international armed conflict, determines that the application of humanitarian law has no effect on the legal status of the contending parties. The Conventions affirm that there are international legal obligations that are, for humanitarian reasons, subject to other international legal consequences for the respect and preservation of human life.

Article 3 and Protocol II of 1977, which is additional to the Geneva Conventions and relates to the protection of victims of armed conflicts that are not of an international character, do not expressly contemplate the possibility of monitoring compliance with humanitarian laws in internal conflicts by the contending parties, nor the repression of violations.

The monitoring procedures established for international conflicts are not suitable for internal conflicts. And to this we have to add the principle of the sovereignty of the State, whose law is not substituted by international humanitarian law, though it may be applied simultaneously. International humanitarian laws on internal armed conflict presume the application of national legislation as regards humanitarian standards. Measures and monitoring procedures will also be national.

However, since the parties assume international obligations and rights, it might have been enough to incorporate recognition of the obligation of the contending parties to sanction conduct in violation of Protocol II.

The Geneva Conventions cover the repression of abuses and violations of their provisions. States are obliged to take all the necessary legislative measures to set appropriate penal sanctions and to judge accused persons. This precept should be applicable to internal armed conflict, since it does not distort or disrupt the application of national law and does not involve any element external to the national authority or internal order. However, execution of the provisions of international humanitarian law that are applicable to internal armed conflicts is still essentially entrusted to a system of internal monitoring by the parties themselves.

Protocol II does not make provision for any specific mechanism to enforce its application, although the monitoring measures of the Geneva Conventions as regards internal conflicts serve to monitor compliance with Protocol II in those conflicts to which it applies.

On the other hand, there are international mechanisms that collaborate in the observance of the provisions of international humanitarian law. The aid of third-party States or international organisations (without interfering in a State's internal affairs) may be effective and necessary for achieving the humanitarian aims of Article 3. Aid must be neutral and impartial.

In the case in which, for whatever reason, humanitarian law is not applicable to a certain situation, people involved in any way in an armed conflict are still protected, since the "Martens clause" (included in the Geneva Conventions and Protocol I-II) states that, in cases not covered by the provisions adopted by the Conventions, civilians and combatants remain under the protection of the principles of international law derived from established custom, from the principles of humanity, and from the dictates of public conscience.

CHAPTER 7

ANNEXES

A. A/RES/46/182

78th plenary meeting
19 December 1991

Strengthening of the coordination of humanitarian emergency assistance
of the United Nations

The General Assembly,

Recalling its Resolution 2816 (XXVI) of 14 December 1971 and its subsequent resolutions and decisions on humanitarian assistance, including its Resolution 45/100 of 14 December 1990,

Recalling also its Resolution 44/236 of 22 December 1989, the annex to which contains the International Framework of Action for the International Decade for Natural Disaster Reduction,

Deeply concerned about the suffering of the victims of disasters and emergency situations, the loss in human lives, the flow of refugees, the mass displacement of people and the material destruction,

Mindful of the need to strengthen further and make more effective the collective efforts of the international community, in particular the United Nations system, in providing humanitarian assistance,

Taking note with satisfaction of the report of the Secretary-General on the review of the capacity, experience and coordination arrangements in the United Nations system for humanitarian assistance,

1. Adopts the text contained in the annex to the present resolution for the strengthening of the coordination of emergency humanitarian assistance of the United Nations system;
2. Requests the Secretary-General to report to the General Assembly at its forty-seventh session on the implementation of the present resolution.

ANNEX

I. GUIDING PRINCIPLES

1. Humanitarian assistance is of cardinal importance for the victims of natural disasters and other emergencies.
2. Humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality.
3. The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country.
4. Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory.
5. The magnitude and duration of many emergencies may be beyond the response capacity of many affected countries. International cooperation to address emergency situations and to strengthen the response capacity of affected countries is thus of great importance. Such cooperation should be provided in accordance with international law and national laws. Intergovernmental and non-governmental organizations working impartially and with strictly humanitarian motives should continue to make a significant contribution in supplementing national efforts.
6. States whose populations are in need of humanitarian assistance are called upon to facilitate the work of these organizations in implementing humanitarian assistance, in particular the supply of food, medicines, shelter and health care, for which access to victims is essential.
7. States in proximity to emergencies are urged to participate closely with the affected countries in international efforts, with a view to facilitating, to the extent possible, the transit of humanitarian assistance.
8. Special attention should be given to disaster prevention and preparedness by the Governments concerned, as well as by the international community.
9. There is a clear relationship between emergency, rehabilitation and development. In order to ensure a smooth transition from relief to rehabilitation and development, emergency assistance should be provided in ways that will be supportive of recovery and long-term development. Thus, emergency measures should be seen as a step towards long-term development.
10. Economic growth and sustainable development are essential for prevention of and preparedness against natural disasters and other emergencies. Many emergencies reflect the underlying crisis in development facing developing countries. Humanitarian assistance should therefore be accompanied by a renewal of commitment to economic growth and sustainable development of developing countries. In this context, adequate resources must be made available to address their development problems.

11. Contributions for humanitarian assistance should be provided in a way which is not to the detriment of resources made available for international cooperation for development.
12. The United Nations has a central and unique role to play in providing leadership and coordinating the efforts of the international community to support the affected countries. The United Nations should ensure the prompt and smooth delivery of relief assistance in full respect of the above-mentioned principles, bearing in mind also relevant General Assembly resolutions, including Resolutions 2816 (XXVI) of 14 December 1971 and 45/100 of 14 December 1990. The United Nations system needs to be adapted and strengthened to meet present and future challenges in an effective and coherent manner. It should be provided with resources commensurate with future requirements. The inadequacy of such resources has been one of the major constraints in the effective response of the United Nations to emergencies.

II. PREVENTION

13. The international community should adequately assist developing countries in strengthening their capacity in disaster prevention and mitigation, both at the national and regional levels, for example, in establishing and enhancing integrated programmes in this regard.
14. In order to reduce the impact of disasters there should be increased awareness of the need for establishing disaster mitigation strategies, particularly in disaster-prone countries. There should be greater exchange and dissemination of existing and new technical information related to the assessment, prediction and mitigation of disasters. As called for in the International Decade for Natural Disaster Reduction, efforts should be intensified to develop measures for prevention and mitigation of natural disasters and similar emergencies through programmes of technical assistance and modalities for favourable access to, and transfer of, relevant technology.
15. The disaster management training programme recently initiated by the Office of the United Nations Disaster Relief Coordinator and the United Nations Development Programme should be strengthened and broadened.
16. Organizations of the United Nations system involved in the funding and the provision of assistance relevant to the prevention of emergencies should be provided with sufficient and readily available resources.
17. The international community is urged to provide the necessary support and resources to programmes and activities undertaken to further the goals and objectives of the Decade.

III. PREPAREDNESS

18. International relief assistance should supplement national efforts to improve the capacities of developing countries to mitigate the effects of natural disasters expedi-

tiously and effectively and to cope efficiently with all emergencies. The United Nations should enhance its efforts to assist developing countries to strengthen their capacity to respond to disasters, at the national and regional levels, as appropriate.

Early warning

19. On the basis of existing mandates and drawing upon monitoring arrangements available within the system, the United Nations should intensify efforts, building upon the existing capacities of relevant organizations and entities of the United Nations, for the systematic pooling, analysis and dissemination of early-warning information on natural disasters and other emergencies. In this context, the United Nations should consider making use as appropriate of the early-warning capacities of Governments and intergovernmental and non-governmental organizations.
20. Early-warning information should be made available in an unrestricted and timely manner to all interested Governments and concerned authorities, in particular of affected or disaster-prone countries. The capacity of disaster-prone countries to receive, use and disseminate this information should be strengthened. In this connection, the international community is urged to assist these countries upon request with the establishment and enhancement of national early-warning systems.

IV. STAND-BY CAPACITY

(a) Contingency funding arrangements

21. Organizations and entities of the United Nations system should continue to respond to requests for emergency assistance within their respective mandates. Reserve and other contingency funding arrangements of these organizations and entities should be examined by their respective governing bodies to strengthen further their operational capacities for rapid and coordinated response to emergencies.
22. In addition, there is a need for a complementary central funding mechanism to ensure the provision of adequate resources for use in the initial phase of emergencies that require a system-wide response.
23. To that end, the Secretary-General should establish under his authority a central emergency revolving fund as a cash-flow mechanism to ensure the rapid and coordinated response of the organizations of the system.
24. This fund should be put into operation with an amount of 50 million United States dollars. The fund should be financed by voluntary contributions. Consultations among potential donors should be held to this end. To achieve this target, the Secretary-General should launch an appeal to potential donors and convene a meeting of those donors in the first quarter of 1992 to secure contributions to the fund on an assured, broad-based and additional basis.

25. Resources should be advanced to the operational organizations of the system on the understanding that they would reimburse the fund in the first instance from the voluntary contributions received in response to consolidated appeals.
26. The operation of the fund should be reviewed after two years.

(b) Additional measures for rapid response

27. The United Nations should, building upon the existing capacities of relevant organizations, establish a central register of all specialized personnel and teams of technical specialists, as well as relief supplies, equipment and services available within the United Nations system and from Governments and intergovernmental and non-governmental organizations, that can be called upon at short notice by the United Nations.
28. The United Nations should continue to make appropriate arrangements with interested Governments and intergovernmental and non-governmental organizations to enable it to have more expeditious access, when necessary, to their emergency relief capacities, including food reserves, emergency stockpiles and personnel, as well as logistic support. In the context of the annual report to the General Assembly mentioned in paragraph 35 (i) below, the Secretary-General is requested to report on progress in this regard.
29. Special emergency rules and procedures should be developed by the United Nations to enable all organizations to disburse quickly emergency funds, and to procure emergency supplies and equipment, as well as to recruit emergency staff.
30. Disaster-prone countries should develop special emergency procedures to expedite the rapid procurement and deployment of equipment and relief supplies.

V. CONSOLIDATED APPEALS

31. For emergencies requiring a coordinated response, the Secretary-General should ensure that an initial consolidated appeal covering all concerned organizations of the system, prepared in consultation with the affected State, is issued within the shortest possible time and in any event not longer than one week. In the case of prolonged emergencies, this initial appeal should be updated and elaborated within four weeks, as more information becomes available.
32. Potential donors should adopt necessary measures to increase and expedite their contributions, including setting aside, on a stand-by basis, financial and other resources that can be disbursed quickly to the United Nations system in response to the consolidated appeals of the Secretary-General.

VI. COORDINATION, COOPERATION AND LEADERSHIP

(a) Leadership of the Secretary-General

33. **The leadership role of the Secretary-General is critical and must be strengthened to ensure better preparation for, as well as rapid and coherent response to, natural disasters and other emergencies. This should be achieved through coordinated support for prevention and preparedness measures and the optimal utilization of, inter alia, an inter-agency standing committee, consolidated appeals, a central emergency revolving fund and a register of stand-by capacities.**
34. **To this end, and on the understanding that the requisite resources envisaged in paragraph 24 above would be provided, a high-level official (emergency relief coordinator) would be designated by the Secretary-General to work closely with and with direct access to him, in cooperation with the relevant organizations and entities of the system dealing with humanitarian assistance and in full respect of their mandates, without prejudice to any decisions to be taken by the General Assembly on the overall restructuring of the Secretariat of the United Nations. This high-level official should combine the functions at present carried out in the coordination of United Nations response by representatives of the Secretary-General for major and complex emergencies, as well as by the United Nations Disaster Relief Coordinator.**
35. **Under the aegis of the General Assembly and working under the direction of the Secretary-General, the high-level official would have the following responsibilities:**
 - (a) **Processing requests from affected Member States for emergency assistance requiring a coordinated response;**
 - (b) **Maintaining an overview of all emergencies through, inter alia, the systematic pooling and analysis of early-warning information as envisaged in paragraph 19 above, with a view to coordinating and facilitating the humanitarian assistance of the United Nations system to those emergencies that require a coordinated response;**
 - (c) **Organizing, in consultation with the Government of the affected country, a joint inter-agency needs-assessment mission and preparing a consolidated appeal to be issued by the Secretary-General, to be followed by periodic situation reports including information on all sources of external assistance;**
 - (d) **Actively facilitating, including through negotiation if needed, the access by the operational organizations to emergency areas for the rapid provision of emergency assistance by obtaining the consent of all parties concerned, through modalities such as the establishment of temporary relief corridors where needed, days and zones of tranquility and other forms;**
 - (e) **Managing, in consultation with the operational organizations concerned, the central emergency revolving fund and assisting in the mobilization of resources;**
 - (f) **Serving as a central focal point with Governments and intergovernmental and non-governmental organizations concerning United Nations emergency relief operations and, when appropriate and necessary, mobilizing their emergency**

relief capacities, including through consultations in his capacity as Chairman of the Inter-Agency Standing Committee;

- (g) Providing consolidated information, including early warning on emergencies, to all interested Governments and concerned authorities, particularly affected and disaster-prone countries, drawing on the capacities of the organizations of the system and other available sources;
 - (h) Actively promoting, in close collaboration with concerned organizations, the smooth transition from relief to rehabilitation and reconstruction as relief operations under his aegis are phased out;
 - (i) Preparing an annual report for the Secretary-General on the coordination of humanitarian emergency assistance, including information on the central emergency revolving fund, to be submitted to the General Assembly through the Economic and Social Council.
36. The high-level official should be supported by a secretariat based on a strengthened Office of the United Nations Disaster Relief Coordinator and the consolidation of existing offices that deal with complex emergencies. This secretariat could be supplemented by staff seconded from concerned organizations of the system. The high-level official should work closely with organizations and entities of the United Nations system, as well as the International Committee of the Red Cross, the League of Red Cross and Red Crescent Societies, the International Organization for Migration and relevant non-governmental organizations. At the country level, the high-level official would maintain close contact with and provide leadership to the resident coordinators on matters relating to humanitarian assistance.
37. The Secretary-General should ensure that arrangements between the high-level official and all relevant organizations are set in place, establishing responsibilities for prompt and coordinated action in the event of emergency.

