INTERNATIONAL COURT OF JUSTICE

INTERPRETATION AND APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

(THE STATE OF QATAR *v.* THE UNITED ARAB EMIRATES)

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GULF CENTER FOR HUMAN RIGHTS

الشبكة العربية لمعلومات حقوق الإنسان
The Arabic Network for Human Rights Information
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UNITED ARAB EMIRATES: CRIMINALISING DISSENT
UAE 94 TRIAL DEEPLY FLAWED

Judicial Observation Report
August 2013

Article 1: 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,

August 2013 / N°614a – Photo: © Reuters

Police cars around the roads to the Court on the day of the verdict.

I. Introduction

The trial of 94 intellectuals, activists, and human rights defenders, took place before the Special Security Court within the Federal Supreme Court in Abu Dhabi, United Arab Emirates (UAE) between 4th March and 2nd July 2013. A coalition of four human rights organisations – the Gulf Centre for Human Rights (GCHR), the International Federation for Human Rights (FIDH), the Arab Network for Human Rights Information (ANHRI) and the Cairo Institute for Human Rights Studies (CIHRS) – appointed observer Melanie Gingell, a barrister of Doughty Street Chambers in London to monitor and report on the trial.

On 27th January 2013, the 94 defendants were charged with founding, organising and administering an organisation aimed at overthrowing the government, contrary to article 180 of the penal code. The offence carries a maximum sentence of 15-years' imprisonment.

At the conclusion of the trial on 2nd July 2013, 69 defendants were convicted and 25 acquitted. Many were sentenced to 10 years and others to 7 years imprisonment. The group tried in absentia received 15 years imprisonment and the UAE has started extradition proceedings against them.

The observer attempted to gain access to the first two hearings on 4th and 11th March and the final hearing which took place on 2nd July 2013. She was denied entry to all hearings. As set out in the first report[1], international observers were asked to comply with procedures and provide documents. All procedures were complied with but the observers were still denied entry.

The coalition was informed in writing by the UAE Ministry of Justice that the final hearing in the trial of the UAE 94 would be open to the public and that international observers would be permitted entry in order to monitor proceedings. However, on attending at the Ministry of Justice on the day prior to the hearing the observer was informed that she would not be admitted. On the day of the hearing it was not possible to approach the Federal Supreme Court as the surrounding roads were subject to police roadblocks. There was a very heavy police presence in the surrounding area.

No independent observation of the trial was allowed. The international media were also barred from the proceedings.

The content of this report is therefore based on information gained from interviews with family members who were allowed access to the hearings, from local activists, from local press reports and other reports of international organisations.

This report concludes that the trial was marred by recurrent and serious breaches of internationally agreed standards of fair trial. This has led to 69 unfair convictions and the imposition of lengthy terms of imprisonment from which there is no right of appeal.

It further finds that credible allegations of torture, which were repeatedly made by defendants to the tribunal, were ignored. The allegations are consistent with other reports of torture that have

1. See at "Trial Observation Report", 26th March 2013 at http://www.fidh.org/United-Arab-Emirates-Flagrant-disregard-of-fair-trial-guarantees-shown-at-13083

been made in UAE over the last 10 years[2] leading to the fear that torture is systematic within the state's penal system and the conclusion that it has occurred in this case. The failure by the authorities to allow independent observation of the trial and to instigate any investigations into the allegation adds weight to this conclusion. The failure to investigate the allegations of torture puts the authorities in breach of their international obligations under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by the UAE in July 2012.

II. The defendants

The large group of defendants includes prominent human rights lawyers, academics, judges, teachers and student leaders. They are all Emiratis with an interest in political reform. Many are members of a local group, the Reform and Social Guidance Association (Al-Islah), which advocates greater adherence to Islamic precepts. The group has engaged in peaceful political debate for many decades in the UAE. They have called on the ruling families of the UAE to take evolutionary steps towards democracy in the country.

III. The charges

All 94 defendants were charged under articles 117, 180/1 and 182 of the Federal Penal Code.

The primary charge against the 94 defendants of founding and administrating an institution aimed at overthrowing the government is pursuant to Article 180 of the federal penal code. It provides that:

> *A punishment of temporary imprisonment shall be inflicted on any person who institutes, founds, organises or administers a society, corporation, association, organisation, group, gang, or a subsidiary thereof of whatever name, aiming at overthrowing, seizing, or opposing the basic principles supporting the government regime in the State, or preventing any institution of the state or any public authority from exercising its functions, or attempting at the citizens' personal or other freedom or public rights guaranteed by the constitution or law, or harming the national unity or social peace. A punishment of imprisonment for a period not exceeding ten years shall be inflicted on any person who joins a society, corporation, association or the organisations stated in the first paragraph of this article or cooperates therewith or participates therein in any manner or provides them with any financial or material aid whilst being aware of their purposes.*[3]

2. See AI reports on UAE http://www.amnesty.org/en/region/uae?page=8
3. http://www.scribd.com/doc/122309224/UAE-Penal-Code-amended-1987#page=72

IV. Arrests and pre-trial detention

The arrests began in early 2012 when 7 Emirati citizens were arrested after having been stripped of their nationality in December 2011. The arrests continued until many men were detained and held incommunicado in secret detention centres without charge. Of these people, at least 25 had signed a petition in March 2011 calling for democratic reform in the country. Arrests continued until a total of 94 were charged within the same indictment.

V. The hearings

The hearings took place in the Special Security Court within the Federal Supreme Court in Abu Dhabi before a tribunal made up of Presiding Judge Falah Al-Hajiri, Judge Mohamed Ahmed Abdulqader and Judge Adbulrassol Tantawy. There were a total of 14 days set aside to hear the case of the 94 defendants. The hearing days were not consecutive and took place on various dates between 4th March and 2nd July 2013. Several of the sessions did not last for a full day.

At the first hearing on 4th March, the 61 male defendants who had been detained and 13 women who had been granted bail entered pleas of not guilty. At the second hearing on 11th March a further 12 defendants (some of them relatives of the detainees) had been arrested and entered pleas of not guilty. This brought the total present at the hearings to 86. The remaining 8 were tried in absentia as they were outside the country.

At the final hearing on 2nd July 2013, 69 were found guilty and 25 acquitted including the 13 women defendants.

Many defendants were sentenced to 10 years and the 8 who were tried in absentia were sentenced to 15 years. The rest received terms of 7 years and some financial penalties. The sentences are followed by a three-year monitoring period for those sentenced to 10 years.

VI. Right to a fair trial

The right to a fair trial guarantees all persons a public hearing before a legally constituted, competent, independent and impartial tribunal.[4] By international law, this right is an absolute one that may suffer no exception.[5]

4. International Covenant on Civil and Political Rights Article s 2(1),3.14 (1),26.
5. United Nations Human Rights Committee, General Comment 32, paragraphs 18 and 19.

Defendants' relatives after the verdict was announced.

VII. UAE, regional and international legal framework: right to a fair trial

There are constitutional fair trial guarantees under the terms of Article 28 of the UAE constitution that: "an accused shall be presumed innocent until proven guilty in a legal and fair trial."

The Arab Charter on Human Rights is the binding regional instrument ratified by the UAE:

Article 13 (1) of the Arab Charter guarantees the right to a fair trial in criminal proceedings "before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him..."

Article 13 (2) guarantees that trials "shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights."

Article 14 (1) provides that: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant."

Article 14 (5) provides that: "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. 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."

Article 16 sets out the presumption of innocence and the following minimum guarantees including equality of arms, adequate time to prepare a defence, to be able to communicate with his/her family, the right to appeal and to security of person and privacy:

1. *The right to be informed promptly, in detail and in a language which he understands, of the charges against him.*

2. *The right to have adequate time and facilities for the preparation of his defense and to be allowed to communicate with his family.*

3. *The right to be tried in his presence before an ordinary court and to defend himself in person or through a lawyer of his own choosing with whom he can communicate freely and confidentially.*

4. *The right to the free assistance of a lawyer who will defend him if he cannot defend himself or if the interests of justice so require, and the right to the free assistance of an interpreter if he cannot understand or does not speak the language used in court.*

5. *The right to examine or have his lawyer examine the prosecution witnesses and to secure the attendance of witnesses on his own behalf and for such witnesses to be examined in the same way as the witnesses against him.*

6. The right not to be compelled to testify against himself or to confess guilt.

7. The right, if convicted of the crime, to file an appeal in accordance with the law before a higher tribunal.

8. The right to respect for his security of person and his privacy in all circumstances.

In addition to the binding instruments set out above there are relevant persuasive standards contained in the Universal Declaration of Human Rights (1948), the United Nations Basic Principles on the Independence of the Judiciary (1980) and the United Nations Basic Principles on the Role of Lawyers (1990).

The United Nations Basic Principles on the Independence of the Judiciary[6] state in the following articles:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

The United Nations Basic Principles on the Role of Lawyers[7] state that:

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.

The Universal Declaration of Human Rights Article 3 guarantees "the right to life, liberty and security of person."

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6. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.
7. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).

Although the UAE is not a signatory to the International Covenant on Civil and Political Rights, it constitutes an authoritative source and guideline reflecting international best practice in relation to the conduct of criminal trials. Article 14 states:

> *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 judgment 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.*
>
> *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;*
> *(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;*
>
> *5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*

VIII. Violations of the right to a fair trial

Right to a fair trial before a competent, independent and impartial court

There are concerns that the tribunal in this case was not independent and free to conduct the trial in a proper manner. These concerns are based upon:

(1) At the first hearing on 4th March the judge ordered that five defendants, Khamis Al-Sam, Abdulsalam Darwish, Ibrahim Al-Yassi, Saif Al-Ichlah and Adnan Julfar, be transferred to hospital in order to be examined by medical specialists. This order was never carried out. This was the only time that the judge acknowledged the poor physical condition of defendants in the trial. The judge did not pursue the failure to comply with the order. He further refused to entertain the defendants' frequent appeals at later hearings to investigate allegations of torture.

(2) At the 6th session on 16th April the judge demanded to know why the case papers had not been supplied to the defendants. The judge called for the prison wardens to be brought to court to explain. There was no compliance with this order.

(3) At the 6th session the judge also criticised local media who had published articles endorsing prosecution evidence and approving the charges against the defendants. The local media nevertheless continued to publish a series of prejudicial articles in the run up to the final hearing.

(4) At the 7th session on 30th April the judge ordered that the defendants be returned to state run prisons (instead of secret detention places where some of them were being held).

(5) At the hearing on 6th May the defendant Mohammed Abdullrazaq stated that the judge's order at the end of the last hearing had been overruled by security services in that the 7 defendants who had had their citizenship stripped from them were taken back to Al-Sader jail instead of Al-Razeen with the other defendants. They were held there incommunicado in solitary confinement.

(6) The judge again ordered that the prison wardens allow the defendants to have the case papers. He ordered that the Public Prosecutor personally supervise that this order be carried out. This order was complied with in a partial manner at later stages in the trial.

The discrepancy between the judicial approach to allegations of torture and that to providing case papers lead to concern that the tribunal was not free to follow lines of inquiry concerning torture and that some other agency had intervened. But further, where the judge did attempt to control proceedings through orders, often these were not carried out.

After the first hearing the judge did not pursue his initial ruling to have certain defendants medically examined. He allowed defendants to make allegations of torture within the proceedings but did not make any rulings in relation to the allegations. In particular he did not order any investigation into the allegations.

In contrast to this, the tribunal repeatedly ordered the prosecution to ensure that case papers were delivered to the defendants in detention over the course of many hearings. These orders, however, were never fully carried out.

Right to a Public Hearing

Trials shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects fundamental freedoms and human rights.[8]

The trial was not held in public. The authorities made no suggestion that there should be restrictions warranted by the interests of justice or of national security; on the contrary, the authorities continued to claim the hearing was fully open to the public despite denying entry to some family members, members of the general public, the international media and international legal observers. Further, people who have used social media to publicise aspects of the trial have been imprisoned (see below).

Strict procedures were put in place for family members to gain entry to the court. Each male defendant was allowed two family members and each female one family member. They had to provide copies of ID cards and car registration plates. They could take nothing in with them. Some family members were arbitrarily refused entry to certain hearings.

Some people who discussed what happened inside the courtroom have been imprisoned. On 8th April 2013 Abdullah Al-Hadidi, the son of a defendant, was convicted under Article 1 of the new Cybercrimes Decree of spreading false information about the trial and sentenced to 10 months imprisonment. He had tweeted that allegations of torture within the trial should be investigated. On 11th May 2013 Waleed Al-Shehhi, an Emirati not connected to the trial used his twitter account to make statements supportive of the UAE 94. He was initially detained at an unknown location, until he was transferred to Al-Wathba jail on 17th May. At least ten individuals from the families received calls from the court after the hearing on 19th March 2013 informing them that they may no longer attend the hearings. These individuals had all tweeted about the court proceedings.

The international media was denied entry to the proceedings. Following the first hearing on 4th March the security services confiscated cameras and recording equipment when journalists tried to interview defendants' relatives in a public place.

Prior to the first two hearings, international legal observers were required to provide documents and attend at different ministries to get permission to enter. Despite complying with all the requirements they were not admitted. One member of the legal observation team was followed by security services.

Prior to the last hearing on 2nd July 2013, the observer was informed in writing by the ministry of justice that she would be admitted. She was not, and further she and a journalist were taken by police and detained at a police station because they spoke to relatives of the defendants in a public place after the hearing. They were later released without charge. A senior officer apologised to the observer.

8. Arab Charter on Human Rights, Article 13(2)

Representatives of the local media were admitted. Their reporting during the course of the trial was so partisan as to be criticised by the tribunal.

Overall, it was obvious that this trial was not held in public. The authorities did not approach this issue in an open and transparent way. Their claims that the hearing was public were demonstrably untrue.

Presumption of Innocence

The terms of the local press coverage was such as to ignore the presumption of innocence. For example on 28th January 2013 *The National* published an article quoting the Attorney General, Salim Saeed Kubaish setting out the prosecution case at length as if it had already been proven. The paper reports him as saying for example that the UAE 94 "launched, established and ran an organisation seeking to oppose the basic principles of the UAE system of governance and to seize power."