(b) Inter-Agency Standing Committee

38. An Inter-Agency Standing Committee serviced by a strengthened Office of the United Nations Disaster Relief Coordinator should be established under the chairmanship of the high-level official with the participation of all operational organizations and with a standing invitation to the International Committee of the Red Cross, the League of Red Cross and Red Crescent Societies, and the International Organization for Migration. Relevant non-governmental organizations can be invited to participate on an ad hoc basis. The Committee should meet as soon as possible in response to emergencies.

(c) Country-level coordination

39. Within the overall framework described above and in support of the efforts of the affected countries, the resident coordinator should normally coordinate the humanitarian assistance of the United Nations system at the country level. He/She

should facilitate the preparedness of the United Nations system and assist in a speedy transition from relief to development. He/She should promote the use of all locally or regionally available relief capacities. The resident coordinator should chair an emergency operations group of field representatives and experts from the system.

VII. CONTINUUM FROM RELIEF TO REHABILITATION AND DEVELOPMENT

40. Emergency assistance must be provided in ways that will be supportive of recovery and long-term development. Development assistance organizations of the United Nations system should be involved at an early stage and should collaborate closely with those responsible for emergency relief and recovery, within their existing mandates.
41. International cooperation and support for rehabilitation and reconstruction should continue with sustained intensity after the initial relief stage. The rehabilitation phase should be used as an opportunity to restructure and improve facilities and services destroyed by emergencies in order to enable them to withstand the impact of future emergencies.
42. International cooperation should be accelerated for the development of developing countries, thereby contributing to reducing the occurrence and impact of future disasters and emergencies.

B. Convention on the Prevention and Punishment of the Crime of Genocide

Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948
entry into force 12 January 1951, in accordance with article XIII

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article 1

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article 2

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;**
- (b) Causing serious bodily or mental harm to members of the group;**
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;**
- (d) Imposing measures intended to prevent births within the group;**
- (e) Forcibly transferring children of the group to another group.**

Article 3

The following acts shall be punishable:

- (a) Genocide;**
- (b) Conspiracy to commit genocide;**
- (c) Direct and public incitement to commit genocide;**
- (d) Attempt to commit genocide;**
- (e) Complicity in genocide.**

Article 4

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article 5

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article 6

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article 7

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article 8

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article 9

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article 10

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article 11

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any nonmember State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an in-

vation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 12

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article 13

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a proces-verbal and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article 11.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected, subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article 14

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article 15

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective. Article 16

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article 17

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article 11;**
- (b) Notifications received in accordance with article 12;**
- (c) The date upon which the present Convention comes into force in accordance with article 13;**
- (d) Denunciations received in accordance with article 14;**
- (e) The abrogation of the Convention in accordance with article 15;**
- (f) Notifications received in accordance with article 16.**

Article 18

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

Article 19

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

C. Protocol relating to the Status of Refugees

The Protocol was taken note of with approval by the Economic and Social Council in resolution 1186 (XLI) of 18 November 1966 and was taken note of by the General Assembly in resolution 2198 (XXI) of 16 December 1966. In the same resolution the General Assembly requested the Secretary-General to transmit the text of the Protocol to the States mentioned in article V thereof, with a view to enabling them to accede to the Protocol

entry into force 4 October 1967, in accordance with article VIII

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

Article 1. General provision

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.
2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words "As a result of events occurring before 1 January 1951 and..." and the words "...as a result of such events", in article 1 A (2) were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article I B (I) (a) of the Convention, shall, unless extended under article I B (2) thereof, apply also under the present Protocol.

Article 2. Co-operation of the national authorities with the United Nations

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:
 - (a) The condition of refugees;
 - (b) The implementation of the present Protocol;
 - (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 3. Information on national legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article 4. Settlement of disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 5. Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 6. Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;**
- (b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;**
- (c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.**

Article VII. Reservations and declarations

- 1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.**

2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.
3. Any State making a reservation in accordance with paragraph I of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.
4. Declarations made under article 40, paragraphs I and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article 8. Entry into Force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.
2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article 9. Denunciation

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article 10. Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto .

Article 11. Deposit in the archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies

thereof to all States Members of the United Nations and to the other States referred to in article 5 above.

D. Optional Protocol to the International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

entry into force 23 March 1976, in accordance with Article 9

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

Article I

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.
2. 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.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.
2. The Committee shall not consider any communication from an individual unless it has ascertained that:
 - (a) The same matter is not being examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.
3. The Committee shall hold closed meetings when examining communications under the present Protocol.
4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph I, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under article 8;
- (b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;
- (c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

E. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities

Adopted by General Assembly resolution 47/135 of 18 December 1992

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming 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,

Desiring to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

- 1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.**
- 2. States shall adopt appropriate legislative and other measures to achieve those ends.**

Article 2

- 1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.**
- 2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.**
- 3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.**
- 4. Persons belonging to minorities have the right to establish and maintain their own associations.**
- 5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.**

Article 3

- 1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.**
- 2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.**

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, *inter alia*, exchanging information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

Article 8

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States

shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.

2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.
4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

F. Convention relating to the Status of Refugees

Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950

entry into force 22 April 1954, in accordance with article 43

Preamble

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international- scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

Article 1. Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee," shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B.

- (1) For the purposes of this Convention, the words "events occurring before I January 1951" in article 1, section A, shall be understood to mean either (a) "events occurring in Europe before I January 1951"; or (b) "events occurring in Europe or elsewhere before I January 1951"; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.
 - (2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.
- C. This Convention shall cease to apply to any person falling under the terms of section A if:
- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
 - (2) Having lost his nationality, he has voluntarily reacquired it; or
 - (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
 - (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
 - (5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
Provided that this paragraph shall not apply to a refugee falling under section A (I) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
 - (6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;
Provided that this paragraph shall not apply to a refugee falling under section A (I) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.
- D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.
When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.
- E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.
- F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that.

- (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2. General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3. Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4. Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5. Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6. The term "in the same circumstances"

For the purposes of this Convention, the term "in the same circumstances," implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7. Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8. Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9. Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10. Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.
2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11. Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II

JURIDICAL STATUS

Article 12. Personal status

- 1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.**
- 2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.**

Article 13. Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14. Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15. Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16. Access to courts

- 1. A refugee shall have free access to the courts of law on the territory of all Contracting States.**
- 2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.**
- 3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.**

CHAPTER III

GAINFUL EMPLOYMENT

Article 17. Wage-earning employment

- 1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.**
- 2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:**
 - (a) He has completed three years' residence in the country;**
 - (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;**
 - (c) He has one or more children possessing the nationality of the country of residence.**
- 3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.**

Article 18. Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens

generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19. Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.
2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

CHAPTER IV

WELFARE

Article 20. Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21. Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22. Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23. Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24. Labour legislation and social security

- 1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:**
 - (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;**
 - (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:**
 - (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;**
 - (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.**
- 2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.**
- 3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.**
- 4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non- contracting States.**

CHAPTER V

ADMINISTRATIVE MEASURES

Article 25. Administrative assistance

1. **When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.**
2. **The authority or authorities mentioned in paragraph I shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.**
3. **Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.**
4. **Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.**
5. **The provisions of this article shall be without prejudice to articles 27 and 28.**

Article 26. Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

Article 27. Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28. Travel documents

1. **The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.**

2. **Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.**

Article 29. Fiscal charges

1. **The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.**
2. **Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.**

Article 30. Transfer of assets

1. **A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.**
2. **A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.**

Article 31. Refugees unlawfully in the country of refuge

1. **The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.**
2. **The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.**

Article 32. Expulsion

1. **The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.**
2. **The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear**

himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33. Prohibition of expulsion or return ("refoulement")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Article 34. Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI

EXECUTORY AND TRANSITORY PROVISIONS

Article 35. Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
 - (a) The condition of refugees,
 - (b) The implementation of this Convention, and
 - (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36. Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37. Relation to previous conventions

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between Parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

CHAPTER VII

FINAL CLAUSES

Article 38. Settlement of disputes

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39. Signature, ratification and accession

- 1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.**
- 2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.**
- 3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.**

Article 40. Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetyth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41. Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States;
- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42. Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive.
2. Any State making a reservation in accordance with paragraph I of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43. Entry into force

- 1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.**
- 2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.**

Article 44. Denunciation

- 1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.**
- 2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.**
- 3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.**

Article 45. - Revision

- 1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.**
- 2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.**

Article 46. Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

- (a) Of declarations and notifications in accordance with section B of article 1;**
- (b) Of signatures, ratifications and accessions in accordance with article 39;**
- (c) Of declarations and notifications in accordance with article 40;**
- (d) Of reservations and withdrawals in accordance with article 42;**
- (e) Of the date on which this Convention will come into force in accordance with article 43;**
- (f) Of denunciations and notifications in accordance with article 44;**
- (g) Of requests for revision in accordance with article 45.**

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

DONE at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

G. Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, 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,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, 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,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, '

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "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",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the where-

abouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and

for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (c) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (d) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable interna-

tional or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
2. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
3. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the

maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and

technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;**
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;**
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;**
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.**

Article 38

- 1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.**
- 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.**
- 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.**
- 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.**

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
 - (c) States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - (d) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (e) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
3. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with

in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or**
- (b) International law in force for that State.**

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

- 1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.**
- 2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.**
- 3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.**
- 4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.**
- 5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.**

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:
 - (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

- 1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.**
- 2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.**

Article 50

- 1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.**
- 2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.**
- 3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.**

Article 51

- 1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.**
- 2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.**
- 3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General**

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

H. International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

entry into force 3 January 1976, in accordance with article 27

status of ratifications

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, 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,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if

conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize 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 the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant 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 or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:

- (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
1. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
2. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
2.
 - (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
 - (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. **The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.**
2. **Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.**
3. **Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.**

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council 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 present Covenant and the specialized agencies on

the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

I. International Convention on the Elimination of All Forms of Racial Discrimination

Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965

entry into force 4 January 1969, in accordance with Article 19

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

PART I

Article I

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
 - (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
 - (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
 - (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
 - (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
 - (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating bar-

riers between races, and to discourage anything which tends to strengthen racial division. 2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national

or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
 - (i) The right to freedom of movement and residence within the border of the State;
 - (ii) The right to leave any country, including one's own, and to return to one's country;
 - (iii) The right to nationality;
 - (iv) The right to marriage and choice of spouse;
 - (v) The right to own property alone as well as in association with others;
 - (vi) The right to inherit;
 - (vii) The right to freedom of thought, conscience and religion;
 - (viii) The right to freedom of opinion and expression;
 - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
 - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training;
 - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5.
 - (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;
 - (b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:
 - (a) within one year after the entry into force of the Convention for the State concerned; and
 - (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.
2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

Article 10

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three 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.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.
3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.
5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1.
 - (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;
 - (b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.
5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.
6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.
8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.
2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.
3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.
3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.
4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.
5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.
6.
 - (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned

shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;

- (b) Within three 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.
7.
 - (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;
 - (b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.
 8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.
 9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph I of this article.

Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.
2.
 - (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;
 - (b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.
4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III

Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention

shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.
2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

Article 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

Article 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

- (a) Signatures, ratifications and accessions under articles 17 and 18;
- (b) The date of entry into force of this Convention under article 19;
- (c) Communications and declarations received under articles 14, 20 and 23;
- (d) Denunciations under article 21.

Article 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

J. Convention on the Elimination of All Forms of Discrimination against Women

Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979

entry into force 3 September 1981, in accordance with article 27(1)

status of ratifications

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article I

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;

- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;**
- (b) The right to bank loans, mortgages and other forms of financial credit;**
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.**

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;**
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;**
- (c) To benefit directly from social security programmes;**
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;**

- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this

occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or**
- (b) In any other international convention, treaty or agreement in force for that State.**

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

- 1. The present Convention shall be open for signature by all States.**
- 2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.**
- 3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.**
- 4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.**

Article 26

- 1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.**
- 2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.**

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

K. International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

entry into force 23 March 1976, in accordance with Article 49

status of ratifications

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, 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,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

- 1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.**
- 2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be 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.**
- 3. The members of the Committee shall be elected and shall serve in their personal capacity.**

Article 29

- 1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.**
- 2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.**
- 3. A person shall be eligible for renomination.**

Article 30

- 1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.**
- 2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance**

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

Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984

entry into force 26 June 1987, in accordance with article 27 (1)

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State;
 - (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such

offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the

field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
 - (a) Six members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communiconsideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee 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 the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached; (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. 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.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

- 1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.**
- 2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.**

Article 28

- 1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.**
- 2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.**

Article 29

1 . Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the

conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

M. Universal Declaration of Human Rights

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

Preamble

Whereas 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,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the

equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article I

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.

Article 2

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.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

Everyone has the right to freedom of movement and residence within the borders of each State.

Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

Everyone has the right to a nationality.

No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Marriage shall be entered into only with the free and full consent of the intending spouses.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

Everyone has the right to own property alone as well as in association with others.

No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

**Everyone has the right to freedom of peaceful assembly and association.
No one may be compelled to belong to an association.**

Article 21

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Everyone has the right to equal access to public service in his country.

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Everyone, without any discrimination, has the right to equal pay for equal work.

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

Everyone has duties to the community in which alone the free and full development of his personality is possible.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration 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 set forth herein.

N. Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims on Non-International Armed Conflicts (Protocol II), of 8 June 1977

Preamble

The High Contracting Parties, Recalling that the humanitarian principles enshrined in Article 3 common to the Geneva Conventions of 12 August 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character,

Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person,

Emphasizing the need to ensure a better protection for the victims of those armed conflicts,

Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience,

Have agreed on the following:

Part I. Scope of this Protocol

Art 1. Material field of application

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions or application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

Art 2. Personal field of application

1. This Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as "adverse distinction") to all persons affected by an armed conflict as defined in Article 1.

2. At the end of the armed conflict, all the persons who have been deprived of their liberty or whose liberty has been restricted for reasons related to such conflict, as well as those deprived of their liberty or whose liberty is restricted after the conflict for the same reasons, shall enjoy the protection of Articles 5 and 6 until the end of such deprivation or restriction of liberty.

Art 3. Non-intervention

1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

Part II. Humane Treatment

Art 4 Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever:

(a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) collective punishments;

(c) taking of hostages;

(d) acts of terrorism;

(e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form or indecent assault;

(f) slavery and the slave trade in all their forms;

(g) pillage;

(h) threats to commit any or the foregoing acts.

3. Children shall be provided with the care and aid they require, and in particular:

(a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;

(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

(d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured;

(e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

Art 5. Persons whose liberty has been restricted

1. In addition to the provisions of Article 4 the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained;

- (a) the wounded and the sick shall be treated in accordance with Article 7;
- (b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;
- (c) they shall be allowed to receive individual or collective relief;
- (d) they shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;
- (e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

2. Those who are responsible for the internment or detention of the persons referred to in paragraph 1 shall also, within the limits of their capabilities, respect the following provisions relating to such persons:

- (a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;
- (b) they shall be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary;
- (c) places of internment and detention shall not be located close to the combat zone. The persons referred to in paragraph 1 shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety;
- (d) they shall have the benefit of medical examinations;
- (e) their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances.

3. Persons who are not covered by paragraph 1 but whose liberty has been restricted in any way whatsoever for reasons related to the armed conflict shall be treated humanely in accordance with Article 4 and with paragraphs 1 (a), (c) and (d), and 2 (b) of this Article.

4. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by those so deciding.

Art 6. Penal prosecutions

1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.

2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality.

In particular:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) anyone charged with an offence shall have the right to be tried in his presence;

(f) no one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

5. At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

Part III. Wounded, Sick and Shipwrecked

Art 7. Protection and care

1. All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Art 8. Search

Whenever circumstances permit and particularly after an engagement, all possible measures shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them.

Art 9. Protection of medical and religious personnel

1. **Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.**
2. **In the performance of their duties medical personnel may not be required to give priority to any person except on medical grounds.**

Art 10. General protection of medical duties

1. **Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.**
2. **Persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or this Protocol.**
3. **The professional obligations of persons engaged in medical activities regarding information which they may acquire concerning the wounded and sick under their care shall, subject to national law, be respected.**
4. **Subject to national law, no person engaged in medical activities may be penalized in any way for refusing or failing to give information concerning the wounded and sick who are, or who have been, under his care.**

Art 11. Protection of medical units and transports

1. **Medical units and transports shall be respected and protected at all times and shall not be the object of attack.**
2. **The protection to which medical units and transports are entitled shall not cease unless they are used to commit hostile acts, outside their humanitarian function. Protection may, however, cease only after a warning has been given, setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.**

Art 12. The distinctive emblem

Under the direction of the competent authority concerned, the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. It shall not be used improperly.

Part IV. Civilian Population

Art 13. Protection of the civilian population

- 1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.**
- 2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.**
- 3. Civilians shall enjoy the protection afforded by this part, unless and for such time as they take a direct part in hostilities.**

Art 14. Protection of objects indispensable to the survival of the civilian population

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works.

Art 15. Protection of works and installations containing dangerous forces

Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

Art 16. Protection of cultural objects and of places of worship

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.

Art 17. Prohibition of forced movement of civilians

- 1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.**

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.[

Art 18. Relief societies and relief actions

1. Relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict. The civilian population may, even on its own initiative, offer to collect and care for the wounded, sick and shipwrecked.

2. If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as food-stuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.

Part V. Final Provisions

Art 19. Dissemination

This Protocol shall be disseminated as widely as possible.

Art 20. Signature

This Protocol shall be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months.

Art 21. Ratification

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal Council, depositary of the Conventions.

Art 22. Accession

This Protocol shall be open for accession by any Party to the Conventions which has not signed it. The instruments of accession shall be deposited with the depositary.

Art 23. Entry into force

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

Art 24. Amendment

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.
2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol.

Art 25. Denunciation

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect six months after receipt of the instrument of denunciation. If, however, on the expiry of six months, the denouncing Party is engaged in the situation referred to in Article 1, the denunciation shall not take effect before the end of the armed conflict. Persons who have been deprived of liberty, or whose liberty has been restricted, for reasons related to the conflict shall nevertheless continue to benefit from the provisions of this Protocol until their final release.
2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.

Art 26. Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol, of:

- (a) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 21 and 22;
- (b) the date of entry into force of this Protocol under Article 23; and
- (c) communications and declarations received under Article 24.

Art 27. Registration

1. After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.
2. The depositary shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol.

Art 28. - Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Conventions.

O. Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977

Chapter III. Civilian objects

Art 54. Protection of objects indispensable to the survival of the civilian population

- 1. Starvation of civilians as a method of warfare is prohibited.**
- 2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.**
- 3. The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party:**
 - (a) as sustenance solely for the members of its armed forces; or**
 - (b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.**
- 4. These objects shall not be made the object of reprisals.**
- 5. In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity.**

Section II. Relief in Favour of the Civilian Population

Art 68. Field of application

The provisions of this Section apply to the civilian population as defined in this Protocol and are supplementary to Articles 23, 55, 59, 60, 61 and 62 and other relevant provisions of the Fourth Convention.

Art 69. Basic needs in occupied territories

1. In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.
2. Relief actions for the benefit of the civilian population of occupied territories are governed by Articles 59, 60, 61, 62, 108, 109, 110 and 111 of the Fourth Convention, and by Article 71 of this Protocol, and shall be implemented without delay.

Art 70. Relief actions

1. If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. In the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection.
2. The Parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party.
3. The Parties to the conflict and each High Contracting Party which allows the passage of relief consignments, equipment and personnel in accordance with paragraph 2:
 - (a) shall have the right to prescribe the technical arrangements, including search, under which such passage is permitted;
 - (b) may make such permission conditional on the distribution of this assistance being made under the local supervision of a Protecting Power;
 - (c) shall, in no way whatsoever, divert relief consignments from the purpose for which they are intended nor delay their forwarding, except in cases of urgent necessity in the interest of the civilian population concerned.
4. The Parties to the conflict shall protect relief consignments and facilitate their rapid distribution.
5. The Parties to the conflict and each High Contracting Party concerned shall encourage and facilitate effective international co-ordination of the relief actions referred to in paragraph 1.

Art 71. Personnel participating in relief actions

1. Where necessary, relief personnel may form part of the assistance provided in any relief action, in particular for the transportation and distribution of relief consignments; the participation of such personnel shall be subject to the approval of the Party in whose territory they will carry out their duties.
2. Such personnel shall be respected and protected.
3. Each Party in receipt of relief consignments shall, to the fullest extent practicable, assist the relief personnel referred to in paragraph 1 in carrying out their relief mission. Only in case of imperative military necessity may the activities of the relief personnel be limited or their movements temporarily restricted.
4. Under no circumstances may relief personnel exceed the terms of their mission under this Protocol. In particular they shall take account of the security requirements of the Party in whose territory they are carrying out their duties. The mission of any of the personnel who do not respect these conditions may be terminated.

P. Convention on the Safety of United Nations and Associated Personnel (A/RES/49/59, 9 December 1994)

The General Assembly,

Considering that the codification and progressive development of international law contributes to the implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Gravely concerned at the increasing number of attacks on United Nations and associated personnel that have caused death or serious injury,

Bearing in mind that United Nations operations may be conducted in situations that entail risk to the safety of United Nations and associated personnel,

Recognizing the need to strengthen and to keep under review arrangements for the protection of United Nations and associated personnel,

Recalling its resolution 48/37 of 9 December 1993, by which it established the Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel, with particular reference to responsibility for attacks on such personnel,

Taking into account the report of the Ad Hoc Committee, in particular the revised negotiating text resulting from the work of the Ad Hoc Committee,

Recalling its decision, in accordance with the recommendation of the Ad Hoc Committee, to re-establish, at its current session, a working group within the framework of the Sixth

Committee to continue consideration of the revised negotiating text and of proposals relating thereto,

Having considered the text of the draft convention prepared by the working group and submitted to the Sixth Committee for consideration with a view to its adoption,

1. Adopts and opens for signature and ratification, acceptance or approval, or for accession, the Convention on the Safety of United Nations and Associated Personnel, the text of which is annexed to the present resolution;
2. Urges States to take all appropriate measures to ensure the safety and security of United Nations and associated personnel within their territory;
3. Recommends that the safety and security of United Nations and associated personnel be kept under continuing review by all relevant bodies of the Organization;
4. Underlines the importance it attaches to the speedy conclusion of a comprehensive review of arrangements for compensation for death, disability, injury or illness attributable to peace-keeping service, with a view to developing equitable and appropriate arrangements and to ensuring expeditious reimbursement.

ANNEX

Convention on the Safety of United Nations and Associated Personnel

The States Parties to this Convention,

Deeply concerned over the growing number of deaths and injuries resulting from deliberate attacks against United Nations and associated personnel,

Bearing in mind that attacks against, or other mistreatment of, personnel who act on behalf of the United Nations are unjustifiable and unacceptable, by whomsoever committed,

Recognizing that United Nations operations are conducted in the common interest of the international community and in accordance with the principles and purposes of the Charter of the United Nations,

Acknowledging the important contribution that United Nations and associated personnel make in respect of United Nations efforts in the fields of preventive diplomacy, peace-making, peace-keeping, peace-building and

humanitarian and other operations,

Conscious of the existing arrangements for ensuring the safety of United Nations and associated personnel, including the steps taken by the principal organs of the United Nations, in this regard,

Recognizing none the less that existing measures of protection for

United Nations and associated personnel are inadequate,

Acknowledging that the effectiveness and safety of United Nations operations are enhanced where such operations are conducted with the consent and cooperation of the host State,

Appealing to all States in which United Nations and associated personnel

are deployed and to all others on whom such personnel may rely, to provide comprehensive support aimed at facilitating the conduct and fulfilling the mandate of United Nations operations,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention of attacks committed against United Nations and associated personnel and for the punishment of those who have committed such attacks,

Have agreed as follows:

Article 1: Definitions

For the purposes of this Convention:

(a) 'United Nations personnel' means:

- (i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;
- (ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted;

(b) 'Associated personnel' means:

- (i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations;
- (ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency;
- (iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency, to carry out activities in support of the fulfilment of the mandate of a United Nations operation;

(c) 'United Nations operation' means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:

- (i) Where the operation is for the purpose of maintaining or restoring international peace and security; or
- (ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation;
- (d) 'Host State' means a State in whose territory a United Nations operation is conducted;
- (e) 'Transit State' means a State, other than the host State, in whose territory United Nations and associated personnel or their equipment are in transit or temporarily present in connection with a United Nations operation.

Article 2: Scope of application

1. This Convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in article 1.
2. This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.

Article 3: Identification

1. The military and police components of a United Nations operation and their vehicles, vessels and aircraft shall bear distinctive identification. Other personnel, vehicles, vessels and aircraft involved in the United Nations operation shall be appropriately identified unless otherwise decided by the Secretary-General of the United Nations.
2. All United Nations and associated personnel shall carry appropriate identification documents.

Article 4: Agreements on the status of the operation

The host State and the United Nations shall conclude as soon as possible an agreement on the status of the United Nations operation and all personnel engaged in the operation including, inter alia, provisions on privileges and immunities for military and police components of the operation.

Article 5: Transit

A transit State shall facilitate the unimpeded transit of United Nations and associated personnel and their equipment to and from the host State.

Article 6: Respect for laws and regulations

1. Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, United Nations and associated personnel shall:
 - (a) Respect the laws and regulations of the host State and the transit State; and
 - (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.
2. The Secretary-General of the United Nations shall take all appropriate measures to ensure the observance of these obligations.

Article 7: Duty to ensure the safety and security of United Nations and associated personnel

1. United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate.
2. States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel. In particular, States Parties shall take all appropriate steps to protect United Nations and associated personnel who are deployed in their territory from the crimes set out in article 9.
3. States Parties shall cooperate with the United Nations and other States Parties, as appropriate, in the implementation of this Convention, particularly in any case where the host State is unable itself to take the required measures.

Article 8

Duty to release or return United Nations and associated personnel captured or detained except as otherwise provided in an applicable status-of-forces agreement, if United Nations or associated personnel are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

Article 9: Crimes against United Nations and associated personnel

1. The intentional commission of:
 - (a) A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel;

- (b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty;
 - (c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;
 - (d) An attempt to commit any such attack; and
 - (e) An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack, shall be made by each State Party a crime under its national law.
2. Each State Party shall make the crimes set out in paragraph 1 punishable by appropriate penalties which shall take into account their grave nature.

Article 10: Establishment of jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in the following cases:
 - (a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State.
2. A State Party may also establish its jurisdiction over any such crime when it is committed:
 - (a) By a stateless person whose habitual residence is in that State; or
 - (b) With respect to a national of that State; or
 - (c) In an attempt to compel that State to do or to abstain from doing any act.
3. Any State Party which has established jurisdiction as mentioned in paragraph 2 shall notify the Secretary-General of the United Nations. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General of the United Nations.
4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 15 to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.
5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 11: Prevention of crimes against United Nations and associated personnel

- States Parties shall cooperate in the prevention of the crimes set out in article 9, particularly by:
- (a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories; and

(b) Exchanging information in accordance with their national law and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 12: Communication of information

1. Under the conditions provided for in its national law, the State Party in whose territory a crime set out in article 9 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General of the United Nations and, directly or through the Secretary-General, to the State or States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever a crime set out in article 9 has been committed, any State Party which has information concerning the victim and circumstances of the crime shall endeavour to transmit such information, under the conditions provided for in its national law, fully and promptly to the Secretary-General of the United Nations and the State or States concerned.

Article 13: Measures to ensure prosecution or extradition

1. Where the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.

2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law and without delay, to the Secretary-General of the United Nations and, either directly or through the Secretary-General, to:

- (a) The State where the crime was committed;**
- (b) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person has his or her habitual residence;**
- (c) The State or States of which the victim is a national; and**
- (d) Other interested States.**

Article 14: Prosecution of alleged offenders

The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State. Those authorities shall take their decision in the same manner as in the case of an ordinary offence of a grave nature under the law of that State.