The local press continued to report the case in partisan terms throughout the life of the trial.

The defendants were treated as if they were convicted criminals in the course of the trial. They were brought to court in handcuffs and shackles. Until the fourth hearing, they were obliged to wear prison uniform in court instead of civilian clothing as would be usual for remand prisoners.

Right to Defence

The prosecution evidence ran to approximately 7000 pages and it would therefore have taken many hours over many months to prepare a defence adequately. None of the defendants or their lawyers received documents in good time so as to allow this to happen. Some of the defendants received incomplete court documents after the trial had begun. Many did not receive documents until very late in proceedings. This problem was raised before the tribunal on many occasions but the situation was not remedied.

One defence counsel had to act for 86 of the defendants as other lawyers were reluctant to come forward. There were a total of 7 defence lawyers in the case. One withdrew in the course of the trial citing personal reasons.

Not all the defendants had had an opportunity to see a lawyer before the trial commenced. At the third hearing on 18th March, for example, a defendant told the judges that he had not yet been able to see a lawyer.

On 19th March Khames Al-Sam, a sitting judge prior to his arrest, told the tribunal that he had been denied the opportunity to prepare a defence over the previous 6 months.

At the hearing of 26th March the defendant Dr Al-Roken, a human rights lawyer, handed the tribunal a formal request that the defendants be allowed access to the case papers and be allowed to prepare a defence. This document listing many violations of the right to a fair trial was signed by 72 defendants. The tribunal declined to consider this application and the trial continued. At the same hearing the defence lawyer for the 86 defendants complained to the judge that he had again been unable to visit those of his clients detained at Al-Wathba jail.

At the hearing on 6th May 2013, the defendant Khalid Al-Shiba told the tribunal that the lengthy handwritten notes he had prepared having read the case file had been confiscated by the prison authorities.

The trial took place over the course of 13 days. This meant that there was inadequate time for 94 defendants to be heard sufficiently or at all.

Overall, the observer was driven to the conclusion that the defendants were not given the chance to defend themselves properly and were not given adequate time and facilities for the preparation of their defence.

Right to Equality of Arms

The defence was significantly disadvantaged in comparison to the prosecution. They did not have the same procedural means and opportunities available to them during the course of the trial nor were they in an equal position to make their case.

At the hearing on 26th March 2013, the defendants Ahmed Al-Tabour, Salim Sahooh, Abdulrahmin Al-Zarouni, Dr. Hadif Al-Owais and Rashid Khalfan Bin Sabt all asked to be allowed to speak but were not allowed to do so.

The prosecution team sat to the right of the judges, closer to them than the defence, who sat at tables facing the judges. When the court rose, the judges and the prosecution retire to the same room. The prosecutor had the opportunity to discuss the case with the judges outside the courtroom in the absence of the defence lawyers.

The defence lawyer representing the 86 defendants was initially not allowed to bring case documents into court. The defence was not afforded a transcript of the proceedings, as was provided to the prosecution. In addition, the defence was not given copies of voice recordings and videos relied on by the prosecution.

Right to Call and Examine Witnesses

The defendants did not have the right to examine witnesses against them and to secure attendance and examination of witnesses on their behalf under the same conditions as witnesses appearing against them.

Defence lawyers were restricted in the number of witnesses they could call and the number of questions they could ask. At the hearing on 18th March 2013 three prosecution witnesses gave evidence. Only three defendants were allowed to ask questions. The defence lawyers were limited to five questions each. One of them had prepared a total of 400 questions.

At the hearing on 26th March 2013 six sealed envelopes containing videos were handed to the tribunal. The defence had not had an opportunity to see this evidence in advance. They were not given an opportunity to instruct voice recognition experts in order to rebut those instructed by the prosecution.

The defence wanted an opportunity to call expert witnesses to show that the signatures on statements which the prosecution claimed had been signed by the defendants had been falsified. They were denied the opportunity.

The matters set out above suggest that defence questioning was limited to an unreasonable degree in the course of the trial. No similar restrictions appear to have been imposed on the prosecution.

Right to a Public and Reasoned Judgment

Everyone has the right to know the basis upon which a judgment is made against them.[9] Despite the fact that many were convicted and sentenced to lengthy custodial terms on 2nd July, no reasoned judgment was made available to the defendants until 25th July 2013.

Right to Appeal

Everyone convicted in criminal proceedings has the right to challenge his or her conviction and sentence and have it reviewed before a higher tribunal.[10]

In this case the Special Security Court has been constituted with no higher tier of courts for appeal. The authorities have an obligation to arrange their procedures so as to ensure that there is the possibility of double judicial scrutiny in all cases. The establishment of special jurisdictions for certain categories of crime or of people is not an adequate reason to fail to provide a forum for appeal.[11]

IX. Legal framework in relation to torture and inhuman treatment

The UAE ratified the United Nations Convention Against Torture and Other Cruel or Degrading Treatment or Punishment in July 2012:

> Article 2 guarantees the right to be free of torture: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture."
>
> Article 12 provides that: "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."

9. Human Rights Committee: General Comment 32
10. United Nations International Covenant on Civil and Political Rights, Article 14, para. 5
11. Human Rights Committee Views of 1st November 1991, Raphael Henry v Jamaica, Communication No.230/1987

Article 15 provides that: "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."

There is a constitutional guarantee against torture in the UAE Constitution in Article 26: "... No person shall be subjected to torture or to degrading treatment."

X. Violations of the right to be free from torture

Credible and widespread allegations of torture of the defendants were made throughout the proceedings. They were made in court during the first hearing and repeated on several occasions. At the first hearing the tribunal ordered that five defendants be transferred to hospital and be examined by specialists. This order was never carried out and the defendants were returned to their places of detention without medical assessment or treatment.

Witnesses in the courtroom described the physical condition of some of the defendants as being poor. They had lost significant amounts of weight, some were incoherent, and some had to be supported in order to stand. Some of the relatives were distressed by the appearance of their family members.

The tribunal failed to order independent investigations into the veracity of the allegations. The trial was allowed to proceed despite the Judge's view that some of the defendants required hospital treatment.

A central piece of evidence relied on by the prosecution was the apparent confession of Ahmed Bin Ghith Al-Suwaidi. He retracted the statement at the first opportunity at the first hearing. He made a plea to the court to protect his life and those of his family as he had been told they would be killed if he dared to plead not guilty.

Allegations of torture and inhuman treatment during the pre-trial period

The family and lawyers of Ahmed Al-Suwaidi complained that he was held incommunicado at a secret location prior to the trial. This would amount to an enforced disappearance placing Al-Suwaidi outside the reach of law.[12]

Dr. Ahmed Al-Zaabi documented that during interrogations in a secret detention facility he was tortured by being suspended upside down and blindfolded. This is as per the prosecuting document.

12. Article 2 International Convention for the Protection of All Persons from Enforced Disappearance: *For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.*

Hearing of 4th March 2013

Dr. Al-Roken called on the court to order that Ahmad Ghaith Al-Suwaidi be given treatment because of the obvious signs of intense psychological anguish he exhibited. Dr. Al-Roken also called for his son and son-in-law to be released as they had suffered 5 months of enforced disappearance during which time they had suffered physical torture including beatings.

Ahmad Ghaith Al-Suwaidi made a plea that his life and those of his family be spared.

The lawyer for the defendant Judge Dr Ahmad Al-Zaabi alleged that his client had been tortured including having his nails extracted.

Issa Al-Sari said he had been locked in a vehicle for approximately half an hour while petrol fumes were directed in through the air vents causing him to choke and struggle to breathe.

Dr. Ibrahim Al-Yassi told the Court he had been beaten and suffered facial injuries especially to his mouth.

Rashid Al-Roken, Dr. Al-Roken's son, said he had been beaten several times a day.

Hearing of 11th March 2013

Dr. Ahmed Saleh Al-Hammadi said he had been treated in a degrading manner. He had been handled roughly and threatened with physical violence if he did not cooperate. He said that he could hardly recognise some of the defendants now as they looked as if they had "come out of their graves."

Issa Al-Sari was in a very poor psychological condition. He was talking to himself and at times shouting incoherently. He seemed to be hallucinating. Medical experts from among the relatives in court speculated that he could have been under the effects of a drug. The relatives were shocked and distressed by his appearance.

Ahmad Ghaith Al-Suwaidi was in a poor condition. He did not seem to be aware of his surroundings, he did not speak and only shook his head when he was spoken to.

A defendant suffering from a bladder disease was denied access to adequate toilet facilities.

Dr. Al-Roken gave further details of the torture inflicted on his son and son-in-law. He said that on one occasion over the course of ten days they were repeatedly beaten on the hands and knees and that bodily hair was pulled out. They were put in electric chairs and threatened with electrocution.

Lawyers requested that the health of all defendants be assessed because of their dramatic weight loss.

Hearing of 19th March 2013

The defendant judge Khamees Al-Sam told the judge that defendants who were ill and being held in the prison medical clinic were being shackled and left in solitary confinement between 10pm and 5am.

Hearing on 26th March 2013

The defendant judge Dr. Ahmed Al-Zaabi told the judge that he had been severely beaten during interrogation to the extent that he had urinated blood. He had several wounds including bruising on the legs. One leg was so swollen it looked like "an elephant's leg." He had been unable to sleep or pray. He had been unable to walk properly for a month. He had been denied medical care.

The judge refused to give Fatimah Humidan leave to travel for medical treatment. She presented a report from her cardiologist saying that she needed urgent heart surgery, which was not available in the UAE. The judge said that the report should say that she needed to travel abroad not just that the procedure wasn't available in the UAE.

The 70-year-old mother of Dr. Al-Roken was denied entry to the hearing although she had attended all previous hearings. She had travelled for two hours to attend. The security services said her name was not on the list.

Hearing of 6th May 2013

Abdullah Al-Hajri stated that after he was detained, the prosecution denied to his family that they knew where he was. During this time he was beaten several times a day and subjected to electric shocks.

Ibrahim Al-Marzooqi told the judge that he had been tortured in detention for a month. The judge told him that this was not the time to discuss such things.

A letter was submitted to the court listing 17 types of torture to which the defendants had been subjected. It was signed by 71 of them.

Outside the trial hearings

On 9th May the defendants who are members of Al-Islah wrote a letter to the President of the UAE which included details of abuses they had suffered. In relation to torture they wrote, "We members of Al-Islah, were unlawfully imprisoned. We were held in solitary confinement for months in cramped window-less cells. As the painfully bright lights blared day and night, we were insulted, sworn at, threatened, and verbally abused. Some of us were physically abused as well. We were denied our right to legal counsel, and to medical care – to mention only a few of the horrendous violations we went through. Those violations are both alien to our country and ill suited for it."

XI. Conclusion on torture and inhuman treatment

By the end of these proceedings there have been constant and consistent allegations of the most serious torture and cruel, inhuman and degrading treatments of the defendants. The number of complaints, the terms of those complaints and the wide variety of the sources of those complaints amount to a formidable basis to accept that the most serious violations of the defendants' rights have taken place. The failure of the Court to undertake a thorough and open investigation of those complaints is both a breach of the Court's duty in its own right, and lends further weight to the truth of the allegations. In addition, the UAE's refusal to allow international observers into the trial is at least consistent with a deliberate attempt to conceal these inhuman treatments.

On all the material available to this mission, the observer has no hesitation in concluding that torture and other cruel, inhuman and degrading treatments have occurred in this case.

XII. Overall conclusion

For all the reasons set out above, it is concluded that the detention, trial and treatment of the defendants in this case has led to violations of numerous and widely accepted human rights, that the trial failed to even approach the most basic standards necessary for a fair trial, and that sustained and grave torture has been inflicted.

The accused in this case suggest that the actions for which they are being prosecuted are the exercise of the rights to freedom of association and to freedom of expression. These are important rights. They are recognised by articles 19 and 22 of the ICCPR and Article 24 of the Arab Charter, to which the UAE is a signatory. The coalition of the Gulf Centre for Human Rights, the International Federation for Human Rights, the Arab Network for Human Rights Information and the Cairo Institute for Human Rights Studies considers that this trial indeed aims at silencing lawyers, academics, judges, teachers and student leaders daring to advocate for democratic reforms in their country. This instrumentalisation of the judiciary blatantly violates their rights to freedom of opinion and expression.

XIII. Recommendations

The coalition of the Gulf Centre for Human Rights, the International Federation for Human Rights, the Arab Network for Human Rights Information and the Cairo Institute for Human Rights Studies therefore calls on the UAE authorities to:

(1) Order the immediate release of those imprisoned as a result of this blatantly unfair trial, pending the outcome of any further inquiry.

(2) Establish an independent inquiry into the conduct of the trial of the UAE 94 and make the findings of such inquiry public;

(3) Provide an independent investigation into the allegations of torture, cruel, inhuman and degrading treatments forthwith, and ensure medical and psychological support, rehabilitation, compensation and other relevant forms of reparation to those who have been victims of such acts and make accountable those responsible for these crimes;

(4) Establish an appellate mechanism to reconsider all the convictions in this case, once the above inquiries have been completed in accordance with their right to a fair trial and to a defense;

(5) Amend the relevant law and ensure the right to appeal any judicial decision including those made in special courts in accordance with the right to a fair trial and to a defense;

(6) Ensure all fair trial guarantees including the independence of the judiciary;

(7) Refrain from using criminal proceedings against those advocating peacefully for the respect of democratic reforms or more generally to restrict freedom of opinion and expression;

(8) Ratify the UN International Covenant on Civil and Political Rights and the Optional Protocol to United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(9) Invite UN Special Rapporteurs on torture, freedom of opinion and on the independence of judges and lawyers to visit the UAE and grant them access to those convicted in this case, in particular those who stated that they have been tortured.

The coalition further calls upon the international community to:

(1) Systematically raise concerns regarding the blatant unfairness and politically motivated trial of the 94, in all bilateral dialogues with the UAE authorities, as well as in relevant UN bodies; and call for the immediate release of all those imprisoned as a result of this trial;

(2) Request access of their diplomatic personnel in the UAE to the 61 prisoners of opinion currently in jail as a result of this trial.