Article 15: Extradition of alleged offenders

1. To the extent that the crimes set out in article 9 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested State.
4. Each of those crimes shall be treated, for the purposes of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of article 10.

Article 16: Mutual assistance in criminal matters

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the crimes set out in article 9, including assistance in obtaining evidence at their disposal necessary for the proceedings. The law of the requested State shall apply in all cases.
2. The provisions of paragraph 1 shall not affect obligations concerning mutual assistance embodied in any other treaty.

Article 17: Fair treatment

1. Any person regarding whom investigations or proceedings are being carried out in connection with any of the crimes set out in article 9 shall be guaranteed fair treatment, a fair trial and full protection of his or her rights at all stages of the investigations or proceedings.
2. Any alleged offender shall be entitled:
 - (a) To communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, of the State which, at that person's request, is willing to protect that person's rights; and
 - (b) To be visited by a representative of that State or those States.

Article 18: Notification of outcome of proceedings

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to other States Parties.

Article 19: Dissemination

The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction.

Article 20: Savings clauses

Nothing in this Convention shall affect:

- (a) The applicability of international humanitarian law and universally recognized standards of human rights as contained in international instruments in relation to the protection of United Nations operations and United Nations and associated personnel or the responsibility of such personnel to respect such law and standards;**
- (b) The rights and obligations of States, consistent with the Charter of the United Nations, regarding the consent to entry of persons into their territories;**
- (c) The obligation of United Nations and associated personnel to act in accordance with the terms of the mandate of a United Nations operation;**
- (d) The right of States which voluntarily contribute personnel to a United Nations operation to withdraw their personnel from participation in such operation; or**
- (e) The entitlement to appropriate compensation payable in the event of death, disability, injury or illness attributable to peace-keeping service by persons voluntarily contributed by States to United Nations operations.**

Article 21: Right of self-defence

Nothing in this Convention shall be construed so as to derogate from the right to act in self-defence.

Article 22: Dispute settlement

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by application in conformity with the Statute of the Court.

2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by all or part of paragraph 1. The other States Parties shall not be bound by paragraph 1 or the relevant part thereof with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 23: Review meetings

At the request of one or more States Parties, and if approved by a majority of States Parties, the Secretary-General of the United Nations shall convene a meeting of the States Parties to review the implementation of the Convention, and any problems encountered with regard to its application.

Article 24: Signature

This Convention shall be open for signature by all States, until 31 December 1995, at United Nations Headquarters in New York.

Article 25: Ratification, acceptance or approval

This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Article 26: Accession

This Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 27: Entry into force

1. This Convention shall enter into force thirty days after twenty-two instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 28: Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 29: Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

Q. First Periodical Meeting on International Humanitarian Law

Acting on recommendation VII of the Intergovernmental Group of Experts for the Protection of War Victims (Geneva, January 1995)⁷⁶ and on Resolution 1 of the 26th International Conference of the Red Cross and Red Crescent (Geneva, December 1995),⁷⁷ in its capacity as depositary of the Geneva Conventions the Swiss Government convened in Geneva, from 19 to 23 January 1998, the First Periodical Meeting of States party to the Geneva Conventions on general problems relating to the application of international humanitarian law. The debates were chaired by Ambassador Lucius Cafilisch, representative of the Swiss Government.

The meeting was attended by the representatives of 129 States party to the Geneva Conventions and 36 observer delegations. The discussions centred on two general topics relating to the implementation of international humanitarian law, namely:

- respect for and security of the personnel of humanitarian organizations;
- armed conflicts linked to the disintegration of State structures.

The ICRC had drafted a preparatory document on each topic.

Preliminary discussions had indicated that States wished the debates to be informal and did not intend to negotiate any new texts. Accordingly, the Chairman presented his conclusions in a report which is not binding on the participants.

The Chairman's report is published below. The preparatory documents may be ordered from the ICRC.

* * *

First Periodical Meeting on International Humanitarian Law Geneva, 19-23 January 1998 Chairman's Report

⁷⁶ IRRIC, No. 304, January-February 1995, pp. 37-38.

⁷⁷ IRRIC, No. 310, January-February 1996, pp. 58-60.

I. Factual Elements

The 26th International Conference of the Red Cross and Red Crescent (1995) requested the Swiss Government, as the depositary of the Geneva Conventions, to hold periodical meetings of the States Parties to those Conventions in order to examine general problems relating to the application of international humanitarian law.

Acting under that mandate, and after consulting the States Parties, Switzerland convened the First Periodical Meeting, which took place in Geneva from 19 to 23 January 1998. It proposed that the experts consider two topics: respect for and security of the personnel of humanitarian organizations, and armed conflicts linked to the disintegration of State structures.

At a preparatory meeting in Geneva on 13 January 1998, it was agreed that the First Periodical Meeting would be held on an informal level. This approach was endorsed by the Meeting, which was attended by the representatives of 129 States and 36 observer delegations.

The participation in the Meeting of the Palestinian delegation and of the Federal Republic of Yugoslavia presented some political difficulties. These difficulties were finally overcome by recourse to the solution applied at the 26th International Conference of the Red Cross and Red Crescent in 1995. With regard to Palestine, the Chairman made the following statement: "The appellation 'Palestine' is used in place of the designation 'Palestine Liberation Organization' and this appellation has no territorial connotations in the context of the present Meeting."

As regards the Federal Republic of Yugoslavia, a statement by the latter was circulated among delegations. The delegations of Bosnia-Herzegovina, Croatia, the former Yugoslav Republic of Macedonia and Slovenia also made a statement distributed among the participants. The two statements are appended as Annexes 1 and 2 to the present Report.⁷⁸

The debates were based on two preparatory documents drafted by the International Committee of the Red Cross and two working papers submitted by the Swiss authorities. At the close of the Meeting, the Chairman drew up and presented the conclusions detailed below. These conclusions identify the problems encountered in implementing humanitarian law in respect of the topics discussed and list possible remedies. They reflect the Chairman's personal view and are in no way binding on the delegations which participated in the First Periodical Meeting.

There was also a brief exchange of views on the topics which could be discussed at subsequent periodical meetings. A number of proposals were made, but it was considered premature to specify which theme(s) would be examined at the next periodical meeting.

II. Chairman's Conclusions

1. Respect for and Security of the Personnel of Humanitarian Organizations

Identification of Problems:

⁷⁸ Omitted (ed.).

Where civilian populations are specifically targeted by acts of violence, humanitarian assistance may be perceived as an obstacle to the very purpose of those acts;

Because they are not familiar with the concept of international humanitarian law, the persons directly

participating in an armed conflict often regard humanitarian workers as friends of their enemies;

Where structures have disintegrated, there is no clear distinction between persons directly engaged in an armed conflict and civilians and no chain of command; and there is confusion about the international humanitarian law applicable among the parties to the conflict;

There is insufficient coordination between measures to restore peace and security, and measures to provide humanitarian assistance;

Humanitarian organizations do not always sufficiently coordinate their activities; they do not always observe their status of neutrality or respect local customs; and their motivation may not always be purely humanitarian;

Through lack of diligent selection, humanitarian actions are sometimes delegated to organizations that are not capable of performing them adequately;

There is insufficient observance of the duty to "prosecute or extradite" those who have committed acts of violence against humanitarian workers, resulting in insufficient deterrence from and prevention of such acts;

Links between political and humanitarian actions may make humanitarian workers more likely targets of attacks.

Possible Remedies:

Establishment of mechanisms to prevent acts of violence against humanitarian workers, such as early warning systems for the exchange of information on situations that may lead to such acts;

Recognition that the commission of acts of violence against humanitarian workers as well as the order to commit such acts are crimes under both international and national law for which the perpetrators bear individual responsibility;

Relentless prosecution of those committing acts of violence against humanitarian workers; or extradition to another State; or, where appropriate, transfer to an independent international criminal court;

Support for and cooperation with international efforts to clear anti-personnel mines threatening the safety of humanitarian workers;

Strengthening of and increased cooperation with local providers of humanitarian assistance, in particular the National Red Cross and Red Crescent Societies;

Ratification of conventions on international humanitarian law, including conventions on anti-personnel mines, and improved implementation through national legislation;

Ratification of the United Nations Convention on the Safety of United Nations and Associated Personnel;

Fulfillment of the obligation to translate the Geneva Conventions into local languages, where necessary with the cooperation of the ICRC's advisory services;

Increased recognition of the competence of the International Humanitarian Fact-Finding Commission and, where appropriate, resort to ad hoc commissions;

Full compliance by humanitarian organizations with the principles of impartiality, of neutrality and of independence, which are the foundations of humanitarian ethics;
Adherence of all humanitarian organizations to the "Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief",⁷⁹ and respect by these organizations for the principles of international humanitarian law;
Acceptance of the "Code of Conduct" by humanitarian organizations, and coordination of their activities with those of other organizations, as a prerequisite for receiving public funds;
Establishment of a system of accreditation for humanitarian organizations;
Intensification of the ICRC's advisory services as well as of the efforts of other institutions, including those of a religious character, to disseminate international humanitarian law among armed forces and civilian populations, with special emphasis on the protection of humanitarian workers and the red cross and red crescent emblems;
Improvement of the recruitment, education and training of humanitarian personnel;
Effort by humanitarian organizations to cooperate, from the outset of their operations, with the authorities controlling the territory concerned;
Improved cooperation of humanitarian organizations in international efforts to maintain peace and security, where such cooperation does not jeopardize the effectiveness of the humanitarian assistance or the safety of its providers.

2. Armed Conflicts Linked to the Disintegration of State Structures

Identification of Problems:

Situations where State structures have disintegrated in the course of an armed conflict are usually characterized by a lack of effective leadership capable of ensuring respect for international humanitarian law or of protecting the safety of humanitarian workers;

Where civilian populations are specifically targeted by acts of violence, the disintegration of State structures and of the common values of a society can have particularly serious consequences;

The distinction between persons directly participating in an armed conflict and civilians tends to blur, as members of local militias rarely wear distinctive signs and mingle with civilians.

Possible Remedies:

International support for measures designed to prevent the disintegration of State structures;

Establishment of early warning mechanisms to detect signs of a State being in the process of disintegration;

Recognition that the basic humanitarian rules in common Article 3 of the Geneva Conventions are applicable in armed conflicts where State structures have disintegrated;

⁷⁹ IRRC, No. 310, January-February 1996, pp. 119 ff. (ed.).

Establishment, among the main actors in an area of armed conflict, of a code of conduct taking into account local ethics and customs in addition to principles of international humanitarian law;

Support for measures aimed at building a lasting peace after a conflict has ended, such as disarmament, resettlement and economic development;

Reduction by States of the influx of weapons into areas of conflict and establishment of a code of ethics on the export of arms;

Integration of conflict prevention into development aid programmes;

Recognition of the necessity to strengthen the capacity of National Red Cross and Red Crescent Societies to enable them to continue to provide humanitarian assistance despite the disintegration of State structures;

Fulfillment of the obligation not to recruit children into armed forces or groups;

Promotion of the endeavour to define minimum humanitarian standards applicable in all circumstances;

Establishment of an independent international criminal court with jurisdiction over acts of violence committed by persons engaged in a conflict where State structures have disintegrated and prosecution by national authorities is no longer feasible;

Support for efforts of the United Nations and regional organizations at managing armed conflicts of an anarchic nature, including those made by the Security Council to restore conditions conducive to provision of humanitarian assistance;

Increased dissemination of humanitarian principles by the ICRC and other institutions, including National Red Cross and Red Crescent Societies and those of a religious character, with emphasis on the education of the young civilian population;

Identification of partners, within structures that may not yet have completely disintegrated or are re-emerging, in order to create the conditions rendering humanitarian assistance possible;

Cooperation and dialogue with local providers of humanitarian assistance who are familiar with local customs and conditions.

3. Follow-up

Periodical meetings, convened by the depositary of the Geneva Conventions and the Additional Protocols, pursuant to Resolution 1, paragraph 7, of the 26th International Conference of the Red Cross and Red Crescent,⁸⁰ which shall, as part of a continuing process, examine general problems relating to the application of international humanitarian law, in conformity with common Article 1 of the Geneva Conventions;

Regular meetings of experts on questions of dissemination of international humanitarian law, organized specifically in regions of conflict;

Communication by the Chairman of his Report on the present Meeting to all the States Parties to the Geneva Conventions, to all the participants in the Meeting, to the 27th International Conference of the Red Cross and Red Crescent, and to the Standing Commission of the Red Cross and Red Crescent;

⁸⁰ *Ibid.*, pp. 58 ff. (ed.).

Communication by the Chairman of his Report on the present Meeting to the Secretary-General of the United Nations to assist him in his task to report to the 53rd Session of the General Assembly on the security of United Nations personnel pursuant to United Nations Resolution 52/167 of 16 December 1997.

Lucius Cafilisch
Chairman
First Periodical Meeting

R. Madrid Declaration

We, leaders and representatives of prominent humanitarian agencies and donors, met this day, the 14th of December 1995, for a Humanitarian Summit.