Abu Dhabi skyscape.

The **Gulf Centre for Human Rights** is an independent, non-profit, and non-governmental NGO that works to strengthen support for human rights defenders (including independent journalists, bloggers, lawyers, etc.) in Bahrain, Iraq, Iran, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen. The GCHR was founded in 2011 by a group of human rights rights defenders, registered in Ireland and has offices in Denmark and Lebanon. In the second half of 2012, GCHR decided to begin providing support to human rights defenders in Syria, which although not technically a Gulf country, shares borders with the Gulf region and has a political impact on the region.

www.gc4hr.org

Founded in 1993, the **Cairo Institute for Human Rights Studies** (CIHRS) is an independent regional non-governmental organization which aims to promote respect for the principles of human rights and democracy in the Arab region. A key component of CIHRS' mandate is to help shape the understanding of and discourse around the most pressing human rights issues in the Arab region. CIHRS then seeks to coordinate and mobilize the key players and NGOs across the Arab world to work together to raise public awareness about these issues and to reach solutions in line with international human rights law.

www.cihrs.org

The Arabic Network for Human Rights Information (ANHRI) is a central repository for human rights information and websites in Arabic throughout the Middle East and North Africa. ANHRI provides a central site where Arabic readers can easily find links to and information about all human rights groups and their work in the region. The Network also focuses on and seeks the expansion of freedom of expression on the internet in the Middle East. Its objective is to create a space where issues such as death penalty or minorities' rights and other vital information about human rights can be discussed freely, and where people who share an interest in these areas can create a community.

www.anhri.net/

fidh

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FIDH represents 178 human rights organisations on 5 continents

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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: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate
FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement
FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation
Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

fidh

Find information concerning FIDH's 178 member organisations on **www.fidh.org**

Annex 125

Committee to Protect Journalists, *Saudi Arabia, UAE, Bahrain block Qatari news websites* (25 May 2017), *available at* https://cpj.org/2017/05/saudi-arabia-uae-bahrain-block-qatari-news-website.php

In this 2009 file photo, Palestinian journalists work in the Ramallah office of Qatari broadcaster Al-Jazeera. Saudi Arabia, the United Arab Emirates, and Bahrain blocked access to Al-Jazeera's websites on May 24, 2017. (Reuters/Fadi Arouri)

Saudi Arabia, UAE, Bahrain block Qatari news websites

May 25, 2017 5:17 PM ET

New York, May 25, 2017-- Authorities in Saudi Arabia, the United Arab Emirates, and Bahrain should cease blocking access to news websites, the Committee to Protect Journalists said today. Authorities in the allied kingdoms yesterday blocked access to at least eight

Qatari-funded news websites, including those of regional broadcaster Al-Jazeera, according to Al-Jazeera, government statements, and news reports.

Regional media published screen shots of error messages saying the websites were blocked by government order.

The censorship came hours after the Qatari state news agency QNA reported remarks purportedly made by Qatar's Emir, Sheikh Tamim bin Hamad Al-Thani, in which he appeared to criticize U.S. foreign policy, to suggest that U.S. President Donald Trump might not last long in power, to express support for Hezbollah and Hamas, and to advocate for better relations with Iran and Israel. In a series of tweets, chief Qatari government spokesman Sheikh Saif Bin Ahmed Al-Thani swiftly wrote that the news agency had been hacked, that what had been published was "not true and totally baseless," and that authorities were investigating the "despicable act."

The Qatari government also claimed that hackers had written a series of tweets from the Qatari Ministry of Foreign Affairs' account accusing Arab countries of plotting against Qatar and claiming that the country had withdrawn its ambassadors to Bahrain, Egypt, Kuwait, Saudi Arabia, and United Arab Emirates in response, according to media reports.

Diplomatic relations between Qatar and its fellow members of the Gulf Cooperation Council have long been strained by divergent foreign policies.

"We call on Gulf kingdoms to resolve their political differences without breaking their international treaty obligations to respect the free flow of information," said CPJ's Middle East and North Africa Coordinator Sherif Mansour. "Gulf kingdoms should not hold the public's right to information hostage to a diplomatic spat, and should immediately cease blocking Qatari-funded websites."

Saudi authorities blocked at least eight Qatari-funded news websites, including those of Al-Jazeera's Arabic, English, and documentary channels; the website of the Qatari state news agency QNA; and the websites of the daily newspapers *Al-Watan, Al-Raya, Al-Arab,* and *Al-Sharq*, the Saudi-government-funded Al-Arabiya satellite news channel reported yesterday.

The Emirati government-owned daily newspaper *Al-Bayan* yesterday quoted an Emirati official, speaking anonymously, as saying that the country had blocked access to Al-Jazeera's websites and "all" Qatari newspapers.

Bahraini authorities likewise said they had blocked Al-Jazeera and other unspecified Qatari media outlets for what they called attempts to incite sedition, in violation of agreements between members of the Gulf Cooperation Council, according to media reports.

Al-Jazeera yesterday reported on Bahraini security forces' forcible dispersal of a sit-in protest near the home of Shia preacher Eisa Al-Qassem, who is under house arrest pending the conclusion of his trial on corruption charges. At least five people were killed and 286 were arrested on terrorism charges in the operation, according to the Bahraini Ministry of Interior.

Officials from the communications and information ministries of Saudi Arabia, Bahrain, and the United Arab Emirates did not immediately respond to CPJ's request for comment.

Egyptian authorities also blocked access to 21 websites, including Al-Jazeera and other Qatari-owned media outlets, alleging that they support terrorism, are affiliated with the Muslim Brotherhood, or report lies, according to news reports.

On May 20 Saudi King Salman Ibn Abdulaziz Al-Saud, U.S. President Trump, and Egyptian President Abdel Fattah El-Sisi and others met in Riyadh for a summit "to embark on new initiatives to counter violent extremist messaging, disrupt financing of terrorism, and advance defense cooperation," according to a statement released afterward.

Short URL:
https://cpj.org/x/6cde

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Annex 126

Reporters Without Borders, *Al Jazeera - collateral victim of diplomatic offensive against Qatar* (7 June 2017), *available at* https://rsf.org/en/news/al-jazeera-collateral-victim-diplomatic-offensive-against-qatar

REPORTERS WITHOUT BORDERS
FOR FREEDOM OF INFORMATION

NEWS

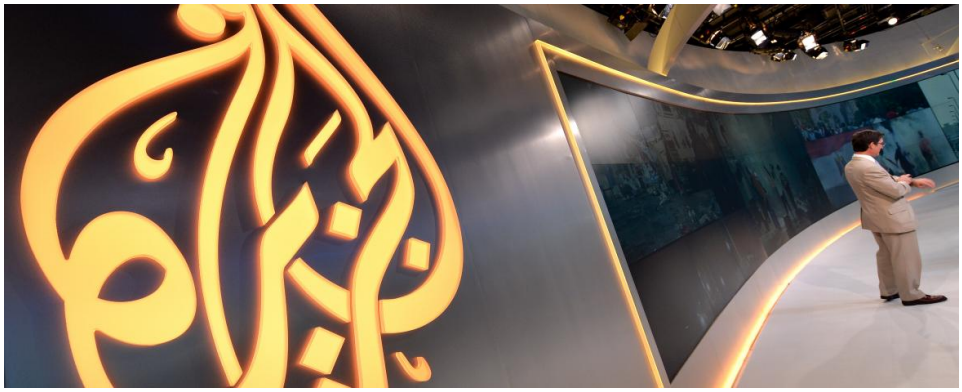
June 7, 2017

Al Jazeera – collateral victim of diplomatic offensive against Qatar

SAUDI ARABIA QATAR JORDAN EGYPT MIDDLE EAST - NORTH AFRICA

CONDEMNING ABUSES

Stan Honda/AFP



Reporters Without Borders (RSF) condemns the offensive by a group of Arab countries against Al Jazeera Media Network, which is suffering the consequences of their decision to cut diplomatic relations with Qatar.

Just hours after Saudi Arabia and three other Arabian Peninsula countries announced that they were severing diplomatic ties with Qatar on 5 June, Saudi Arabia closed the *Al Jazeera* bureau in Riyadh and withdrew its operating licence.

The state-owned *Saudi Press Agency* **accused (http://www.spa.gov.sa/viewstory.php?lang=ar&newsid=1637497)** *Al Jazeera* of promoting the propaganda of terrorist groups, backing the Houthi rebel militias in Yemen and trying to create divisions within Saudi Arabia.

Following the Saudi lead on Qatar, the Jordanian government later also **announced (http://www.aljazeera.com/news/2017/06/jordan-downgrades-ties-qatar-170606212813381.html)** its intention to close the *Al Jazeera* bureau in Amman and to withdraw the Qatari-owned TV broadcaster's licence to operate in Jordan.

Egypt, another member of the group of countries severing diplomatic ties with Qatar, already forced *Al Jazeera* to pull out in 2013 after **seizing (https://rsf.org/en/news/al-jazeeras-egyptian-tv-station-banned-premises-raided)** its production equipment and transmitters. More recently, Gen. Sisi's government **blocked (https://www.theguardian.com/world/2017/may/25/egypt-blocks-access-news-websites-al-jazeera-mada-masr-press-freedom)** the *Al Jazeera* website at the same time as 20 other news websites accused of bias in favour of the outlawed Muslim Brotherhood. A similar measure was taken by Saudi Arabia, Bahrain and United Arab Emirates, which **blocked the (https://www.alaraby.co.uk/english/news/2017/5/24/egypt-blocks-qatars-al-jazeera-amid-gulf-media-war)*Al Jazeera (https://www.alaraby.co.uk/english/news/2017/5/24/egypt-blocks-qatars-al-jazeera-amid-gulf-media-war)*** website on 23 May.

"*Closing Al Jazeera*'s *bureaux* is a political decision that amounts to censoring this TV broadcaster," said Alexandra El Khazen, the head of RSF's Middle East desk. "*In Saudi Arabia, this violation of the freedom to inform compounds the country's already very bad record on free speech and media freedom, We urge the Saudi authorities to rescind this decision and to let Al Jazeera* resume operating."

For the time being, RSF has no information about the current state of *Al Jazeera*'s employees in Riyadh or whether they are affected by the order given to Qatari citizens to leave the country within 14 days.

When reached by RSF, *Al Jazeera* condemned the Saudi government decision and said in a statement: "*This is not the first time that Saudi authorities have imposed such restrictions on Al Jazeera*'s operations *(...) We firmly believe these are unjustified measures by the authorities in the Kingdom against the Network and its operations (...) We call upon the government to respect the freedom of press and allow journalists to continue do their job free of intimidation and threats.*"

Al Jazeera also operates in Libya and Mauritania, two other members of the group of countries which – like Bahrain and United Arab Emirates – announced that they were breaking off relations with Qatar.

The diplomatic crisis with Qatar and the targeting of *Al Jazeera* are having repercussions throughout the region, including in Jerusalem.

Individuals led by Israeli far-right activist Baruch Marzel stormed into the building that houses the *Al Jazeera* bureau in East Jerusalem yesterday evening brandishing posters, accusing the broadcaster of being allied to Islamic State and demanding its closure. After their arrival outside the *Al Jazeera* bureau's entrance, the Israeli police had to intervene twice to get them to leave.

Launched in 1996, *Al Jazeera* revolutionized the Arab world's media landscape by making room for the broadest range of viewpoints, from the most moderate to the most radical. It distinguished itself above all during its coverage of the Arab Spring but enraged many of the region's governments, which regard it as a Qatari foreign policy tool.

Saudi Arabia is ranked 168th out of 180 countries in RSF's 2017 World Press Freedom **Index (https://rsf.org/fr/ranking)**. Egypt, Jordan and Qatar are ranked 161st, 138th and 123th respectively.

Annex 127

Committee to Protect Journalists, *UAE threatens 15 years in prison for expressions of 'sympathy' with Qatar* (7 June 2017), *available at* https://cpj.org/2017/06/uae-threatens-15-years-in-prison-for-expressions-o.php

Crown Prince of Abu Dhabi Mohammed Bin Zayed al-Nahyan, who is also deputy commander of the UAE armed forces, shakes hands with U.S. President Donald Trump at a meeting of the Gulf Cooperation Council in Riyadh, Saudi Arabia, May 21, 2017. (Reuters/Jonathan Ernst)

UAE threatens 15 years in prison for expressions of 'sympathy' with Qatar

June 7, 2017 3:28 PM ET

New York, June 7, 2017--Authorities in the United Arab Emirates should clearly and immediately repudiate Emirati Attorney General Hamad Saif al-Shamsi's threats to imprison and fine anyone who criticizes the United Arab Emirates' stance toward Qatar or who expresses any "sympathy" for Qatar, the Committee to Protect Journalists said today.

In a statement circulated to Emirati media, Al-Shamsi said those who publicly criticize the Saudi-Emirati stance on Qatar could be imprisoned for as many as 15 years and fined no less than 500,000 Emirati dirhams (US$136,000) under the penal code and the law on Combatting Information Technology Crimes. "Strict and firm action will be taken against anyone who shows sympathy or any form of bias towards Qatar, or against anyone who objects to the position of the United Arab Emirates, whether it be through the means of social media, or any type of written, visual or verbal form," the statement said.

"The United Arab Emirates' threat to jail anyone who objects to the government's policy on Qatar is completely inconsistent with the image of a forward-looking, cosmopolitan, global hub it seeks to cultivate," CPJ Middle East and North Africa Program Coordinator Sherif Mansour said from Washington, D.C. "This is censorship of a scope so bizarrely broad it is almost totalitarian."

Kuwaiti efforts to reconcile Qatar with fellow Gulf Cooperation Council members Saudi Arabia, the United Arab Emirates, and Bahrain continued today, according to news reports.