RECALLING:

That in response to ever-growing needs, global humanitarian assistance has increased many-fold in the past five years to exceed today 4 billion dollars. In 1994 an estimated 45 million people depended on humanitarian assistance. However, it is clear that humanitarian assistance is neither a solution, nor a panacea for crises which are essentially man-made. This is true in Rwanda and Bosnia, but also in many other parts of the world, such as Afghanistan, Northern Irak, Liberia and Sierra Leone, Tajikistan, and the Sudan;

That in line with our respective mandates and responsibilities, we remain committed to relieve the plight of victims of man-made and natural disasters when and where we can, and to support and encourage local and regional initiatives to address crises. We will provide assistance, in particular, to protect and feed the victims, to organise shelter, to provide medical care and counselling and to reunite children with their families. We will ensure we coordinate closely amongst ourselves and with our partners to achieve maximum impact to reduce suffering;

That since the end of the Cold War, the world is torn by some 50 armed conflicts. A large number of civilians have been and are being brutally murdered, wounded or forced to flee their homes on a scale unseen since the UN Charter was drawn up. Those who cannot flee, or have nowhere to go, have suffered untold misery and seen their lives traumatized and, in many cases, their existence rendered more fragile than ever. Basic principles of international humanitarian law are often disregarded; human rights continue to be trampled underfoot in many areas of the world;

That too often the causes of humanitarian disasters still lie deep in the social and economic injustice existing within and between nations. Power struggles, poor governance and competition over scarce resources are also related to widespread abject poverty, overpopulation, and social inequality;

That the work of humanitarian organisations is guided by the principles of humanity, impartiality, neutrality and independence;

WE APPEAL TO THE INTERNATIONAL COMMUNITY AT LARGE FOR:

Determination to take whatever resolute decisive action may be necessary to resolve crisis situations and not to use humanitarian activities as a substitute for political action. The

independence and impartiality of humanitarian assistance must be fully recognized and respected. This is indispensable for saving lives in crisis situations.

The development of a global system of proactive crisis prevention. Determination and political will are needed to address both the direct and indirect causes of conflict and other humanitarian emergencies. Early warning should lead to early action.

A new and imaginative commitment to development assistance. Crises are greatly exacerbated by the current decrease in development assistance, just at a time when it needs to be increased to reduce the severity of humanitarian crises. Poverty leads to vulnerability and forces people into survival strategies that can further hasten the onslaught of crises. As a result, crises become more likely and more deadly when they strike.

A global campaign against hunger which afflicts one out of every seven people on earth. Food security is one of the issues which must be singled out in view of the particular importance that food has in poor rural households in the developing world. Not only must food production and supplies be assured but also access at affordable prices for the poorest segments of society. Similar attention must be given to the supply of clean drinking water.

Greater stress on and support for preparedness measures, especially for natural disasters. Reluctance to fund local initiatives, carry out preparedness programmes and support self-reliance may not only cause human suffering when the crisis strikes but it will also lead to much larger costs for victims and donors alike.

Resources to bring relief and political solutions also to the many "forgotten" crises which do not hit, or quickly slip from, the international headlines. These crises, just like any others, threaten the survival of millions of people and can destabilise whole regions.

Urgent steps to address the deliberate targeting of civilians in today's conflicts. Atrocities such as ethnic cleansing, torture and rape have become in many cases tools and objectives of warfare, in flagrant disregard for international humanitarian law. All parties to conflict should be held accountable. Impunity for human rights abuses must end. The International Criminal Tribunals for Former Yugoslavia and Rwanda must be enabled fully to carry out their mandates, with a view to the establishment of a permanent International Criminal Tribunal for the punishment of genocide, war crimes and crimes against humanity.

Measures to address the specific protection and assistance needs of the millions of people who have fled within their own countries as a result of conflict. Guiding principles must be formulated to improve their plight, and to safeguard their right to physical and material security. We also support the development by the UN of improved facilities to prevent human rights abuses in cases of internal conflict. Moreover, the right of refugees to seek and enjoy in other countries asylum from persecution must be upheld.

Urgent attention to be given to the needs and protection of all victims, with priority to women, children and the elderly, who are invariably the vast majority of all victims of armed conflict. The central role of women must be recognised and women must be reasserted in the planning, management and distribution of relief assistance, as the best way of ensuring that relief reaches the most vulnerable. Their reproductive health must be systematically taken into consideration.

Children, in particular, should not be deprived of their home and family, of their right to life, physical and psychological health and education, and to a peaceful existence.

Resources to remain available to meet the challenge of rebuilding war-shattered societies and thus consolidate a peace settlement and prevent the seeds of future disaster from being sown. The links between relief and development must be strengthened and local capacity to cope must be reinforced. Reconstruction involves not only water systems, bridges and roads but also civil society: the demobilisation of soldiers and the rebuilding of the judiciary and administration and of education and social services. Flexible mechanisms to provide more funding for emergency rehabilitation must be found. At the same time, relief must be managed efficiently in order to phase out humanitarian aid as soon as the emergency period is over, switching over rapidly to other forms of assistance.

All concerned to respect the humanitarian and non-political nature of our work, as well as our respective mandates, to give us full access to all persons in need, to ensure the safety of humanitarian personnel, and to provide us with a more secure basis for funding. In this connection we reaffirm international concern and commitment. The resourcefulness of human solidarity is enormous. Yet fatalism and compassion fatigue are real threats. Governments and leaders need to recognise that, in an ever more interdependent world, the vital interests of every nation in global peace and security can only be achieved through concerted international action.

Mr Brian Atwood USAID Administrator

Ms Carol Bellamy Executive Director of UNICEF

Ms Catherine Bertini Executive Director of the World Food Programme (WFP)

Mrs Emma Bonino European Commissioner for Humanitarian Aid

Mr Agostinho Jardim Gonçalves President of the Liaison Committee of Development NGOs to the European Union

Mr Peter Hansen United Nations Under-Secretary General responsible for Humanitarian Affairs

Mrs Sadako Ogata United Nations High Commissioner for Refugees

Mrs Doris Schopper President of Médecins Sans Frontières

Mr Cornelio Sommaruga President of the International Committee of the Red Cross

Mrs Julia Taft President of InterAction (the American Council for Voluntary International Action)

S. Cardiff European Council

15 and 16 June 1998

Presidency Conclusions

I. INTRODUCTION

1. In the last six months historic decisions have been taken on Economic and Monetary Union. The process of further enlargement has begun. So have negotiations on the Agenda 2000 proposals on policy reform and the future financing of the Union. The economic outlook has improved. A new process of economic reform and the promotion of employment is under way so that all Europe's citizens can enjoy the full benefits of EMU and the single market.

2. The Cardiff European Council has taken further steps in this process by:
 - * setting out essential elements of the European Union's strategy for further economic reform to promote growth, prosperity, jobs and social inclusion;
 - * identifying practical ways of bringing the Union closer to people through greater transparency, environmental integration and stepping up the fight against drugs and organised crime;
 - * establishing guidelines and a timeframe for further negotiations on Agenda 2000;
 - * reviewing other progress in developing the Union and its external relations;
 - * launching a longer-term debate on the Union's future development.
3. The European Council began with an exchange of views with the President of the European Parliament on the main topics to be discussed at its meeting.
4. The European Council warmly welcomes the presence in Cardiff of the President of the Republic of South Africa, Mr Nelson Mandela, whose personal courage and statesmanship has profoundly marked the history of his country, and has served as an example to champions of civil rights and democracy throughout the world.

II. ECONOMIC AND MONETARY UNION

5. The European Council welcomes the historic decision taken on 3 May 1998 confirming that eleven Member States met the conditions for joining the single currency, as well as the establishment of the European Central Bank on 1 June 1998. It urges the Council, the Member States and the private sector to complete rapidly the remaining legislative and practical steps needed to ensure the successful introduction of the euro on 1 January 1999. It asks the Council to take the necessary measures to ensure the external representation of the euro Member States area in an effective manner.
6. The full benefits of EMU and the European single market for all Europe's citizens can be achieved only by a strategy to promote employment through increased competitiveness and economic and social cohesion within a framework of macro-economic stability. The progress made by all Member States towards a high degree of convergence and stability is contributing to sustainable economic growth and employment throughout the Union. The introduction of the euro will help to ensure stable macro-economic conditions.
The European Council welcomes the determination of Member States to ensure effective coordination of their economic policies.

III. ECONOMIC REFORM AND SOUND PUBLIC FINANCES: THE BASIS FOR GROWTH, PROSPERITY AND JOBS

7. Sustained fiscal consolidation and economic reform are essential if the Union is to face successfully the challenges of globalisation, competitiveness, and promoting employment and inclusion. The European Council welcomes the Declaration concerning budgetary discipline and structural reform adopted by the ECOFIN Council on 1 May 1998. It also reaffirms the importance it attaches to strict budgetary discipline at Community level.

8. The importance of the contribution of the social partners was underlined by their exchange of views on these issues with the Troika of Presidencies on 14 June. The European Council favours a strong and broad based social dialogue and welcomes the intention of the Austrian Presidency to organise in Vienna a seminar with the social partners, including representatives of SMEs, to explore ways further to improve the social dialogue.

DEVELOPING THE BROAD ECONOMIC GUIDELINES AS A TOOL FOR GROWTH

9. The European Council agrees with the Council's recommendations on the Broad Economic Guidelines in the Member States and in the Community and commends them to the Council for adoption. The European Council welcomes the progress made in all Member States towards stable prices, sound public finances, and economic reform which are the foundations for more growth, prosperity and jobs throughout Europe. It confirms its view that strong fundamentals and the sound policies set out in the Broad Economic Guidelines provide the conditions for a further strengthening of the recovery and its extension into a self-sustaining, non-inflationary economic growth process over the medium and longer term - a prerequisite for substantially and durably higher employment. In this context, the European Council welcomes the statement on the international economic situation made by Finance Ministers on 15 June (Annex I).

10. After 1 January 1999 it will be important to strengthen this process further. The Broad Economic Guidelines must be an effective instrument for surveillance, coordination of economic policies, and for promoting sustained convergence.

11. Economic policy should focus on promoting growth and employment and on securing macro-economic stability and efficient working of labour, product (goods and services) and capital markets. The European Council welcomes the decision by the Council to establish a light procedure under which Member States and the Commission will produce short year-end reports within their areas of competence on product and capital markets. This procedure will fully respect subsidiarity, help exchange best practice and complement the information already available in national employment plans and other existing reports. The European Council also welcomes the Commission's proposal to produce a report on structural issues and policies drawing on this material for consideration by the ECOFIN and other formations of the Council.

ACTION FOR EMPLOYMENT

12. An enterprising and inclusive society needs to give all citizens, particularly the young and long-term unemployed, the opportunity to work and to contribute to broader economic and social development. For the first time, all 15 Member States have submitted Employment Action Plans as agreed at the Luxembourg European Council. From the initial assessments of the Action Plans by the Commission and the Council it is clear that Member States are:

- * making serious efforts to enhance the employability of the active population, in particular of the young and long-term unemployed, and of women;
- * actively promoting the development of skills and lifelong learning;
- * seeking to improve conditions for SMEs and the self-employed;
- * taking measures to promote work as opposed to dependence.

13. The European Council welcomes this progress and urges the Member States to proceed with the practical implementation of the Action Plans as speedily as possible, allowing for continuing evaluation and updating.

14. The Social Affairs and ECOFIN Councils should continue to work together to exchange best practice, to develop peer group evaluation of Member States' Action Plans and to consider the 1999 Employment Guidelines in preparation for the Vienna European Council and future European Councils. The European Council underlines the need for economic reform to be linked to social dialogue in order to enhance its understanding and acceptance

More work is also needed to define comparable indicators of progress, where necessary, and to secure the effective contribution of the social partners. The Commission has undertaken to make a report for the European Council in Vienna on ways of improving the comparability of the statistics used in that context.

15. Orientations which guide our future work on employment shall include:

- * reinforcing the development of a skilled and adaptable workforce, including through lifelong learning; particular attention should be paid to older workers;
- * strengthening action on equal opportunities by ensuring that equality between men and women is mainstreamed in all employment policies; promoting family friendly working practices, including suitable childcare and parental leave schemes;
- * tackling discrimination against the disabled, ethnic minorities and other groups at a disadvantage in the labour market;
- * promoting new ways of organising work, where necessary by reviewing the existing regulatory framework at all levels, to combine flexibility and security;
- * reviewing tax and benefit systems to make it easier for employers to create new jobs and more attractive for employees to fill them;
- * developing a culture of entrepreneurship and encouraging the growth of smaller businesses.

16. The European Council notes the interim report of the High Level Group on Industrial Change and stresses the importance of the final report for Vienna giving practical advice on how to improve European industry's responsiveness to change. The European Council look forward to the annual updating of the report on "Europe as an Economic Entity" for its meeting in Vienna.

MAKING THE SINGLE MARKET A MOTOR FOR NEW JOBS

17. Good progress has been made on modernising, extending and simplifying the single market. To enable the single market to make its full contribution to competitiveness, growth and employment, still more needs to be done. The European Council therefore:

- * welcomes the Commission's work on an extended scoreboard with indicators of effective market integration, including price differentials and implementation of single market measures, as set out in the Broad Economic Guidelines;
- * notes that improvement in the functioning of the single Market is of paramount importance for a successful EMU. This work will also help to ensure that consumers benefit fully from the lower prices brought by the single market and EMU;
- * reaffirms its commitment to transpose the remaining overdue single market Directives into national laws by the end of this year;
- * invites the Council and the Commission to pursue initiatives on enforcement of single market laws including improved complaints procedures, and greater use of informal procedures such as peer group review;
- * welcomes the work that has already been launched to improve weaker areas such as standardisation, mutual recognition and public procurement and asks the Council and Commission to pursue this work actively;
- * invites the Commission to table a framework for action by the time of the Vienna European Council to improve the single market in financial services, in particular examining the effectiveness of implementation of current legislation and identifying weaknesses which may require amending legislation;
- * reaffirms its commitment to fostering tax efficiency and discouraging harmful tax competition. The European Council welcomes the new Code of Conduct Group on business taxation, and its intention to send a preliminary report to the Council by the end of the year;
- * emphasises the need to promote competition and to reduce distortions such as state aids.

18. The European Council intends to review progress in these areas at its future meetings.

PROMOTING ENTREPRENEURSHIP AND COMPETITIVENESS

19. Member States and the Community need to work together to create conditions for fostering and encouraging entrepreneurs and small businesses. The Council has begun to identify the key factors influencing competitiveness, which include skills and adaptability of labour, an efficient market for capital, and an improved environment for business start-ups and innovation. Work in these areas should continue in partnership with business.

20. The Business Environment Simplification Task Force has identified ways to improve the business climate for entrepreneurs and promote entrepreneurship. The Commission is invited to draw up a timetable for action, in the light of the recommendations in the BEST report, to assess the extent to which current policies encourage entrepreneurship.