Short URL:
https://cpj.org/x/6d14

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Annex 128

National Human Rights Committee, *First Report Regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar* (13 June 2017), *avaialble at* http://www.nhrc-qa.org/wp-content/uploads/2017/06/First-Report-of-the-Qatar-National-Human-Rights-Committee.pdf

NHRC
اللجنة الوطنية لحقوق الإنسان
National Human Rights Committee

First Report Regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar

Report of Qatar National Human Rights Committee – Jun 13, 2017

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Content:

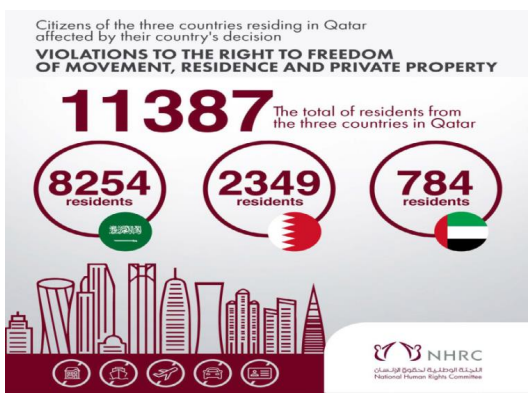
NHRC
اللجنة الوطنية لحقوق الإنسان
National Human Rights Committee

I. Summary

The Kingdom of Saudi Arabia (KSA), United Arab Emirates (UAE), and Kingdom of Bahrain severed relations with the state of Qatar, on 5 June, 2017, that involved closure of sea, land, and air routes in the face of trades, and also in the face of Gulf Citizens in a series of actions never witnessed before by the states of the Gulf Cooperation Council (GCC), disregarding all human rights and humanitarian standards and principles and their legal obligations, as those three states are fully aware of the great interrelations and connections among the region's people and nations on all social, economic, cultural, civilian levels.

In this report, the National Human Rights Committee (NHRC) sheds light on the violations of the most basic human rights reported since 5 June, the day on which the blockade and ban was imposed, until Monday , 12 June, by citizens of: KSA, Qatar, UAE, Bahrain (without addressing the political domain, as it is not included in the mandate of the NHRC).

Since Monday , 5 June 2017, hundreds of complaints have been submitted to the NHRC via e-mail, phone and hotlines , or personal visits to the NHRC headquarters in Doha, Qatar's capital. According to the data received, approximately 11,387 citizens from the three states live in Qatar, and approximately 1927 Qatari citizens live in those states. All of those people have been affected in different areas and ways to varying degrees. In some cases, the actions taken by these states separated mothers from her children.



NHRC
اللجنة الوطنية لحقوق الإنسان
National Human Rights Committee

On Sunday , 11 June, (Six days after the decision), KSA issued a royal order to take into consideration the humanitarian situation of mixed families (Saudi-Qatari), then the UAE followed their footsteps, and then Kingdom of Bahrain. While the NHRC appreciates this step and sees it as a step in the right direction, NHRC also calls on the three states to clarify the implementation mechanisms, emphasizes that it has to include all human rights and legal areas, and calls for ending the blockade and all violations in all its forms, and compensating the affected families and individuals.

Dr. Ali al Marri, chairman of NHRC, stated that "The GCC Dispute Settlement Commission should play a role in resolving the ongoing conflict, especially that the conflict directly affects the lives and rights of a large number of GCC citizens."

II. Report methodology

In the aftermath of the crisis that affected citizens of four GCC states (citizens and residents in the State of Qatar), NHRC extended working hours for monitoring, documenting, and following-up cases. NHRC received about 119 complaints via e-mail, and countless phone calls. About 381 individuals visited the NHRC to report their cases. During the period covered by the report, researchers opened files, filled in complaints forms prepared by NHRC, with attaching copies of identification documents, while some complainants attached university and school reports, work contracts, family related information, and other documents that are available in the NHRC archive.

NHRC will, and is, progressively sharing these files with the concerned international human rights and legal parties. It is worth noting that an individual might be subjected to more than one type of violations. Therefore, the total number of files reflecting the total number of violations is certainly greater than the total number of individuals; as we reported cases in which some individuals were deprived of their families, their right to education and freedom of movement is affected. As of Monday, 12 June, a total of 764 violations have been reported since 5 June, the date on which the blockade, ban, and boycott imposed.

In this report, we shed light on the most notable violations that occurred. Out of the 764 documented cases, we refer to the most notable two, or three forms of each violation, in order to maintain the size of the report. Please note that the concerned parties can acquire all of these forms and documents.

NHRC
اللجنة الوطنية لحقوق الإنسان
National Human Rights Committee

Also, we referred to names using initial letters in order to preserve their safety and security, in light of unprecedented procedures by the UAE that involved imposing penalties including to 3-15 years' imprisonment and fines of 500,000 AED for merely showing sympathy towards the state of Qatar.

Surely, the data provided by the victims are different from one case to another. However, all of these cases enjoy a high level of credibility. Most of the data were acquired personally through personal visits from the affected parties. Additionally, we received complaints from people regarding violations against their first-degree relatives, where the victims were in other countries and are, as they claimed, unable to visit the NHRC headquarters, contact it, or send an e-mail -which we are still receiving on a daily basis- in this regard, we encourage all the citizens of the four states who suffer from any violations as a result of these abusive decisions to submit their complaints at the NHRC or any other national or international organizations. In light of this, what the NHRC was able to report and document is still the bare minimum, considering that many of those whose rights were violated don't know of the existence of any mechanisms for complaint submission. In addition, many of them seriously are afraid to reveal their identities due to that measures and actions that could be taken against them by their countries' local authorities if they contacted or submitted a compliant.

The Qatari government has not taken any action against the citizens of the three states, and we didn't receive any complaint of that nature.

III. Most notable violations

The following table includes classifications of the 764 files we reported, and their distribution according to each of the 3 states:

NHRC
اللجنة الوطنية لحقوق الإنسان
National Human Rights Committee

Complaint / Country	Education	Ownership	Family Separation	Travel	Health	Religious Practices	Work	Residency	Total
Saudi Arabia	9	179	74	212	4	25	23	7	764
UAE	16	35	21	46	-	-	3	-	
Bahrain	5	2	60	19	5	-	12	2	
Multiple	-	-	-	5	-	-	-	-	
Total	30	216	155	282	9	25	38	9	

A. Violation to the right of family reunification

This might be the most serious and appalling violation that resulted from the abusive decisions made by the three states, because it affects and threatens the ties of the united Gulf Families.

It also threatens the most vulnerable categories of society – women, children, people with disabilities, and the elderly- not to mention that it is an explicit violation to many articles of the international human rights laws.

In this regard, NHRC recorded 155 forms pertaining to families that were separated, even though we are absolutely certain that actual number is far greater.

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Mrs. (N.H.), Saudi born in 1990, visited the NHRC headquarters and stated the violations she suffered from: "I have been a widow for three years. I live in the State of Qatar along with my two minor children who have a Qatari nationality. I don't have a job, but I am supporting my family financially from my late husband's family, which is paid by the State of Qatar. I am enrolled in Qatar University, and living in a rented house until the inheritance case is settled at court. On 8 June, Saudi authorities informed me to go back to the Saudi Arabia without my children.

I can't leave my children alone in Qatar, but I am afraid arbitrary actions will be taken against me if I didn't comply."

Mr. (K.S.), Bahraini born in 1984, called NHRC and then visited NHRC headquarters and stated that: "I live and work in the State of Qatar with my wife and my mother who both have Qatari nationality. The decision to sever relations with Qatar will force me to leave my work and family in Qatar and go back to Bahrain. How can I leave my wife and my mother, who suffers from a disability, and uproot my life and work here? I don't wish to leave Qatar, and I am afraid of the punitive actions that might be taken against me by the Bahraini authorities."

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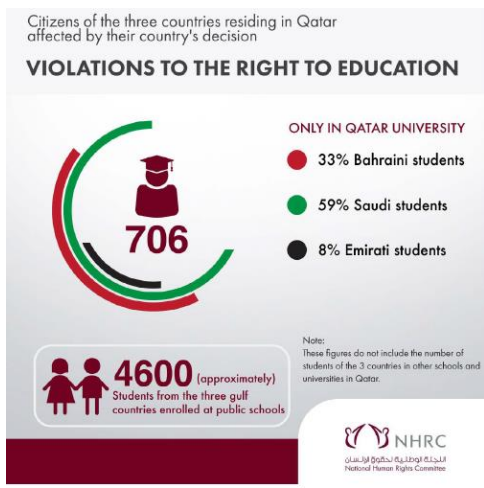
B. Violation of the right to Education

The education future of every Saudi, Emirati, or Bahraini studying in Qatar schools or universities has been put in jeopardy this year. Therefore, Qatari authorities decided to postpone those students' exams in order to maintain their right to complete their education and lose the progress they made in their whole academic year especially that we are at the end of the school year. However, the focus remains on the Qatari students studying in the three states.



NHRC received 30 cases regarding that violation in particular – we will highlight the following four main cases:

(F.M.), an Emirati student, born in 1998, he was deprived of the opportunity to complete his education. Also, he was separated from his mother who has a Qatari nationality. He stated that:

"I am in grade year 11 at Mohammad ben Abdul Aziz High School in Doha, Qatar. I live with my divorced mother in the State of Qatar. The Emirati authorities notified me that I have to leave Qatar, which will prevent me from completing my education, and will separate me from my mother who has a Qatari nationality."

(H.A.), Qatari born in 1986, contacted NHRC and stated that: "I study at the Applied Science University in the Kingdom of Bahrain. On 8 June, 2017, Bahraini authorities prevented me from entering the Bahraini lands, so I won't be able to attend my exams, which means I will fail."

According to what Mrs. (A.F.), Qatari, stated to the NHRC that, University of Sharjah, in the UAE, cancelled her registration at the university and prevented her from completing her education until 2018 after ties were cut with Qatar: "After paying the full expenses for the summer internship semester at Sharjah University, I was prevented from continuing my studies on 8 June, 2017, and, even more, I was forced to leave UAE on the same day."

Mrs. (K.W.), Qatari born in 1992 and lives in Dubai emirate, he stated that : "I live, work, and study in Dubai emirate , in my last year at Zayed University, and I have a work contract as a jockey at Al Nasr Stable owned by Sheikh Hamdan Bin Rashid .. The university administration called me on 10 June, 2017, to inform me that I was banned from studying due to the "recent political developments". I lost my education, my work, and my future."

C. Violation of the right to Work

As with education, hundreds of business owners were affected after those states abruptly stopped -in order to cause as much harm as possible- all trading convoys, and thousands of tons of food or health supplies have expired. Hundreds of business owners lost great, immeasurable sums of money.

What is even more crucial is that there are entire families that rely completely on traveling between Gulf states, and those families' only source of income has been cut off. However, none of the three states have compensated those families or sought an alternative for them, which intensified popular resentment even further.

Moreover, many citizens who are employed at public, private, or government sectors and used to move freely between the four countries are now jobless with no source of income and with no compensations from the three states that initiated the blockade.

NHRC received no less than 38 complaints from individuals who are affected by these abusive actions.

Mr. (H.M.), Saudi born in 1979, stated that: "I work at the State of Qatar, and I have a wife and kids who live with me in Doha, and I am also supporting my elder mother financially. Because of the decision to cut ties between my country and Qatar, I have to leave my job and go back to KSA. I am afraid that I will be subjected to arbitrary punitive actions in case I don't comply with the news decisions."

Mr. (A.B.), Saudi, expressed his concern about him being subjected to sanctions if he doesn't comply with his country's decisions and leave Qatar. Mr. (A.B) stated that: "I have been living in Qatar since 1974. I have my wife and kids here who live with me in Doha and are enrolled in schools here. This decision will force me to leave my job and the country that I lived all this time in. I am afraid of the sanctions that would be incurred by the Saudi authorities if I don't comply."

D. Violations to the right of Freedom of Opinion and Expression

UAE imposes penalties 3-15 years' imprisonment and fines of 500,000 AED just for merely showing sympathy towards the State of Qatar by even a word, a like, or a tweet on social media in an unprecedented threat to freedom of expression. Bahrain's Ministry of Interior imposes five-year imprisonment, while KSA considered this an internet crime.

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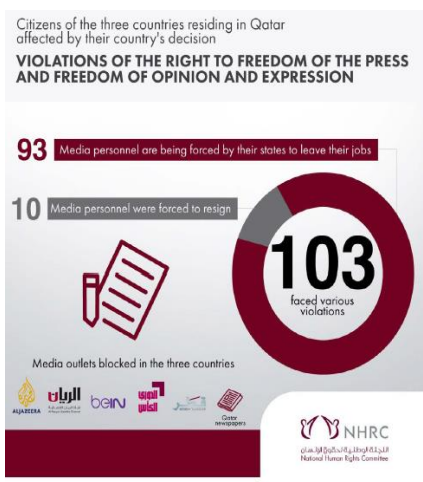
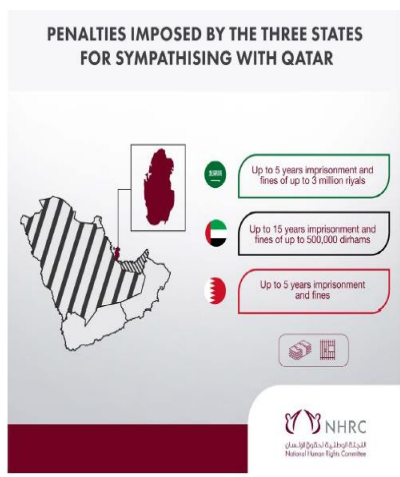
These very extreme and harsh actions betray the fragility of the grounds and legitimacy of the blockade decision by those three states, and reflect how much those states' authorities are afraid from citizens' freedom to express any opinions that don't agree with their will.

This blatantly goes against many of international and regional declarations and covenants as we will detail further in the Legal Description portion of this report.

In the media field , the NHRC observed 103 affected media personnel from the three states that imposed the blockade and boycott, who used to work at several positions such as Audio, Print, and Visual Media in the State of Qatar have all been subjected to various types of violations, including being forced resign by their countries from their jobs. Accordingly, 10 of those were forced to submit and resign, and lost their jobs and source of income. There are still great pressures on everyone who didn't submit their resignation. These actions constitute a blatant violation to the freedom of the press, freedom to work, freedom of residence, and freedom of opinion all at the same time.





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E. violations of the right to movement and residence (including for the dead)

Mr. (M.R.), Saudi, stated that: "My father died at Hamad Hospital in the State of Qatar. On 7 June, 2017, Saudi authorities prohibited me from going to Qatar to receive his body. They don't respect the sanctity of death."

F. Other violations

We recorded other forms of violation, all were due to the blockade, and some of which overlap with the main aforementioned violations, such as family separation and denial of travel. These violations are:

- Violation of the right of private property

Mr. (A.E.), Qatari, visited NHRC and stated that:

"I own a large group of camels in KSA, and I leased a land for my camels, in addition to a vehicle and also I hire workers whom I obtained a work residency from the State of Qatar so they can take care of my camels and feed and water them. On 5 June, 2017,

Saudi authorities barred me from passing through the land crossing (Salwa) so I can access my properties. And I couldn't bring the workers back to Qatar. These actions will result in fines being imposed on me related to the workers' residency permits, and I don't know what will be done to my properties in Saudi Arbaia, and I am afraid my camels will die."

Mr. (H.N.), Qatari who owns residential and industrial lands in UAE, called us and we asked him to come to NHRC headquarters, and stated that:

"I have four residential lands in Masfout Strip, Ajman area, and one industrial land in Arqoub area, Sharjah city. Emirati authorities prevented me on 5 June, 2017, from entering UAE and accessing my properties. I don't have any idea what will happen to my properties in light of this actions."

Mr. (K.M.), Qatari born in 1969, stated that after Emirati authorities banned him from entering their lands: "I have been living with my family in Dubai emirate for years. I have been working for Ras al-Khaimah Bank for 14 years.

Emirati authorities banned me from going into UAE after the decision to cut ties with Qatar, and they didn't let me see my wife and daughter, and I was subjected to a degrading, inhumane treatment by Dubai Airport employees."

- Being subjected to Inhumane degrading treatment, , and violation to the right to freedom of religious practices

Qataris going for Umrah (minor pilgrimage to Mecca) in Saudi Arabia were prohibited from doing so after the decision to cut ties was taken. Saudi authorities forced them to leave their lands, and they treated them in an ill-manner.

A Qatari citizen filming himself in a video at Jeddah Airport, and how Saudi authorities forbade him to go into Mecca for Umrah.

https://youtu.be/64_Dn2XMw54

Mrs. (M.G.), Qatari born in 1954, told NHRC the details of the violations she suffered: "On 5 June, 2017, I had to leave KSA before I got to perform an Umrah. The authorities

didn't let me travel directly from Jeddah Airport to Doha Airport, and I had to go there through Turkey, which caused a great psychological and financial burdens on me."

Mr. (M.E.), Qatari born in 1942, contacted NHRC and gave a testimony, and talked about his violation: "On 5 June, 2017, and after the decision to cut ties with the State of Qatar, I was forced to leave KSA before I got to conduct an Umrah. The Saudi authorities prohibited me from traveling directly from Jeddah Airport to Doha Airport, and I had to go back through Turkey, which had caused a great psychological and financial toll on me."

- Violation of the right to Health - Especially for persons with Disabilities

Mr. (K.S), Saudi, contacted NHRC and stated that: "I live in the State of Qatar, and I suffer from an illness in my kidney. On 11 June, 2017, I was supposed to undergo a surgery in my right kidney at Hamad General Hospital in the State of Qatar. But after the decision to

cut ties between Saudi Arabia and Qatar, I have to go back to KSA, and the situation will be complicated and my health will be affected. In case I don't comply, I will be subjected to the penalties KSA issued."

Mrs. (R.M.), Qatari, talked to NHRC and stated that: "I have health conditions, and I was about to undergo a surgery at Suliman al Habib Hospital in Riyadh city, KSA on 17 June, 2017, but the decision to cut ties with Qatar will force me to go back to Qatar without completing my treatment, which will affect my health, but I am afraid from the actions that could be taken against me if I stayed in Saudi Arabia"

IV. Conclusions and Legal Description

In their resolutions, KSA, UAE, and Kingdom of Bahrain, violated a number of principle international human rights laws and rules, which are related to the most fundamental human rights , which are treated as international norms. These resolutions violate a number of articles of the Universal Declaration of Human Rights, other articles included in the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, in addition to articles in the: Arab Charter on Human Rights, the GCC Declarations of Human Rights, and the Economic Agreement between the GCC States. Therefore, those states are responsible for protecting and preserving the rights and interests of the individuals living on their lands.

The Texts of the Articles that were violated by the three Gulf states:

First: Universal Declaration of Human Rights

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

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 23

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

Article 26

1. 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.

2. 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.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Second: International Covenant on Civil and Political Rights

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, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Third: International Covenant on Economic, Social and Cultural Rights

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.

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 labor should be prohibited and punishable by law.

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.

Fourth: Arab Charter on Human Rights

Article 3

1. Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without

distinction on grounds of race, color, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.

Article 8

1. No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.

Article 26

1. Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force.

Article 32

1. The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.

2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure

respect for the rights or reputation of others or the protection of national security, public order and public health or morals.

Article 33

1. The family is the natural and fundamental group unit of society; it is based on marriage between a man and a woman. Men and women of marrying age have the right to marry and to found a family according to the rules and conditions of marriage. No

marriage can take place without the full and free consent of both parties. The laws in force regulate the rights and duties of the man and woman as to marriage, during marriage and at its dissolution.

2. The State and society shall ensure the protection of the family, the strengthening of family ties, the protection of its members and the prohibition of all forms of violence or abuse in the relations among its members, and particularly against women and children. They shall also ensure the necessary protection and care for mothers, children, older persons and persons with special needs and shall provide adolescents and young persons with the best opportunities for physical and mental development.

3. The States parties shall take all necessary legislative, administrative and judicial measures to guarantee the protection, survival, development and well-being of the child in an atmosphere of freedom and dignity and shall ensure, in all cases, that the child's best interests are the basic criterion for all measures taken in his regard, whether the child is at risk of delinquency or is a juvenile offender.

Fifth: Human Rights Declaration for the Member States of the Cooperation Council for the Arab States of the Gulf

Article (6)

The Freedom of belief and the practice of religious rites is a right of every person according to the regulation (law) without disruption of the public order and public morals.

Article (9)

Everyone has the right to freedom of opinion and expression, and exercising such freedom is guaranteed insofar as it accords with Islamic Sharia law, public order and the regulations (laws) regulating this area.

Article (14)

The family is the natural and fundamental group unit of society, originally com- posed of a man and a woman, governed by religion, morals and patriotism; its entity and bonds are maintained and reinforced by religion. Motherhood, childhood and members of the family are protected by religion as well as the State and society against all forms of abuse and domestic violence.

Article (24)

Every person, who has the capacity of doing so, has the right to work and has the right to free choice of employment according to the requirements of dignity and public interest, while just and favorable employment conditions, as well as employees' and employers' rights, are ensured.

Article (27)

Private property is inviolable and no one shall be prevented from the disposition of his property except by the regulation (law), and it may not be expropriated unless for public interest with fair compensation.

V. Recommendations

The United Nations and the Office of the United Nations High Commissioner for Human Rights (OHCHR)

1- The great amount of social violations constitute a threat to the stability of the region, and is stared to have a negative impact on the economic and social levels. Speedy steps must be taken to force the states that issued these unjust decisions to repeal their actions.

2- The OHCHR to prepare reports and statements documenting the various types of violations that affected great numbers of people, especially the families that were

separated, including the negative consequences on women and children as a result of the separation of their families. Also, the OHCHR to call on these states to respect the basic freedoms of the people living on their lands.

Human Rights Council

To Take every possible action in order to end the blockade and its ramifications, and call for the compensation of all people who were harmed and affected.

Human Rights Council Special Rapporteurs

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National Human Rights Committee

To Document forms of the various types of violations that occurred, and contact the certain concerned governments in that regard as soon as possible. NHRC is fully prepared to share all the related data.

General Secretariat of the Gulf Cooperation Council

The Dispute Settlement Commission of the Supreme Council at the Gulf Cooperation Council to take urgent actions and do everything in its power to convince the concerned governments to start settling the dispute and the social, civil, and cultural situation for the affected families and citizens.

KSA, UAE, and Kingdom of Bahrain

1- Respect the nature of the Gulf societies, and to refrain from making any decisions that sever the relations and ties between families and societies , and to repeal these decisions as early as possible.2- Respect the basic human rights related to freedom of movement, private property, work, residence, and freedom of expression and opinion that are enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and the Arab Charter on Human Rights.

3- The political disputes must not affect the humanitarian and social rights and will being of citizens, which is considered a violation of the international law and the international human rights law.

4- Respect the holiness of the Month of Ramadan, repeal all decisions, and end the siege before Eid al-Fitr.

Annex 129

Amnesty International, *Gulf / Qatar dispute: Human dignity trampled and families facing uncertainty as sinister deadline passes* (19 June 2017), *available at* https://www.amnesty.org/en/latest/news/2017/06/gulf-qatar-dispute-human-dignity-trampled-and-families-facing-uncertainty-as-sinister-deadline-passes/

QATAR DISCRIMINATION

Gulf / Qatar dispute: Human dignity trampled and families facing uncertainty as sinister deadline passes

19 June 2017, 10:14 UTC

Thousands of people in the Gulf face the prospect of their lives being further disrupted and their families torn apart as new arbitrary measures announced by Saudi Arabia, Bahrain and the United Arab Emirates (UAE) in the context of their dispute with Qatar are due to come into force from today, said Amnesty International.

The three Gulf states had given their citizens the deadline of 19 June to leave Qatar and return to their respective countries or face fines and other unspecified consequences. They had given Qatari nationals the same deadline to leave Bahrain, Saudi Arabia and the UAE and have refused entry to Qatari nationals since 5 June.

“The situation that people across the Gulf have been placed in shows utter contempt for human dignity. This arbitrary deadline has caused widespread uncertainty and dread amongst thousands of people who fear they will be separated from their loved ones,” said James Lynch, Deputy Director of Amnesty International’s Global Issues Programme.

> **“ The situation that people across the Gulf have been placed in shows utter contempt for human dignity. This arbitrary deadline has caused widespread uncertainty and dread amongst thousands of people who fear they will be separated from their loved ones. ”**
>
> James Lynch, Deputy Director of Amnesty International’s Global Issues Programme

"With these measures, the governments of Saudi Arabia, the UAE and Bahrain have needlessly put mixed-nationality families at the heart of a political crisis."

"They should immediately cancel this sinister arbitrary deadline, otherwise thousands of families risk being torn apart, with others losing their jobs or the opportunity to continue their education. People undergoing medical treatment are being made to choose between continuing their treatment or complying with the overly broad and harsh measures announced by Saudi Arabia, UAE and Bahrain."

The dispute has created growing concern about what will happen if residents choose to remain with their families across Gulf states. Some have told Amnesty International they are preparing to travel to countries outside the dispute to be reunited with their families.

The governments of Bahrain, Saudi Arabia and UAE have made statements acknowledging the impact of their measures on mixed-nationality families and announced the establishment of emergency hot lines for affected individuals. Such a measure is clearly insufficient to address the human rights impact of the arbitrary, blanket measures imposed on 5 June.

Additionally, Amnesty International has spoken to a number of people who tried to call these hot lines. Their experiences raise serious questions about whether these hot lines are providing effective advice or information. Several people said they had tried in vain for hours or days to get through to the hot lines. Those who got through said officials asked them for minimal details about their cases and told them they would receive a call back, but there had been no follow-up. Amnesty International has rung the hot lines and asked how cases registered were being dealt with, but officials were not able to provide any information.

Some affected families have told Amnesty International that they are too scared to call hot lines and register their presence, or their family's presence, in a "rival" country for fear of reprisal.

Statements by the authorities in Saudi Arabia, the UAE and Bahrain that people will be punished for expressing sympathy towards Qatar or criticizing government actions have contributed to the climate of fear spreading across the region.

On 13 June a Bahraini lawyer was arrested after he filed a lawsuit against his government arguing that the measures taken against Qatar are unconstitutional and violate the rights of Bahraini citizens, then posted a copy of this complaint on his Facebook page.

A Qatari man unable to return to his farmland in Saudi Arabia has told Amnesty International that his friends in Saudi Arabia were too scared to look after his land or remain in contact with him for fear of being prosecuted by the Saudi Arabian government for sympathizing with him.

"It is unthinkable that states can so blatantly infringe on the right to freedom of expression. Citizens have the right to express views and concerns about their governments, as well as feelings of sympathy towards others," said James Lynch.

Topics

QATAR SAUDI ARABIA UNITED ARAB EMIRATES OMAN KUWAIT BAHRAIN

DISCRIMINATION

Annex 130

Human Rights Watch, *Submission for the Universal Periodic Review of the United Arab Emirates* (29 June 2017), *available at* https://www.hrw.org/news/2017/06/29/submission-universal-periodic-review-united-arab-emirates

HUMAN RIGHTS WATCH

JUNE 29, 2017 11:16AM EDT

Submission for the Universal Periodic Review of the United Arab Emirates

29th session of the Universal Periodic Review, January 2018

Summary

The United Arab Emirates has continued to violate human rights norms since its last Universal Periodic Review in 2012. This submission provides an update on the continued lack of adequate legal protections for migrant workers, women, and members of the LGBT community, suppression of the freedom of expression, and arbitrary detentions and forced disappearances carried out by the UAE both at home and during the military campaign in Yemen.

1. Migrant Workers and Migrant Domestic Workers

Despite labor reforms, the UAE's large migrant worker population remain acutely vulnerable to forced labor. Foreigners account for more than 88.5 percent of UAE residents, according to 2011 government statistics.

The *kafala* (visa-sponsorship) system, with some reforms, continues to tie migrant workers to their employers. Those who leave can be punished for "absconding" and fined, imprisoned, and deported. In 2016, a Labor Ministry decree outlining the rules for terminating employment and granting work permits to new employees took effect, which should theoretically make it easier for workers to change employers before their contract ends if their rights are violated. These reforms however, do not apply to domestic workers.