21. Access to capital is a key factor in encouraging entrepreneurs and smaller business to achieve their full potential. The European Council welcomes the Commission's report on the promotion of risk capital in the EU and calls on the Council and Member States to consider its recommendations, including its proposed Action Plan.

22. The Commission report "Legislate Less To Act Better: The Facts" shows the importance of subsidiarity and better regulation. This is a shared responsibility which requires the institutions and the Member States to work together.

23. The European Council welcomes the Commission's establishment of a pilot test panel of businesses to improve consultation on new regulatory proposals, and encourages it to develop its business impact assessment system.

24. It invites the Commission to press ahead with its Simpler Legislation for the Internal Market (SLIM) initiative in all areas of single market legislation. The Commission is also requested to co-ordinate the sharing of best regulatory practice, on the basis of contributions by the Member States.

25. The Commission is invited to report before the Vienna European Council on progress in all these areas.

26. Innovation is crucial to promoting enterprise. The European Council welcomes the progress made by the Council on the Fifth Research and Development Programme, and calls for it to be adopted in good time before the end of 1998.

IV. BRINGING THE UNION CLOSER TO PEOPLE

27. A sustained effort is needed by the Member States and all the institutions to bring the Union closer to people by making it more open, more understandable and more relevant to daily life. The European Council is therefore particularly concerned to see progress in policy areas which better meet the real concerns of people, notably through greater openness, and progress on environment and justice and home affairs.

OPENNESS

28. The European Union is committed to allowing the greatest possible access to information on its activities. The Internet is being used to provide more information on the European Union, including shortly a public register of Council documents. The Commission, the Council and the European Parliament should prepare rapid implementation of the new provisions on openness in the Treaty of Amsterdam.

29. The European Council welcomes the Commission's use of the Internet to promote an effective dialogue with citizens and business on their single market rights and opportunities.

30. The European Council noted the outcome of the People's Europe 98 conference. It welcomed the participation of representatives from all parts and sections of the society across Europe, and the conference's contribution to public debate. It encouraged future Presidencies and the Commission to promote such public debate.

31. The European Council invites the Council and the Member States to consider ideas to promote more contacts between young people, e.g. through the Internet, and the scope for tackling social exclusion among young people, including through sport.

ENVIRONMENT

32. A healthy environment is central to the quality of life. Our economies must combine prosperity with protection of the environment. That is why the Amsterdam Treaty emphasises the integration of environmental protection into Community policies, in order to achieve sustainable development. The European Council welcomes the Commission's submission of a draft strategy and commits itself to consider it rapidly in view of the implementation of the new Treaty provisions. It invites the Commission to report to future European Councils on the Community's progress in meeting this Treaty requirement and welcomes the commitment of the Austrian, German and Finnish Presidencies to achieve further practical progress.

33. The European Council endorses the principle that major policy proposals by the Commission should be accompanied by its appraisal of their environmental impact. It notes the Commission's efforts to integrate environmental concerns in all Community policies and the need to evaluate this in individual decisions, including on Agenda 2000.

34. The European Council invites all relevant formations of the Council to establish their own strategies for giving effect to environmental integration and sustainable development within their respective policy areas. They should monitor progress taking account of the Commission's suggested guidelines and identifying indicators. The Transport, Energy and Agriculture Councils are invited to start this process. The Council and Commission are invited to keep under review their organisational arrangements necessary to carry this forward. The European Council at Vienna will take stock of progress.

35. The European Council welcomes the progress in following up the Kyoto Conference on Climate Change. The Community and the Member States now need to develop strategies to meet their commitments under the Kyoto Protocol. Meeting these demanding targets will be a practical test of the progress the Community and Member States are making towards integrating environmental concerns into their policies. The European Council will review progress in 1999.

36. The European Council urges the earliest possible agreement of those elements of the Auto-Oil package which are under conciliation with the European Parliament. These measures will make an important contribution to improving Europe's air quality.

JUSTICE AND HOME AFFAIRS

37. Working together to tackle the ever greater dangers posed by cross-border crime is crucial for people's safety and security. The European Council welcomes the excellent progress made in implementing the Action Plan to fight organised crime, including the ratification by all Member States of the Europol Convention and the conclusion of the pre-accession pact with the countries of Eastern and Central Europe and Cyprus. It invites the Council to report to its meeting in Vienna on progress in implementing the Action Plan as a whole.

38. The European Council urges those Member States which have not already done so to ratify rapidly the Convention on the Protection of the European Communities' Financial Interests (the Fraud Convention) and the Convention of 27 September 1996 relating to

extradition between the Member States of the European Union. It also urges the Council to conclude the Joint Action on private sector corruption by December 1998 and calls on Member States to ratify the Corruption Convention by December 1999.

39. The European Council underlines the importance of effective judicial cooperation in the fight against cross-border crime. It recognises the need to enhance the ability of national legal systems to work closely together and asks the Council to identify the scope for greater mutual recognition of decisions of each others' courts.

40. Serious environmental crime is a grave problem, often with cross-border effects. The European Council invites the Council to consider, building on work in other fora, closer cooperation and common measures to protect the environment through effective criminal law provision and enforcement in each Member State.

41. The European Council is deeply concerned by the threat to our societies posed by drugs. It endorses the key elements of an EU strategy to tackle all aspects of the problem in 2000-2004 and asks the Council and the Commission to develop this into a comprehensive plan as a basis for action. Cooperation among all countries to combat drugs is vital and the European Council therefore welcomes the success of the United Nations' initiative to hold a General Assembly Special Session on that subject. This cooperation should include all aspects of the drugs problem : natural and synthetic drugs, drug misuse, trafficking and money laundering, and treatment and rehabilitation. The European Council stresses the importance of building on existing EU initiatives in other regions and, in particular, developing further cooperation with the applicant countries, including through the European Conference.

42. The Community and the Member States should continue to implement and update the Action Plan on the influx of migrants from Iraq and the neighbouring region. It invites the Council to build on this work in order to be prepared for comparable influxes in future.

43. The European Council welcomes the start of work by the Management Board of the European Monitoring Centre on Racism and Xenophobia. It looks forward to the early opening of the centre itself. It also welcomes the Commission's Action Plan against racism and looks forward to proposals for further common action.

CENTURY DATE CHANGE PROBLEM

44. Problems for information technology and other electronic systems arising from the year 2000 could have serious cross-border effects. It is therefore important that Member States share best practice in addressing the problem.

45. National programmes should raise awareness and prescribe action to minimise disruption. Such action should include ensuring millennium compliance in critical systems in the state sector, contingency planning and appropriate training to address skill shortages. The issue should continue to receive top priority. The Commission is invited to report on progress before the Vienna European Council.

V. DEVELOPING THE UNION

PREPARING TO IMPLEMENT THE TREATY OF AMSTERDAM

46. Ratification of the Treaty of Amsterdam is well underway. The European Council looks forward to its early entry into force.

47. Progress has been made in preparatory work to establish the CFSP policy planning and early warning unit and consolidate relations between the EU and the WEU. The Treaty of Amsterdam establishes that the General Secretariat of the Council shall be under the responsibility of a Secretary-General, High Representative for the CFSP, assisted by a Deputy Secretary-General. So as to meet its commitment at Amsterdam that the new Treaty should be fully operational once it enters into force, the European Council resolves to take the necessary decisions in this regard at its meeting in Vienna.

48. In the light of the good progress which has been made towards integrating the Schengen Secretariat into the General Secretariat of the Council and determining the appropriate legal bases for the Schengen acquis, the European Council looks forward to early agreement on these issues. It also looks forward to agreement at the next General Affairs Council on the mandate for negotiations with Norway and Iceland, and urges their timely completion. It calls on the Council and Commission to present to its meeting in Vienna an Action Plan on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom and security and justice.

49. The European Council notes that the European Parliament is developing proposals for the regulations and general conditions governing the performance of the duties of its Members, for consideration by the Commission and the Council as foreseen by the Amsterdam Treaty.

AGENDA 2000

50. Agenda 2000 is of fundamental importance for the future development of the European Union. The Union must make important choices about key policies and the medium term financial framework within which they will be developed. The European Council recognises that final agreement will need to be reached on the Agenda 2000 proposals as a whole.

51. Without prejudice to such a final agreement, the European Council considers that useful progress can already be identified in the light of the report from the Presidency and the Council.

The Future Financial Framework

52. A new financial perspective is essential for budget discipline, efficient expenditure and for an appropriate financial framework permitting the coordinated evolution of major categories of expenditure in accordance with the priorities defined for developing Community policies. There is broad agreement that it should be set for a seven-year period (2000 - 2006) with provision for adjustment at the time of the first enlargement. Without prejudice to the amounts to be identified for pre-accession aid, there is wide-

spread support for maintaining the present categories of expenditure within the financial perspective. In line with the conclusions of the Luxembourg European Council, a clear distinction must be made in the presentation and implementation in the financial framework between expenditure relating to the Union as currently constituted and that reserved for the future acceding countries, including after enlargement.

53. The Inter-Institutional Agreement has worked well as a framework for the annual budget procedures. The approach to negotiating a new agreement should be governed by the principles that an appropriate balance of powers between the institutions should be maintained, that the new agreement should ensure strict budgetary discipline and that it should clearly implement dual programming and entry of pre-accession and accession-related expenditure. The Council should now begin a technical examination of the Commission's proposals with the European Parliament.

54. The European Council notes the Commission's working assumption that the existing Own Resources ceiling will be maintained, but that some Member States have not accepted this. The European Council notes the Commission's undertaking to bring forward to the autumn of 1998 its report on Own Resources, including the question of relative budgetary positions in the light of policy reforms and including all other issues discussed in the European Council in Cardiff. In this context, the European Council notes that some Member States have expressed their view that burden-sharing should be more equitable and have called for the creation of a mechanism for correcting budgetary imbalances, but that some other Member States have opposed this. In the same context, it also notes that some Member States have made proposals for changing the own resources, e.g. by creating a progressive own resource, but that others have opposed this.

55. The European Council attaches importance to the implementation of Trans-European Networks, including the fourteen priority projects. It notes the initial discussions on the changes to the regulation on the financing of Trans-European Networks and invites the Council to reach a common position by December.

56. The European Council stresses the importance of sound financial management and fraud prevention. In particular, it calls on the institutions to ensure that the opportunities provided by policy reform are used to introduce policies and procedures which are as fraud proof as possible and which encourage a high standard of financial management. It also underlines the importance of preparing the enlargement candidates to participate in the Community's finances. In the enlarged Union, at least the present level of protection of the Community's financial interests must be maintained.

Reform of the Common Agricultural Policy

57. The European Council considers that the Commission's proposals constitute a basis for the continued reform envisaged at its meeting in Luxembourg in December 1997. It welcomes the progress made in the examination of the proposals.

58. In line with the overall timetable for Agenda 2000, the negotiations on key elements of the reform should take into account the need to achieve economically sound solutions and be based on the conclusions agreed by the Agriculture Council on 26 May 1998.

Reform of the Structural and Cohesion Funds

59. The European Council has taken note of the Council report on the progress made in examining the Commission's proposals for reforming the structural and cohesion funds in the light of experience and future needs.

Timetable

60. The European Council welcomes the readiness of the European Parliament and the Council to ensure a thorough consideration of the Agenda 2000 proposals in time to achieve their final adoption before the next European Parliamentary elections in June 1999. The Council for its part should now intensify its work. Substantial progress should be made at the Vienna European Council on the key elements of the package so that political agreement can be reached on the package as a whole no later than March 1999.

THE FUTURE OF EUROPE

61. The European Council held a wide-ranging discussion about the future development of the European Union, against the background of the important policy developments during the past year: the Amsterdam Treaty, the launch of EMU and of the enlargement negotiations, economic reform and the Employment Action Plans, the intensified cooperation in the fight against organised crime. It agreed on the following points:

- * the first priority is the ratification of the Amsterdam Treaty,**
- * once the Treaty is ratified, an early decision will be required on how and when to tackle the institutional issues not resolved at Amsterdam,**
- * the European Council welcomes the Commission's initiative for improving the efficacy and administration of the Commission in the light of the future development of the Union. It notes that the Council is also considering the scope for improvements in its own functioning. It invites the Council and the Commission to report on progress on these issues in the next Presidency,**
- * there is a need to bring the EU closer to people and to focus it on the issues that matter most to the European citizens - including enhancing democratic legitimacy and making a reality of subsidiarity.**

As a first step, the President of the European Council will convene an informal meeting of the Heads of State or Government and the President of the Commission to deepen their discussion and to examine how best to prepare for these issues to be considered at the Vienna European Council with a view to pursuing their discussion on the future of Europe.

ENLARGEMENT

62. Noting that the Luxembourg European Council assessed the candidatures addressed in Agenda 2000 and took the decisions necessary to launch the overall enlargement

process, the European Council welcomes the substantial progress made since Luxembourg in preparing for enlargement.

63. The Union's priority is to maintain the enlargement process for the countries covered in the Luxembourg European Council conclusions, within which they can actively pursue their candidatures and make progress towards taking on the obligations of membership, including the Copenhagen criteria. Each of these candidate countries will be judged on the basis of the same criteria and will proceed in its candidature at its own rate, depending on its degree of preparedness. Much will depend on the efforts made by the candidate countries themselves to meet the criteria. All will benefit from strengthened relations with the EU including through political dialogue and tailored strategies to help them prepare for accession.

64. The European Council welcomes the Commission's confirmation that it will submit at the end of 1998 its first regular reports on each candidate's progress towards accession. In the case of Turkey, reports will be based on Article 28 of the Association Agreement and the conclusions of the Luxembourg European Council.

65. The European Council welcomes the launch of the Accession Process in Brussels on 30 March. It is an evolutionary and inclusive process. A productive further meeting of the Ministers for Justice and Home Affairs of the 15 Members of the European Union with their opposite numbers from the 10 Central and East European applicant states and Cyprus was held on 28-29 May. Further Ministerial meetings will take place as the need arises.