The UAE rejected recommendations during its previous UPR to ensure swift and effective implementation of legislation protecting the living and working conditions of foreign workers and abuses continue to occur. For example, in 2015, Human Rights Watch documented employers at the Saadiyat Island project withholding wages and benefits from workers, failing to reimburse recruiting fees, confiscating worker passports, and housing workers in substandard accommodation, nearly five years after Human Rights Watch first revealed systematic human rights violations associated with the project. The UAE summarily deported Saadiyat workers who went on strike to protest low pay after their employers contacted the police in 2015.

Migrant workers have no right to organize or bargain collectively, and they face penalties for going on strike.

The UAE continues to exclude domestic workers from UAE labor law protections. At least 146,000 female migrant domestic workers are in the Emirates – primarily from the Philippines, Indonesia, India, Bangladesh, Sri Lanka, and Nepal – cleaning, cooking, and caring for families. A 2014 Human Rights Watch report documented a range of abuses against domestic workers including unpaid wages, confinement to the house, workdays of up to 21 hours with no rest breaks and no days off, and in some cases, employers physically or sexually assaulting them. Domestic workers face legal and practical obstacles to redress, and many return home without justice.

The UAE has made some reforms to increase domestic worker protection. By the end of 2017, domestic workers are to move from the Ministry of Interior's jurisdiction to the Ministry of Human Resources and Emiratisation, which oversees all other workers. While an important move, this has not resulted in domestic workers benefiting from labor law protections, or labor ministry enforcement mechanisms such as the wage protection system, or reforms to the kafala system. In 2017, the UAE also moved to adopt a new law that would strengthen domestic worker protections, including granting them a weekly rest day and paid leave, but these protections remain weaker than those in the UAE labor law.

As with past labor reforms, strong regulation, inspections, and enforcement of penalties are critical to ensuring that recruitment agencies and employers are held accountable and made to follow the law.

Recommendations

- Pass the draft domestic workers bill. After the bill becomes law, develop implementing regulations that will bring the country into line with the International Labour Organization's (ILO) Domestic Workers Convention.
- Ratify the ILO Domestic Workers Convention and align national laws to the treaty.

- Pass legislation that prohibits employers from retaining their employees' passports and provides for meaningful sanctions for offenders.
- Abide by the obligation under UAE Labor Law of 1980 to implement a minimum wage and cost of living index.
- Ensure that criminal justice authorities aggressively investigate, prosecute in good faith, and impose meaningful penalties on employers that violate relevant provisions of the labor law, penal code, and anti-trafficking law.
- Pass legislation that requires companies to escrow funds to ensure workers receive all benefits and payments in event of bankruptcy or other liability issues.
- Amend UAE labor law to guarantee workers' right to strike—including by establishing explicit voting and notification procedures for strikes—and to provide for binding arbitration of collective labor disputes only upon workers' request and only in limited circumstances.

2. **Freedom of Expression**

Despite accepting a recommendation in 2012 to "respect the right to freedom of expression and association, and make the minimum use of criminal proceedings against persons availing themselves of those rights", people in the UAE who speak about human rights abuses are at serious risk of arbitrary detention, imprisonment, and torture, and many are serving long prison terms or have felt compelled to leave the country.

The UAE's 2014 counterterrorism law provides for the death penalty for people whose activities are found to "undermine national unity or social peace," neither of which are defined in the law.

UAE authorities have launched a sustained assault on freedom of expression and association since 2011.

In March 2017, the UAE detained Ahmed Mansoor, an award-winning human rights defender. He remains detained and is facing speech-related charges that include using social media websites to "publish false information that harms national unity." A coalition of 20 human rights organizations said Mansoor was the last remaining human rights defender in the UAE who had been able to criticize the authorities publicly. UAE authorities have harassed and persecuted Mansoor for more than six years.

In the weeks leading up to his arrest, Mansoor had called for the release of Osama al-Najjar, who remains in prison despite having completed a three-year prison sentence on charges related to his peaceful activities on Twitter.

In March 2017, the UAE also sentenced prominent academic Nasser bin-Ghaith to 10 years in prison, whom authorities forcibly disappeared in August 2015, for charges that included speech-related offenses, including peaceful criticism of the UAE and Egyptian authorities. UAE-based Jordanian journalist Tayseer al-Najjar was also sentenced to three years in prison that was related to his online criticism in 2016 of Israeli military actions in Gaza and Egyptian security forces' destruction of tunnels. All of these arrests despite accepting a 2012 UPR recommendation to "Take steps to protect human rights defenders, journalists and religious minorities from discrimination, harassment or intimidation, including the arbitrary deprivation of nationality".

The UAE has also used the pretext of national security to prosecute protected expression. In July 2012, the authorities intensified a crackdown on dissidents with alleged ties to an Islamist group, al-Islah. The mass trial of 94 defendants for alleged links with al-Islah began on March 4, 2013 on charges that they had been part of a group that aimed to overthrow the country's political system. Authorities detained 64 of the men and held them at undisclosed locations for up to a year before the trial, and defendants later claimed in court that they had been ill-treated in detention. The UAE Federal Supreme Court found 69 of the 94 defendants guilty on July 2, 2013.

UAE authorities have also used citizenship revocation as a tool to punish peaceful dissidents and critics. In December 2011, the UAE announced through its official news agency that it had stripped six men of their UAE citizenship for "acts posing a threat to the state's security and safety" based on their membership in al-Islah. In March 2016, the UAE revoked the citizenship of two daughters and a son of imprisoned political dissident Mohammed Abdulraziq Al-Siddiq, who is serving a ten-year sentence following his conviction on charges stemming from peaceful political activities.

According to a 2016 report from Citizen Lab, a research institute at the University of Toronto that focuses on internet security and human rights identified a series of digital campaigns against UAE dissidents, dating back to 2012. Citizen Lab described the operator of these campaigns as "a sophisticated threat actor," and said that it was implausible that a state-actor was not behind the campaign. The research identified several pieces of information suggesting a connection between the operator and the UAE government.

Recommendations

- Release all prisoners held solely for their peaceful practice of their rights to free expression and association, including prisoners convicted of alleged crimes, prisoners currently on trial, and prisoners held arbitrarily.

- Revoke Penal Code articles and other criminal legislation used to prosecute individuals for the exercise of the rights to freedom of expression, association, or peaceful assembly, or amend such articles so that they comply with international law.
- Review all laws in the area of cybercrime, information and communications technology (ICT), and telecommunications to ensure their compliance with international human rights standards.
- Review all laws in the area of counterterrorism to ensure their compliance with international human rights standards.
- Halt arbitrary withdrawals of citizenship in retaliation for peaceful criticism and provide judicial remedies for those who have faced withdrawal of citizenship.

3. **Arbitrary Detention, Torture, and Mistreatment of Detainees**

The UAE arbitrarily detains, and in some cases forcibly disappears, individuals who criticize the authorities, and its security forces face allegations of torturing detainees both in the UAE and in Yemen. The UAE accepted just 2 out of 17 recommendations related to the issue of torture during its 2012 UPR, including those proposing a standing invitation to the Special Rapporteur on Torture, or calling on the UAE to ratify the OP-CAT.

In February 2017, a group of United Nations human rights experts criticized the UAE's treatment of five Libyan nationals who had been held in arbitrary detention since 2014. Individuals arrested at the same time but subsequently released alleged that authorities tortured them to secure confessions and said they heard other detainees being tortured. The Libyans said their interrogators asked them about supposed links to the Muslim Brotherhood – which the UAE has designated a terrorist organization – and described being subjected to beatings, forced standing, and threats of rape, electrocution, and death. The special rapporteur on torture said he had received credible information that authorities subjected the men to torture. In May 2016, the Federal Supreme Court acquitted the men of having links to armed groups in Libya.

In another case involving the UAE's state security apparatus, the son of an adviser to former Egyptian President Mohamed Morsy claimed that UAE authorities subjected him to "brutal physical and psychological torture" to get him to confess to membership in the Muslim Brotherhood. The allegation echoes numerous others that state security detainees have made since 2012.

In March 2016, a Dubai court acquitted British businessman David Haigh of charges brought under the UAE's cybercrime laws. Haigh claimed after his release that Dubai police had punched and tasered him in an unsuccessful effort to make him confess to accusations of fraud. Haigh said that he regularly witnessed prison officers beating inmates during his two years of incarceration butwas not able to see the evidence against him at his trial norgive evidence or cross-examine witnesses.

The UAE is a member of the Saudi-led coalition that has conducted aerial and ground operations in Yemen since March 2015, including scores of apparently unlawful attacks. The UAE supports Yemeni forces that have arbitrarily detained, forcibly disappeared, tortured, and abused dozens of people during security operations in Yemen. Human Rights Watch has documented UAE-backed security forces arbitrarily detaining or forcibly disappearing at least 38 individuals. The UAE also runs at least two informal detention facilities, and its officials appear to have ordered the continued detention of people despite release orders, and forcibly disappeared people, including reportedly moving high-profile detainees outside the country.

Recommendations

- Grant lawyers, journalists, independent monitors of detention facilities and human rights monitors access to both official and unofficial detention facilities in the UAE and to any UAE-run facilities in Yemen.
- Provide independent forensic medical examinations to defendants who say they have been tortured.
- Exclude evidence obtained by torture from any trial proceedings.
- Ensure prompt, independent, and impartial investigations into allegations of torture and other ill-treatment, enforced disappearances, and other serious human rights violations and bring those responsible to justice in proceedings that comply with international fair trial standards;
- Ensure that victims of torture, enforced disappearance, and arbitrary detention receive full reparations.
- Ratify the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4. **Women's Rights, Children's Rights and Sexual Orientation and Gender Identity**

Discrimination on the basis of sex and gender is not included in the definition of discrimination in the UAE's 2015 anti-discrimination law, despite accepting during its 2012 UPR to "Fully incorporate in the Constitution or other national legislation the principle of equality between men and women".

Federal law No. 28 of 2005 regulates matters of personal status in the UAE, and some of its provisions discriminate against women. For instance, the law provides that, for a woman to marry, her male guardian must conclude her marriage contract; men have the right to unilaterally divorce their wives, whereas a woman who wishes to divorce her husband must apply for a court order; a woman can lose her right to maintenance if, for example, she refuses to have sexual relations with her husband without a lawful excuse; and women are required to "obey" their husbands. A woman may be considered disobedient, with few exceptions, if she decides to work without her husband's consent.

In 2010, the Federal Supreme Court issued a ruling—citing the penal code—that sanctions husbands' beating and inflicting other forms of punishment or coercion on their wives, provided they do not leave physical marks.

UAE law permits domestic violence. Article 53 of the UAE's penal code allows the imposition of "chastisement by a husband to his wife and the chastisement of minor children" so long as the assault does not exceed the limits prescribed by Sharia, or Islamic law. Marital rape is not a crime in the UAE.

Article 356 of the penal code criminalizes (but does not define) "indecency," and provides for a minimum sentence of one year in prison. In practice, UAE courts use this article to convict and sentence people for *zina* offenses, which include consensual sexual relations outside heterosexual marriage and other "moral" offenses, including same-sex relations. Different emirates within the UAE have laws that criminalize same-sex sexual relations, including Abu Dhabi where "unnatural sex with another person" can be punished with up to 14 years in prison, and Dubai which imposes 10 years of imprisonment for sodomy. The UAE rejected both recommendations it received in 2012 to de-criminalize consensual same-sex marriage.

Recommendations

- Enact a law prohibiting any form of discrimination against women in practice, policy or regulation.
- Amend or Abolish Penal Code Article 53, explicitly stating that no family member has the authority to "discipline" female dependents using violence and that "discipline" is not a legal defense in cases involving family violence.
- Enact a law criminalizing domestic violence and that provides for prevention of domestic violence, protection of survivors, and prosecution of abusers. Establish separate units within police stations focused on domestic violence and ensure that all police stations employ female officers. Issue

guidelines to police on how to deal with domestic violence cases, including penalties for officers who do not allow women to file a complaint.

- Reform the Personal Status Law to provide women with equal rights in entering marriage, during marriage, and at its dissolution, including in all issues concerning children, inheritance, and property rights.
- Undertake a thorough review and issue guidance to judges prohibiting them from enforcing a male's authority over a woman through the legal system.
- Decriminalize adult, consensual sexual relations conducted in private.

Region / Country

- Middle East/North Africa
- United Arab Emirates

Topic

- United Nations

- Human Rights Council

More Reading

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  Libya: Threat of Tripoli Fighting Raises Atrocity Concerns

- 

  April 5, 2019 News Release

  Khashoggi Case: A Call to Prevent a Cover-Up

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[3] https://www.amnesty.org/en/documents/mde25/0018/2014/en/

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[6] https://www.hrw.org/news/2017/04/20/uae-free-prominent-rights-defender

[7] https://www.hrw.org/news/2017/02/16/uae-academic-facing-speech-charges

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[9] https://www.hrw.org/news/2017/03/17/uae-jordanian-journalist-convicted

[10] https://www.hrw.org/news/2015/10/13/uae-investigate-allegations-torture-foreign-nationals

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Annex 131

Article 19, *Qatar: Demands to close Al Jazeera endanger press freedom and access to information* (30 June 2017), *avaialble at* https://www.article19.org/resources/qatar-demands-to-close-al-jazeera-endanger-press-freedom-and-access-to-information/

(https://www.article19.org)

English

Qatar: Demands to close Al Jazeera endanger press freedom and access to information

MEDIA 1 MIN READ

ARTICLE 19
@article19org (https://twitter.com/article19org)

Posted on June 30, 2017

Recent demands made by Saudi Arabia and allies to Qatar to shut down Al Jazeera, which is Qatar's independent public service broadcaster, as well as a major regional and global media outlet, represent a severe attack on free expression and information and should be dropped. As negotiations continue related to the current blockade, ARTICLE 19 calls for Saudi Arabia and its allies to drop this and any similar demands that endanger press freedom, both in Qatar and across the region.

Public service broadcasters play a vital role in facilitating democratic debate and ensuring media pluralism. Media organisations like Al Jazeera, whether in their role as PSB in Qatar or more broadly across the region, enable the free flow of information about a range of issues of public interest, and are key to enabling free expression across the region.