66. The European Council encourages the Commission to pursue rapidly the delivery of assistance within the Accession Partnership framework. Pre-accession aid will be increased substantially. In this context it endorses in general terms the legislative framework proposed by the Commission, and invites the Council to continue its work. The priorities for projects financed by these instruments should reflect the priorities for agriculture and the environment and transport established in the Accession Partnerships. Effective coordination between these instruments and Phare, as well as with operations funded by the EIB, EBRD and other international financial institutions will be essential. The European Council notes that the basis of funding for the countries included in the enlargement process was set out at Luxembourg.

67. Following the opening of accession negotiations on 31 March 1998 with Cyprus, Hungary, Poland, Estonia, the Czech Republic and Slovenia, the European Council notes that the screening exercises for seven chapters of the *acquis* have been completed. It also welcomes the opening of the analytical examination of the *acquis* with Bulgaria, Latvia, Lithuania, Romania and Slovakia.

68. The European Council also welcomes the Commission's communication of 4 March 1998 on taking forward the European Strategy to prepare Turkey for membership. It agrees that, taken as a package, this provides the platform for developing our relationship on a sound and evolutionary basis. The European Council invites the Commission to carry forward this strategy, including the tabling of any proposals necessary for its effective implementation. The Strategy can be enriched over time, taking into account Turkey's own ideas. The European Council further invites the Presidency and the Commission and the appropriate Turkish authorities to pursue the objective of harmonising Turkey's legislation and practice with the *acquis*, and asks the Commission to re-

port to an early Association Council on progress made. Recalling the need for financial support for the European Strategy, the European Council notes the Commission's intention to reflect on ways and means of underpinning the implementation of the European strategy, and to table appropriate proposals to this effect.

69. The European Council welcomes the first meeting of the European Conference held in London on 12 March 1998, and its conclusions. The principles of participation in the Conference and its initial membership were agreed at the meeting of the European Council in Luxembourg.

VI. EXTERNAL ISSUES INTERNATIONAL TRADE

70. The European Council welcomes the outcome of the 1998 WTO Ministerial and the Heads of Government event marking 50 years of the GATT, in Geneva in May. It reaffirms its commitment to the World Trade Organisation and its dispute settlement system, and to further multilateral trade liberalisation which will enhance living standards and global economic growth. It underlines the importance of initiating a comprehensive new round of liberalising negotiations at the third WTO Ministerial Conference towards the end of 1999.

71. The European Council also stresses the importance of the EU's market access strategy as a means of removing trade barriers in third countries.

72. It endorses the Presidency's intention to reach early agreement on the common market organisation on bananas, which includes import arrangements which conform to the Community's international obligations.

EU/US

73. The European Council took note of the common declaration on the transatlantic economic partnership which was adopted in London during the Transatlantic Summit Meeting on 18 May 1998. The further development of transatlantic relations on a broad basis will continue to be one of the important objectives of the European Union.

SOUTH AFRICA

74. On the occasion of President Mandela's presence in Cardiff, the European Council reaffirms the Union's determination to strengthen existing links of friendship and cooperation with South Africa and develop these into new fields.

75. The European Council welcomes the strenuous efforts South Africa is making under its Growth, Employment and Redistribution (GEAR) programme to modernise the South African economy and integrate it into the world trading system. It recognises too the success that has already been achieved in delivering such services as better utilities and basic healthcare to improve the lives of all people in South Africa.

76. The European Council underlines the Union's determination to bring the negotiations on a comprehensive trade, development and cooperation agreement with South Africa to a successful conclusion no later than the autumn of 1998. The European Union should respond in a similar spirit in good time for the next negotiating round to the proposals by South Africa in its recent revised trade offer.

77. The European Council looks forward to the important first meeting at Foreign Minister level in Vienna on 3/4 November of the EU and Members of the Southern African Development Conference.

RUSSIA

78. The European Council welcomes the substantial progress of economic reform in Russia, which has been recognised by its recent decision to stop classifying Russia as a non-market economy on anti-dumping. It welcomes Russia's new programme of fiscal, monetary and structural policy measures, in particular measures to strengthen the tax administration. Implementation of these steps and other growth-promoting reforms are the most crucial actions Russia can take to build confidence. The European Council continues to back the active engagement of the IMF and the World Bank in support of Russian reforms. It notes that the Member States are ready to consider additional conditional support from these institutions as necessary and appropriate.

79. Recalling its conclusion at Luxembourg, the European Council notes the relevance of the Finnish proposal for a Northern Dimension in the policies of the Union and the Commission's intention to submit a report for consideration at its next meeting in Vienna. It reiterates the commitment of the EU to help Russian efforts to tackle the problem of spent nuclear fuel and nuclear waste in North-West Russia and notes that such work might be taken forward under the proposed Northern Dimension.

KOSOVO

80. The European Council agreed the Declaration in Annex II.

MIDDLE EAST PEACE PROCESS

81. The European Council reviewed the state of the Middle East Peace Process in the light of the visit to the region by the President of the European Council from 17 to 21 April and the President of the Council from 15 to 18 March, and the continuing contacts with the parties by the Presidency and the Special Envoy.

82. The European Council recalls its previous Declarations, particularly its Call for Peace in the Middle East issued in Amsterdam on 16/17 June 1997, and reaffirms the guidelines for an EU policy aimed at facilitating progress and restoring confidence between the parties, issued in Luxembourg on 12/13 December 1997.

83. The European Council expresses its very grave

T. Statute of the International Tribunal for the Former Yugoslavia (UN Doc. S/RES/827 (1993))

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal") shall function in accordance with the provisions of the present Statute.

Article 1: Competence of the International Tribunal

The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

Article 2: Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) wilful killing;
- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.

Article 3: Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- (e) plunder of public or private property.

Article 4: Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.
2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - (a) killing members of the group;
 - (b) causing serious bodily or mental harm to members of the group;
 - (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) imposing measures intended to prevent births within the group;
 - (e) forcibly transferring children of the group to another group.
3. The following acts shall be punishable:
 - (a) genocide;
 - (b) conspiracy to commit genocide;
 - (c) direct and public incitement to commit genocide;
 - (d) attempt to commit genocide;
 - (e) complicity in genocide.

Article 5: Crimes against humanity

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

U. Statute of the International Tribunal for Rwanda (UN Doc. S/RES 955(1994))

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring

States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "the International Tribunal for Rwanda") shall function in accordance with the provisions of the present Statute.

Article 1: Competence of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute.

Article 2: Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article 3: Crimes against humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment ;

- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.

Article 4: Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

- (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- (h) Threats to commit any of the foregoing acts.

V. Rome Statute of the International Criminal Court (UN Doc. A/CONF.183/9)⁸¹

Adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998

Part 2: Jurisdiction, admissibility and applicable law

Article 5: Crimes within the jurisdiction of the Court

- (1) The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
- (a) The crime of genocide;

⁸¹ Source: UN Doc. A/CONF.183/9.

- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

(2) The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6: Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 7: Crimes against humanity

(1) For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture;
 - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - (i) Enforced disappearance of persons;
 - (j) The crime of apartheid;
 - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
- (2) For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) "Forced pregnancy" means the unlawful confinement, of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
- (3) For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8: War crimes

- (1) The Court shall have jurisdiction in respect of war crimes in particular when committed as a part of a plan or policy or as part of a large-scale commission of such crimes.
- (2) For the purpose of this Statute, "war crimes" means:
- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Wilful killing;**
- (ii) Torture or inhuman treatment, including biological experiments;**
- (iii) Wilfully causing great suffering, or serious injury to body or health;**
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;**
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;**
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;**
- (vii) Unlawful deportation or transfer or unlawful confinement;**
- (viii) Taking of hostages.**
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:**
 - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;**
 - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;**
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;**
 - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;**
 - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;**
 - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;**
 - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;**
 - (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;**
 - (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;**
 - (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;**

- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
 - (xii) Declaring that no quarter will be given;
 - (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - (xvi) Pillaging a town or place, even when taken by assault;
 - (xvii) Employing poison or poisoned weapons;
 - (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
 - (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) Taking of hostages;
 - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the law of armed conflict;
 - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (v) Pillaging a town or place, even when taken by assault;
 - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) Killing or wounding treacherously a combatant adversary;
 - (x) Declaring that no quarter will be given;
 - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed con-

flicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups. (3) Nothing in paragraphs 2 (c) and (d) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

W. Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention)

Art. 23. Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:

- (a) that the consignments may be diverted from their destination,
- (b) that the control may not be effective, or
- (c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make such permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.

Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed.

Art. 59. If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.

A Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the re-

lief of the needy population and are not to be used for the benefit of the Occupying Power.

Art. 60. Relief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55, 56 and 59. The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power.

Art. 61. The distribution of the relief consignments referred to in the foregoing Articles shall be carried out with the cooperation and under the supervision of the Protecting Power. This duty may also be delegated, by agreement between the Occupying Power and the Protecting Power, to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body.

Such consignments shall be exempt in occupied territory from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory. The Occupying Power shall facilitate the rapid distribution of these consignments.

All Contracting Parties shall endeavour to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories.

Art. 62. Subject to imperative reasons of security, protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them.

X. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949 (First Geneva Convention)

Art. 19. Fixed establishments and mobile medical units of the Medical Service may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict. Should they fall into the hands of the adverse Party, their personnel shall be free to pursue their duties, as long as the capturing Power has not itself ensured the necessary care of the wounded and sick found in such establishments and units.

The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

Art. 20. Hospital ships entitled to the protection of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, shall not be attacked from the land.

Art. 21. The protection to which fixed establishments and mobile medical units of the Medical Service are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded.

Art. 22. The following conditions shall not be considered as depriving a medical unit or establishment of the protection guaranteed by Article 19:

- (1) That the personnel of the unit or establishment are armed, and that they use the arms in their own defence, or in that of the wounded and sick in their charge.
- (2) That in the absence of armed orderlies, the unit or establishment is protected by a picket or by sentries or by an escort.
- (3) That small arms and ammunition taken from the wounded and sick and not yet handed to the proper service, are found in the unit or establishment.
- (4) That personnel and material of the veterinary service are found in the unit or establishment, without forming an integral part thereof.
- (5) That the humanitarian activities of medical units and establishments or of their personnel extend to the care of civilian wounded or sick.

Art. 23. In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital zones and localities so organized as to protect the wounded and sick from the effects of war, as well as the personnel entrusted with the organization and administration of these zones and localities and with the care of the persons therein assembled.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the hospital zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital zones and localities.

Y. Code of Conduct for The International Red Cross and Red Crescent Movement and NGOs in Disaster Relief

Purpose

This Code of Conduct seeks to guard our standards of behaviour. It is not about operational details, such as how one should calculate food rations or set up a refugee camp. Rather, it seeks to maintain the high standards of independence, effectiveness and impact to which disaster response NGOs and the International Red Cross and Red Crescent Movement aspires. It is a voluntary code, enforced by the will of organisation accepting it to maintain the standards laid down in the Code.

In the event of armed conflict, the present Code of Conduct will be interpreted and applied in conformity with international humanitarian law.

The Code of Conduct is presented first. Attached to it are three annexes, describing the working environment that we would like to see created by Host Governments, Donor Governments and Intergovernmental Organisations in order to facilitate the effective delivery of humanitarian assistance.

Definitions

NGOs

NGOs (Non Governmental Organisations) refers here to organisations, both national and international, which are constituted separate from the government of the country in which they are founded.

NGHAs

For the purposes of this text, the term Non Governmental Humanitarian Agencies (NGHAs) has been coined to encompass the components of the International Red Cross and Red Crescent Movement - The International Committee of the Red Cross, The International Federation of Red Cross and Red Crescent Societies and its member National Societies - and the NGOs as defined above. This code refers specifically to those NGHAs who are involved in disaster response.

IGOs

IGOs (Inter Governmental Organisations) refers to organisations constituted by two or more governments. It thus includes all United Nations Agencies and regional organisations.

Disasters

A disaster is a calamitous event resulting in loss of life, great human suffering and distress, and large scale material damage.

The Code of Conduct

Principles of Conduct for The International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes

1: The Humanitarian imperative comes first

The right to receive humanitarian assistance, and to offer it, is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries. As members of the international community, we recognise our obligation to provide humanitarian assistance wherever it is needed. Hence the need for unimpeded access to affected populations, is of fundamental importance in exercising that responsibility. The prime motivation of our response to disaster is to alleviate human suffering amongst those least able to withstand the stress caused by disaster. When we give humanitarian aid it is not a partisan or political act and should not be viewed as such.

2: Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone

Wherever possible, we will base the provision of relief aid upon a thorough assessment of the needs of the disaster victims and the local capacities already in place to meet those needs. Within the entirety of our programmes, we will reflect considerations of proportionality. Human suffering must be alleviated whenever it is found; life is as precious in one part of a country as another. Thus, our provision of aid will reflect the degree of suffering it seeks to alleviate. In implementing this approach, we recognise the crucial role played by women in disaster prone communities and will ensure that this role is supported, not diminished, by our aid programmes. The implementation of such a universal, impartial and independent policy, can only be effective if we and our partners have access to the necessary resources to provide for such equitable relief, and have equal access to all disaster victims.

3: Aid will not be used to further a particular political or religious standpoint

Humanitarian aid will be given according to the need of individuals, families and communities. Notwithstanding the right of NGHAs to espouse particular political or religious opinions, we affirm that assistance will not be dependent on the adherence of the recipients to those opinions. We will not tie the promise, delivery or distribution of assistance to the embracing or acceptance of a particular political or religious creed.

4: We shall endeavour not to act as instruments of government foreign policy

NGHAs are agencies which act independently from governments. We therefore formulate our own policies and implementation strategies and do not seek to implement the policy of any government, except in so far as it coincides with our own independent policy. We will never knowingly - or through negligence - allow ourselves, or our employees, to be used to gather information of a political, military or economically sensitive nature for governments or other bodies that may serve purposes other than those which are strictly humanitarian, nor will we act as instruments of foreign policy of donor governments. We will use the assistance we receive to respond to needs and this assistance should not be driven by the need to dispose of donor commodity surpluses, nor by the political interest of any particular donor. We value and promote the voluntary giving of labour and finances by concerned individuals to support our work and recognise the independence of action promoted by such voluntary motivation. In order to protect our independence we will seek to avoid dependence upon a single funding source.