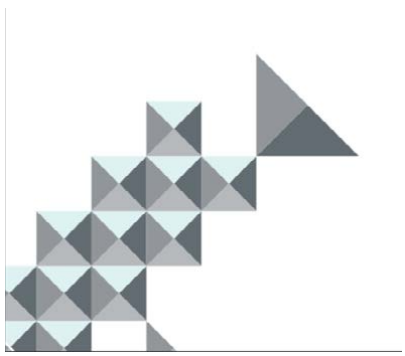
Decisions about public service broadcasting should only be taken by parliaments and with public participation, not unilaterally or in response to external demands. A unilateral decision by the government, for whatever reason, to pull the plug leaves the public both without a say and without a vital source of information and ideas.

We urge respect for freedom of expression and information to be a core consideration in ongoing negotiations between the states.

Annex 132

National Human Rights Committee, *Second Report Regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar* (1 July 2017), *available at* http://www.nhrc-qa.org/wp-content/uploads/2017/07/NHRC-Second-Report-Regarding-the-Human-Rights-Violations-as-a-Result-of-the-Blockade-on-the-State-of-Qatar.pdf

NHRC Second Report Regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar



1/07/2017

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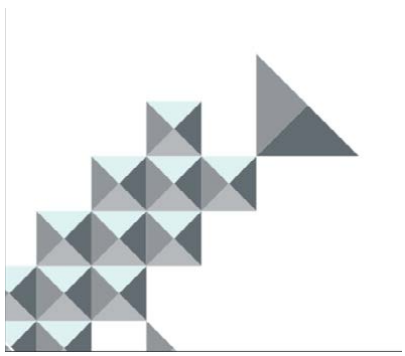


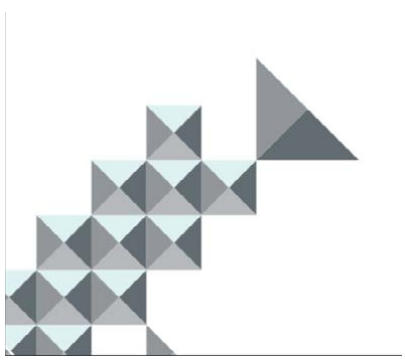
Report contents

I. Summary

The Kingdom of Saudi Arabia (KSA), United Arab Emirates (UAE), and Kingdom of Bahrain severed relations with the state of Qatar, on 5 June, 2017, that involved closure of sea, land, and air routes in the face of trades, and also in the face of Gulf Citizens in a series of actions never witnessed before by the states of the Gulf Cooperation Council (GCC), disregarding all human rights and humanitarian standards and principles and their legal obligations, as those three states are fully aware of the great interrelations and connections among the region's people and nations on all social, economic, cultural, civilian levels.

In this report, the National Human Rights Committee (NHRC) sheds light on the violations of the most basic human rights reported since 5 June, the day on which the blockade and ban was imposed, until Wednesday 28 June, by citizens of: KSA, Qatar, UAE, Bahrain (without addressing the political domain, as it is not included in the mandate of the NHRC).

Since Monday , 5 June 2017, hundreds of complaints have been submitted to the NHRC via e-mail, phone and hotlines , or personal visits to the NHRC headquarters in Doha, Qatar's capital. According to the data received, approximately 11,387 citizens from the three states live in Qatar, and approximately 1927 Qatari citizens live in those states. All of those people have been affected in different areas and ways to varying degrees. In some cases, the actions taken by these states separated mothers from her children.



On Sunday , 11 June, (Six days after the decision), KSA issued a royal order to take into consideration the humanitarian situation of mixed families (Saudi-Qatari), then the UAE followed their footsteps, and then Kingdom of Bahrain. While the NHRC appreciates this step and sees it as a step in the right direction, NHRC also calls on the three states to clarify the implementation mechanisms, emphasizes that it has to include all human rights and legal areas, and calls for ending the blockade and all violations in all its forms, and compensating the affected families and individuals.

Dr. Ali Al Marri, chairman of NHRC, stated that ""The suffering of the GCC people has become notable through the reports of the NHRC, international reports and statements and stories published in the mainstream media and social media. After all, we hope that the besiege countries take into account the rights and interests of the GCC peoples".

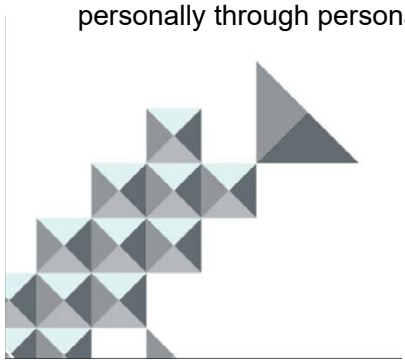
II. Report methodology

In the aftermath of the crisis that affected citizens of four GCC states (citizens and residents in the State of Qatar), NHRC has increased working hours, even within the Eid holiday, due to the large number of complaints received daily, submitted by those affected. Victims communicate with the NHRC legal researchers via mail or the three dedicated hotlines. If victims are within the State of Qatar, they are asked to visit the Committee's headquarters in person, where they fill in complaint forms with required basic details, along with their personal ID numbers. Some of them attach university or school reports, work contracts, or other documents, all of which are available in the Committee's archives. It should be borne in mind that an individual may be subjected to more than one type of violations, and therefore the accumulated number of files reporting all violations is certainly greater than the total number of individuals. We have recorded incidents in which some individuals have been separated from their families, prevented from continuing education and had their right to movement violated. So, three violations against one individual.

In this report, we shed light on the most notable violations, we refer to the most notable two, or three forms of each violation, in order to maintain the size of the report. Please note that the concerned parties can acquire all of these forms and documents.

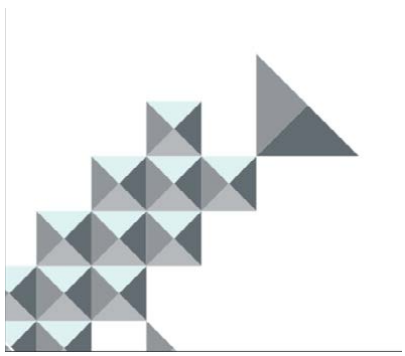
Also, we referred to names using initial letters in order to preserve their safety and security, in light of unprecedented procedures by the UAE that involved imposing penalties including to 3-15 years' imprisonment and fines of 500,000 AED for merely showing sympathy towards the state of Qatar.

Surely, the data provided by the victims are different from one case to another. However, all of these cases enjoy a high level of credibility. Most of the data were acquired personally through personal visits from the affected parties. Additionally, we received



complaints from people regarding violations against their first-degree relatives, where the victims were in other countries and are, as they claimed, unable to visit the NHRC headquarters, contact it, or send an e-mail -which we are still receiving on a daily basis- in this regard, we encourage all the citizens of the four states who suffer from any violations as a result of these abusive decisions to submit their complaints at the NHRC or any other national or international organizations. In light of this, what the NHRC was able to report and document is still the bare minimum, considering that many of those whose rights were violated don't know of the existence of any mechanisms for complaint submission. In addition, many of them seriously are afraid to reveal their identities due to that measures and actions that could be taken against them by their countries' local authorities if they contacted or submitted a compliant. Finally, there are violations against minors (under 18 years), and since they do not have identity documents, statistics do not include a large number of them. However, the psychological impact of violations affected by them is too deep to heal by time.

The Qatari government has not taken any action against the citizens of the three states, and we didn't receive any complaint of that nature.



III. Most notable violations

The following table includes classifications of the violations recorded by the NHRC, 2451 in total. The violations are sorted by the state that perpetrated the violation and the type of each violation. The table includes the violations against the citizens of the three states in addition to Qatari citizens:

Complaint / Country	Education	Ownership	Family Separation	Travel	Health	Religious Practices	Work	Residency	Total
Saudi Arabia	29	464	261	557	14	121	64	50	1560
UAE	85	165	52	196	1	-	7	1	507
Bahrain	25	22	167	99	10	-	30	22	375
Multiple	-	-	-	9	-	-	-	-	9
Total	139	651	480	861	25	121	101	73	2451

A. Violations of the right of family reunification

This might be the most serious and appalling violation that resulted from the abusive decisions made by the three states, because it affects and threatens the ties of the united Gulf Families.

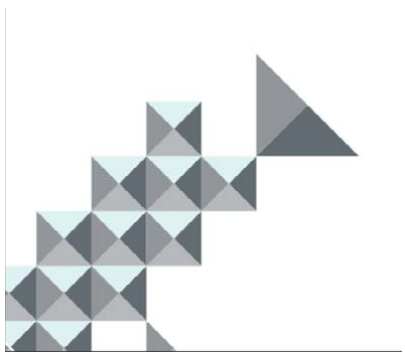
It also threatens the most vulnerable categories of society – women, children, people with disabilities, and the elderly- not to mention that it is an explicit violation to many articles of the international human rights laws.

In this regard, NHRC recorded 480 forms pertaining to families that were separated, even though we are absolutely certain that actual number is far greater.

In addition, the three besieging countries prevented any citizen or resident in the State of Qatar from carrying out any financial or even postal transactions, and thus not only cut family ties during the month of Ramadan and Eid, but prevented bread-winners from transferring money to their dependents, including women and children which constitutes, accordingly, a violation of all human rights and conventions.

Consequently, given that the besieging countries have failed to rectify any of the repercussions of their unfair decisions, the National Human Rights Committee has the conviction that these countries have not taken these decisions randomly, but deliberately with the intention to inflict humiliating and commit violation of fundamental freedoms, values and religious and social norms.

M. B. is a Qatari national married to a Bahraini; she stated “I live with my family in Qatar. As a result of the decision to sever relations with Qatar, my husband and children will have to leave Qatar and our family will be separated. My husband has a job here and my children are schooling here as well. My life is under threat and the future of my family is unknown under this decision.” She said.

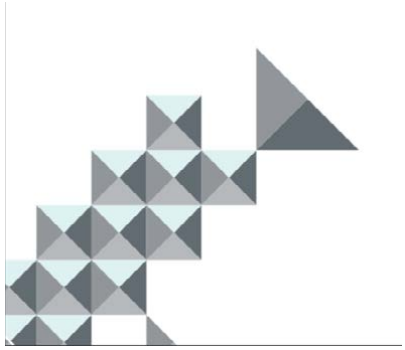


Mrs. (N.H.), Saudi born in 1990, visited the NHRC headquarters and stated the violations she suffered from: “I have been a widow for three years. I live in the State of Qatar along with my two minor children who have a Qatari nationality. I don’t have a job, but I am supporting my family financially from my late husband’s family, which is paid by the State of Qatar. I am enrolled in Qatar University, and living in a rented house until the inheritance case is settled at court. On 8 June, Saudi authorities informed me to go back to the Saudi Arabia without my children. I can’t leave my children alone in Qatar, but I am afraid arbitrary actions will be taken against me if I didn’t comply.”

Mr. (K.S.), Bahraini born in 1984, called NHRC and then visited NHRC headquarters and stated that: “I live and work in the State of Qatar with my wife and my mother who both have Qatari nationality. The decision to sever relations with Qatar will force me to leave my work and family in Qatar and go back to Bahrain. How can I leave my wife and my mother, who suffers from a disability, and uproot my life and work here? I don’t wish to leave Qatar, and I am afraid of the punitive actions that might be taken against me by the Bahraini authorities.”

B. Violation of the right to Education

The education future of every Saudi, Emirati, or Bahraini studying in Qatar schools or universities including QF has been put in jeopardy this year. Therefore, Qatari authorities decided to postpone those students’ exams in order to maintain their right to complete their education and lose the progress they made in their whole academic year especially that we are at the end of the school year. However, the focus remains on the Qatari students studying in the three states, where their rights have been terribly violated, as laws have prevented them from traveling to complete their exams, obtaining documents from their university.



The National Human Rights Committee has recorded 139 cases pertaining specifically to this violation, including the following six main cases:

J.Z is a Qatari female student at the American University of the UAE, born in 1993; she sated “my graduation date was set on July 27, 2017; I am prevented from entering the UAE after the decision to sever relations with the State of Qatar.”

Student H. M., a Qatari national born in 1997, reported to the NHRC headquarters and told his story of being denied access to education after the decision to sever relations with the State of Qatar: “I am a Qatari student at Ajman University in the UAE. I am left with only two examinations to finish my study. However, the UAE denied me entry into its territory and this will prevent me from realizing my dream and completing my educational journey.” He said.

According to student M. H., he was prevented from completing his education at a university in the UAE after the authorities denied him entry because of being a Qatari citizen. “I booked my university seat at Al-Jazira University in Dubai and paid all fees installments. I was waiting for next semester to start my studies. However, after the decision to sever relationship with Qatar I won’t be able to continue my studies, and thus I did not only lose my seat, but half the amount I paid because the university will not give me full refund.” He explained.

Student H. M., a Qatari citizen born in 1991, has been denied access to education. “I am a student sent by the Commercial Bank of Qatar to complete my studies in the Emirate of Sharjah. Only 9 hours separated me from graduation, but the decision to sever relations with the State of Qatar will prevent me from completing my studies and achieving my dream.” He told the NHRC.

Saudi child S. H. born in 2006, he was separated from his mother who is a Qatari national. “I am a 4th-grade student at the Qadisiya Independent Model School in Qatar. I have been living with my mother in Qatar. The Saudi authorities have asked me to leave Qatar, which will prevent me from completing my studies and will also separate me from Qatari mother.” He testified before the NHRC.

Student H. A., a Qatari national studying at the University of Applied Sciences in Bahrain. “The Bahraini authorities have prevented me from entering their territory as of 8 June 2017. I will not be able to complete my exams and I will be fail if I am not allowed to enter the country.” He said in his report to NHRC.

C. Violation of the right to Work

As with education, hundreds of business owners were affected after those states abruptly stopped -in order to cause as much harm as possible- all trading convoys, and thousands of tons of food or health supplies have expired. Hundreds of business owners lost great, immeasurable sums of money.