5: We shall respect culture and custom

We will endeavour to respect the culture, structures and customs of the communities and countries we are working in.

6: We shall attempt to build disaster response on local capacities

All people and communities - even in disaster - possess capacities as well as vulnerabilities. Where possible, we will strengthen these capacities by employing local staff, purchasing local materials and trading with local companies. Where possible, we will work through local NGHAs as partners in planning and implementation, and co-operate with local government structures where appropriate. We will place a high priority on the proper co-ordination of our emergency responses. This is best done within the countries concerned by those most directly involved in the relief operations, and should include representatives of the relevant UN bodies.

7: Ways shall be found to involve programme beneficiaries in the management of relief aid

Disaster response assistance should never be imposed upon the beneficiaries. Effective relief and lasting rehabilitation can best be achieved where the intended beneficiaries are involved in the design, management and implementation of the assistance programme. We will strive to achieve full community participation in our relief and rehabilitation programmes.

8: Relief aid must strive to reduce future vulnerabilities to disaster as well as meeting basic needs

All relief actions affect the prospects for long term development, either in a positive or a negative fashion. Recognising this, we will strive to implement relief programmes which actively reduce the beneficiaries' vulnerability to future disasters and help create sustainable lifestyles. We will pay particular attention to environmental concerns in the design and management of relief programmes. We will also endeavour to minimise the negative impact of humanitarian assistance, seeking to avoid long term beneficiary dependence upon external aid.

9: We hold ourselves accountable to both those we seek to assist and those from whom we accept resources

We often act as an institutional link in the partnership between those who wish to assist and those who need assistance during disasters. We therefore hold ourselves accountable to both constituencies. All our dealings with donors and beneficiaries shall reflect an attitude of openness and transparency. We recognise the need to report on our activities, both from a financial perspective and the perspective of effectiveness. We recognise the obligation to ensure appropriate monitoring of aid distributions and to carry out regular assessments of the impact of disaster assistance. We will also seek to report, in an open fashion, upon the impact of our work, and the factors limiting or enhancing that impact. Our programmes will be based upon high standards of professionalism and expertise in order to minimise the wasting of valuable resources.

10: In our information, publicity and advertising activities, we shall recognise disaster victims as dignified humans, not hopeless objects

Respect for the disaster victim as an equal partner in action should never be lost. In our public information we shall portray an objective image of the disaster situation where the capacities and aspirations of disaster victims are highlighted, and not just their vulnerabilities and fears. While we will co-operate with the media in order to enhance public response, we will not allow external or internal demands for publicity to take precedence over the principle of maximising overall relief assistance. We will avoid competing with other disaster response agencies for media coverage in situations where such coverage may be to the detriment of the service provided to the beneficiaries or to the security of our staff or the beneficiaries.

The Working Environment

Having agreed unilaterally to strive to abide by the Code laid out above, we present below some indicative guidelines which describe the working environment we would like to see created by donor governments, host governments and the inter-governmental org

anisations - principally the agencies of the United Nations - in order to facilitate the effective participation of NGHAs in disaster response.

These guidelines are presented for guidance. They are not legally binding, nor do we expect governments and IGOs to indicate their acceptance of the guidelines through the signature of any document, although this may be a goal to work to in the future. They are presented in a spirit of openness and co-operation so that our partners will become aware of the ideal relationship we would seek with them.

Annex I: Recommendations to the governments of disaster affected countries

1: Governments should recognise and respect the independent, humanitarian and impartial actions of NGHAs

NGHAs are independent, bodies. This independence and impartiality should be respected by host governments.

2: Host governments should facilitate rapid access to disaster victims for NGHAs

If NGHAs are to act in full compliance with their humanitarian principles, they should be granted rapid and impartial access to disaster victims, for the purpose of delivering humanitarian assistance. It is the duty of the host government, as part of the exercising of sovereign responsibility, not to block such assistance, and to accept the impartial and apolitical action of NGHAs. Host governments should facilitate the rapid entry of relief staff, particularly by waiving requirements for transit, entry and exit visas, or arranging that these are rapidly granted. Governments should grant over-flight permission and landing rights for aircraft transporting international relief supplies and personnel, for the duration of the emergency relief phase.

3: Governments should facilitate the timely flow of relief goods and information during disasters

Relief supplies and equipment are brought into a country solely for the purpose of alleviating human suffering, not for commercial benefit or gain. Such supplies should normally be allowed free and unrestricted passage and should not be subject to requirements for consular certificates of origin or invoices, import and/or export licences or other restrictions, or to importation taxation, landing fees or port charges.

The temporary importation of necessary relief equipment, including vehicles, light aircraft and telecommunications equipment, should be facilitated by the receiving host government through the temporary waving of license or registration restrictions. Equally, governments should not restrict the re-exportation of relief equipment at the end of a relief operation.

To facilitate disaster communications, host governments are encouraged to designate certain radio frequencies, which relief organisations may use in-country and for international communications for the purpose of disaster communications, and to make such frequencies known to the disaster response community prior to the disaster. They should authorise relief personnel to utilise all means of communication required for their relief operations.

4: Governments should seek to provide a co-ordinated disaster information and planning service

The overall planning and co-ordination of relief efforts is ultimately the responsibility of the host government. Planning and co-ordination can be greatly enhanced if NGHAs are provided with information on relief needs and government systems for planning and implementing relief efforts as well as information on potential security risks they may encounter. Governments are urged to provide such information to NGHAs.

To facilitate effective co-ordination and the efficient utilisation of relief efforts, host governments are urged to designate, prior to disaster, a single point-of-contact for incoming NGHAs to liaise with the national authorities.

5: Disaster relief in the event of armed conflict

In the event of armed conflict, relief actions are governed by the relevant provisions of international humanitarian law.

Annex II: Recommendations to donor governments

1: Donor governments should recognise and respect the independent, humanitarian and impartial actions of NGHAs

NGHAs are independent bodies whose independence and impartiality should be respected by donor governments. Donor governments should not use NGHAs to further any political or ideological aim.

2: Donor governments should provide funding with a guarantee of operational independence

NGHAs accept funding and material assistance from donor governments in the same spirit as they render it to disaster victims; one of humanity and independence of action. The implementation of relief actions is ultimately the responsibility of the NGHAs and will be carried out according to the policies of that NGHAs.

3: Donor governments should use their good offices to assist NGHAs in obtaining access to disaster victims

Donor governments should recognise the importance of accepting a level of responsibility for the security and freedom of access of NGHAs staff to disaster sites. They should be prepared to exercise diplomacy with host governments on such issues if necessary.

Annex III: Recommendations to intergovernmental organisations

1: IGOs should recognise NGHAs, local and foreign, as valuable partners

NGHAs are willing to work with UN and other intergovernmental agencies to effect better disaster response. They do so in a spirit of partnership which respects the integrity and independence of all partners. Intergovernmental agencies must respect the independence and impartiality of the NGHAs. NGHAs should be consulted by UN agencies in the preparation of relief plans.

2: IGOs should assist host governments in providing an overall co-ordinating framework for international and local disaster relief

NGHAs do not usually have the mandate to provide the overall co-ordinating framework for disasters which require an international response. This responsibility falls to the host government and the relevant United Nations authorities. They are urged to provide this

service in a timely and effective manner to serve the affected state and the national and international disaster response community. In any case, NGHAs should make all efforts to ensure the effective co-ordination of their own services.

In the event of armed conflict, relief actions are governed by the relevant provisions of international humanitarian law.

3: IGOs should extend security protection provided for UN organisations, to NGHAs

Where security services are provided for intergovernmental organisations, this service should be extended to their operational NGHAs partners where it is so requested.

4: IGOs should provide NGHAs with the same access to relevant information as is granted to UN organisations

IGOs are urged to share all information, pertinent to the implementation of effective disaster response, with their operational NGHAs partners.

Z. Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts

TITLE V: Provisions on a common foreign and security policy

Article J

A common foreign and security policy is hereby established which shall be governed by the following provisions.

Article J.1

1. The Union and its Member States shall define and implement a common foreign and security policy, governed by the provisions of this Title and covering all areas of foreign and security policy.

2. The objectives of the common foreign and security policy shall be:

- to safeguard the common values, fundamental interests and independence of the Union;

- to strengthen the security of the Union and its Member States in all ways;

- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter;

- to promote international cooperation;

- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

3. The Union shall pursue these objectives:

- by establishing systematic cooperation between Member States in the conduct of policy, in accordance with Article J.2;

•by gradually implementing, in accordance with Article J.3, joint action in the areas in which the Member States have important interests in common.

4. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council shall ensure that these principles are complied with.

Article J.2

1. Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that their combined influence is exerted as effectively as possible by means of concerted and convergent action.

2. Whenever it deems it necessary, the Council shall define a common position.

Member States shall ensure that their national policies conform to the common positions.

3. Member States shall coordinate their action in international organizations and at international conferences. They shall uphold the common positions in such forums.

In international organizations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.

Article J.3

The procedure for adopting joint action in matters covered by the foreign and security policy shall be the following:

1. The Council shall decide, on the basis of general guidelines from the European Council, that a matter should be the subject of joint action.

Whenever the Council decides on the principle of joint action, it shall lay down the specific scope, the Union's general and specific objectives in carrying out such action, if necessary its duration, and the means, procedures and conditions for its implementation.

2. The Council shall, when adopting the joint action and at any stage during its development, define those matters on which decisions are to be taken by a qualified majority.

Where the Council is required to act by a qualified majority pursuant to the preceding subparagraph, the votes of its members shall be weighted in accordance with Article 148(2) of the Treaty establishing the European Community, and for their adoption, acts of the Council shall require at least 62 votes in favour, cast by at least 10 members. * Second subparagraph of point 2 as amended by Article 15 AA A/FIN/SWE in the version resulting from Article 3 of AD AA A/FIN/SWE.

3. If there is a change in circumstances having a substantial effect on a question subject to joint action, the Council shall review the principles and objectives of that action and take the necessary decisions. As long as the Council has not acted, the joint action shall stand.

4. Joint actions shall commit the Member States in the positions they adopt and in the conduct of their activity. 5. Whenever there is any plan to adopt a national position or take national action pursuant to a joint action, information shall be provided in time to

allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions. 6. In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the joint action. The Member State concerned shall inform the Council immediately of any such measures. 7. Should there be any major difficulties in implementing a joint action, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the joint action or impair its effectiveness.

Article J.4

1. The common foreign and security policy shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence.
2. The Union requests the Western European Union (WEU), which is an integral part of the development of the Union, to elaborate and implement decisions and actions of the Union which have defence implications. The Council shall, in agreement with the institutions of the WEU, adopt the necessary practical arrangements.
3. Issues having defence implications dealt with under this Article shall not be subject to the procedures set out in Article J.3.
4. The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.
5. The provisions of this Article shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, in the framework of the WEU and the Atlantic Alliance, provided such cooperation does not run counter to or impede that provided for in this Title.
6. With a view to furthering the objective of this Treaty, and having in view the date of 1998 in the context of Article XII of the Brussels Treaty, the provisions of this Article may be revised as provided for in Article N(2) on the basis of a report to be presented in 1996 by the Council to the European Council, which shall include an evaluation of the progress made and the experience gained until then.

Article J.5

1. The Presidency shall represent the Union in matters coming within the common foreign and security policy.
2. The Presidency shall be responsible for the implementation of common measures; in that capacity it shall in principle express the position of the Union in international organizations and international conferences.

3. In the tasks referred to in paragraphs 1 and 2, the Presidency shall be assisted if need be by the previous and next Member States to hold the Presidency. The Commission shall be fully associated in these tasks.

4. Without prejudice to Article J.2(3) and Article J.3(4), Member States represented in international organizations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

Article J.6

The diplomatic and consular missions of the Member States and the Commission Delegations in third countries and international conferences, and their representations to international organizations, shall cooperate in ensuring that the common positions and common measures adopted by the Council are complied with and implemented.

They shall step up cooperation by exchanging information, carrying out joint assessments and contributing to the implementation of the provisions referred to in Article 8c of the Treaty establishing the European Community.

Article J.7

The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy.

The European Parliament may ask questions of the Council or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.

Article J.8

1. The European Council shall define the principles of and general guidelines for the common foreign and security policy.

2. The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines adopted by the European Council. It shall ensure the unity, consistency and effectiveness of action by the Union.

The Council shall act unanimously, except for procedural questions and in the case referred to in Article J.3(2).

3. Any Member State or the Commission may refer to the Council any question relating to the common foreign and security policy and may submit proposals to the Council.

4. In cases requiring a rapid decision, the Presidency, of its own motion, or at the request of the Commission or a Member State, shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.

5. Without prejudice to Article 151 of the Treaty establishing the European Community, a Political Committee consisting of Political Directors shall monitor the international situation in the areas covered by common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission.

Article J.9

The Commission shall be fully associated with the work carried out in the common foreign and security policy field.

Article J.10

On the occasion of any review of the security provisions under Article J.4, the Conference which is convened to that effect shall also examine whether any other amendments need to be made to provisions relating to the common foreign and security policy.

Article J.11

1. The provisions referred to in Articles 137, 138, 139 to 142, 146, 147, 150 to 153, 157 to 163 and 217 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this Title.

2. Administrative expenditure which the provisions relating to the areas referred to in this Title entail for the institutions shall be charged to the budget of the European Communities.

The Council may also:

- either decide unanimously that operational expenditure to which the implementation of those provisions gives rise is to be charged to the budget of the European Communities; in that event, the budgetary procedure laid down in the Treaty establishing the European Community shall be applicable;

- or determine that such expenditure shall be charged to the Member States, where appropriate in accordance with a scale to be decided.