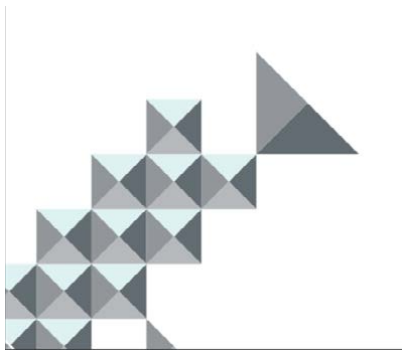
What is even more crucial is that there are entire families that rely completely on traveling between Gulf states, and those families’ only source of income has been cut off. However, none of the three states have compensated those families or sought an alternative for them, which intensified popular resentment even further.

Moreover, many citizens who are employed at public, private, or government sectors and used to move freely between the four countries are now jobless with no source of income and with no compensations from the three states that initiated the blockade.

The NHRC has received at least 101 cases of persons who have been denied access to their work due to the arbitrary decisions.

Born in 1988, A. M. is a Saudi national female working as teacher in Qatar. “After the decision to sever relations with the State of Qatar, the Saudi authorities informed me that I should leave Qatar. I will lose my job if I return to Saudi Arabia, but I am also afraid of any consequences or punitive measures that will follow if I stay here.” She said in her testimony before the NHRC.

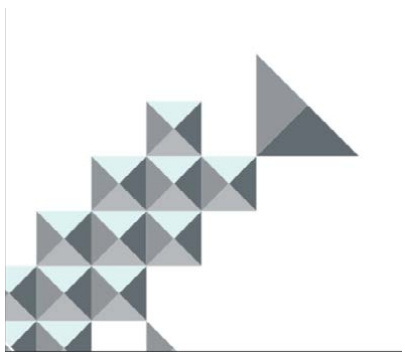
Mr. H. Q, who is a Saudi national married to a Qatari woman, contacted the NHRC and then visited its headquarters in person. He gave details of the violation to which he was subjected. “I have been living and working in the State of Qatar as an administrative supervisor at a junior high school. On 18 June 2017 the Saudi authorities asked me to leave both my job and my Qatari wife and return to Saudi Arabia. I am afraid of losing my job and I do not want to leave my wife in Qatar alone. This decision will affect my life and the life of my entire family. I am afraid of any punitive measures against me by the authorities.” He explained.



Mr. A. I, a Saudi national, contacted NHRC and presented his testimony. “I work for Qatar Aircraft Fuel Company. On 16 June 2017 the Saudi authorities informed me that I should leave Qatar and return to my country. I do not want to go back and I do not want to leave my job. This decision will make me lose the job I like, but I am afraid of any sanctions for not noncompliance with the decision”.

Ms. Sh. M. mentions the violations she has been exposed to. “After the decision to sever relations with the State of Qatar, the Saudi authorities informed me that I should return to my country and leave my job at Hamad Medical Corporation,” she said. “This decision will separate me from my family, as I have a sister with Qatari nationality. We work together to support our mother. I will lose my job, and I will leave my family. I don’t know what penalties I have to face if I do not comply.”

In an interview with Mr. A. M, a Saudi national, at the headquarters of the NHRC, he gave his testimony after his right to work came under threat. The Saudi authorities asked him to leave Qatar: “I work at a car and motorcycle racing club. After the decision to sever relations with the State of Qatar I will have to give up my job. Otherwise, I will be subject to sanctions that the Saudi authorities may impose against me. This decision will threaten my future career.” He testified.

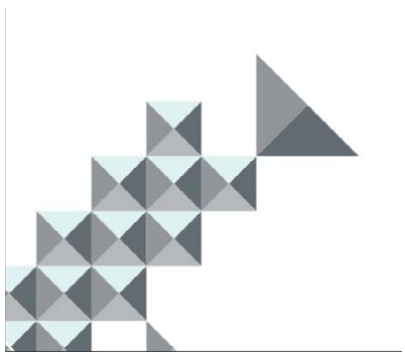


Ms. F. A. who is a Saudi national expresses fear that she might be exposed to sanctions if she does not comply with her country's decision to leave Qatar. "I have been in Qatar since 2007 and I work as a football trainer in the Qatar Women's Sports Committee", she said, speaking on condition of anonymity. "As a result of the decision to sever relations with the State of Qatar I will have to leave my job and the country where I lived all this time."

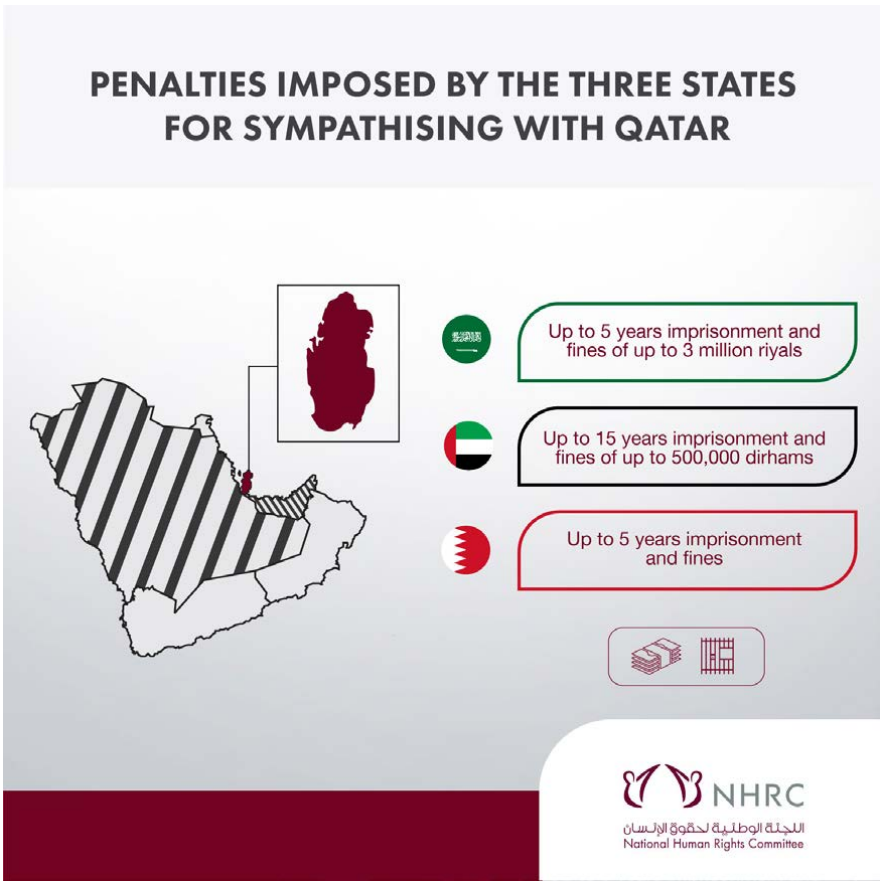
Mr. H. J, who is a Saudi national, told the NHRC about the details of what he was exposed to after the decision to sever relations with Qatar. He stated that he works for Qatar Steel. "Following my country's decision to sever the relations with Qatar I will have to leave my job and return to Saudi Arabia. I am afraid of being subjected to arbitrary punitive measures in the event should I not comply with the decision."

D. Violations to the right of Freedom of Opinion and Expression

It is worth mentioning that the NHRC holds no right to record violations of the freedom of opinion and expression in the three sanctioning states and Egypt. However, NHRC reported violations on the background of severing relations with Qatar. Violations have gone to extremes for just showing sympathy with Qatar via social media, including media outlets funded by the State of Qatar, that certainly do not broadcast newsletters or news programs or political matters, thus indicating the deplorable condition of the freedom of opinion and expression in the three countries and Egypt. Just wearing a Barcelona or Paris Saint-Germain T-shirt, out of sympathy is enough for a person to receive severe punishment.



UAE imposes penalties 3-15 years' imprisonment and fines of 500,000 AED just for merely showing sympathy towards the State of Qatar by even a word, a like, or a tweet on social media in an unprecedented threat to freedom of expression. Bahrain's Ministry of Interior imposes five-year imprisonment, while KSA considered this an internet crime.



This very extreme and harsh actions betray the fragility of the grounds and legitimacy of the blockade decision by those three states, and reflect how much those states' authorities are afraid from citizens' freedom to express any opinions that don't agree with their will. This blatantly goes against many of international and regional declarations and covenants as we will detail further in the Legal Description portion of this report.

In the media sector alone, NHRC recorded that 103 media figures from the three states that imposed the blockade and boycott who used to work at several visual media outlets in the State of Qatar have all been subjected to various types of violations, including pressuring them as a way to force them to resign from their jobs. Due to the pressure, 10 of those were forced to submit and forcibly asked for their termination, and, therefore, lost their jobs and source of income. There are still great pressures on everyone who didn't submit his resignation. These actions constitute a blatant violation to the freedom of journalism, freedom of work, freedom of residency, and freedom of opinion all at the same time.

E. Denial of the right to movement and residence (even for the dead)

Mr. H. Q., a Qatari national was denied the right to movement. "My brother died following a traffic accident in Saudi Arabia on 6 June 2017. I was prevented from entering the Kingdom of Saudi Arabia to receive my brother's body to bury it". He told the NHRC.

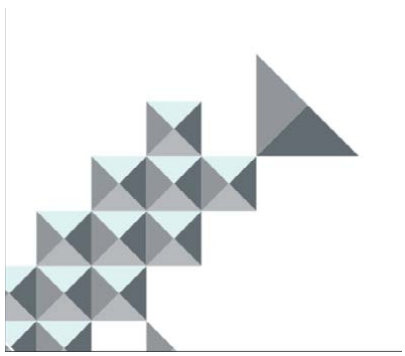
Mr. S. M, a Saudi national, reports his plight to NHRC. “My father died in the State of Qatar and on 7 June 2017 the Saudi authorities prevented me from traveling to Qatar to receive the body of my father,” he said.

Ms. W. H, a Qatari national, tells NURC: “I booked in a hotel in Mecca and paid my accommodation fees,” she said. “The reservation was cancelled on 13 June 2017, but I was not refunded.”

F. Violation of the right to ownership:

The sudden siege laws imposed by the three countries have resulted in huge losses of assets and property to tens of thousands of people, which indicate that those who have taken this decision have total disrespect basic rights. Money and property were confiscated because their owners could not travel, as all persons prohibited from traveling cannot be able to use their property or dispose of it.

Due to the great overlap and interrelatedness of the businesses between the Gulf States, this may not be noticed by many organizations and countries. For example, we have received complaints that there are hundreds of workers in Saudi Arabia whose Qatari directors can no longer pay their salaries, because money transfer services have been stopped. Thus, their work was stopped in the first place, and secondly these workers are now displaced. Another blatant example is the loss of real estate purchased on installments such as land, buildings and apartments, especially in the Emirate of Dubai.



As a result of the freezing of the assets of Qatari nationals in these countries, cheque debits have been stopped and if the situation continues for two months, this may result in complete loss of the property. It may even lead to the owner becoming subject to lawsuit because of the failure to pay its monthly debits.

In addition to the above, the three countries have gone as far as limiting the financial transfers and postal transactions to any of the citizens or residents in the State of Qatar, to eliminate any possibility of saving any financial losses. All this indicates that the sanctioning countries meant to intentionally violate fundamental freedoms from the start. This is further emphasized by the fact that no measures have been taken so far to eliminate the serious repercussions on the citizens of the three countries as well as the citizens of the State of Qatar.

The NHRC has also recorded presence of a large number of workers who hold Qatari residence permits and work in companies owned by Qatari citizens. After the decision to impose siege on Qatar, workers were prevented from returning to Qatar. They stopped working and there is no one to pay for their expenses.

Mr. B. S, a Qatari national, visited the headquarters of the NHRC and presented his case in detail.
“I own an apartment and a car in the UAE and I cannot reach them under the decision to sever relations with the State of Qatar. I have been deprived of my most basic rights.” He said.

Mr. M. Kh, a Qatari national who owns property in Saudi Arabia, contacted us and we asked him to come to the headquarters of the NHRC. He gave his testimony and details of the violation he was subjected to: “I own a group of livestock and camels in Saudi Arabia and I cannot enter Saudi Arabia. I know nothing at all about the fate of my possessions.”

Ms. A. R, a Qatari national told NHRC about the violation of her rights. “I cannot access my property in the wake of the decision to sever relations with Qatar. I have two studios in Jebel Ali in the UAE and two studios in Dubai,” said A R. “I have one car park, and I also own a hotel apartment with one car park, but now I cannot dispose of my property or access it.”

Mr. H. M., a Qatari national, reported to the NHRC about his properties in Saudi Arabia. “I have 80 heads of camels and 120 of sheep in Saudi Arabia. I cannot provide these animals with water and feeds, because of the closure of the border and I am prevented from entering Saudi territory. I fear the loss of my livestock. I do not know the fate of my cars and workers. I am not in a position to renew their work permits if expired”. He explained.

Ms. B. M, born in 1982 in Qatar, testified before the NHRC that she has been denied entry to Saudi Arabia following the decision to sever ties. “I have two pieces of land in Saudi Arabia and a house that I bought for 700,000 riyals, and a number of livestock. I have workers and I cannot renew their work visas in the event of expiration.” She said.

“I have a bank account at Al-Rajhi Bank in Saudi Arabia and I cannot go to the bank to withdraw my money because of the violation,” said H. F, a Qatari lady before the NHRC.

G. Violations of the right to freedom to practice a religion:

Mecca and Medina, two holy cities for all Muslims, are located in the Kingdom of Saudi Arabia. The two cities are a constant destination for Muslims to perform Umrah. The blockade imposed by Saudi Arabia has impeded the rights of nearly 1.5 million Muslims residing in Qatar to performing religious rituals. Saudi Arabia did not make exceptions for those who might wish to perform such rituals. Instead of a trip that takes one and a half hours via Jeddah Airport, citizens and residents of Qatar have to travel via the city of Muscat in Oman, taking up to 12 hours, let alone the doubled cost. Scores of people have been held back from performing Umrah due to these conditions. The Kingdom of Saudi Arabia is held fully responsible religiously, morally and legally.

When the unfair decisions were issued, the authorities in Saudi Arabia prevented a group of Qatari citizens who were on board the plane or at Jeddah airport from entering Jeddah and had to return to Qatar.

A Qatari citizen filming himself in a video at Jeddah Airport, and how Saudi authorities forbade him to go into Mecca for Umrah.

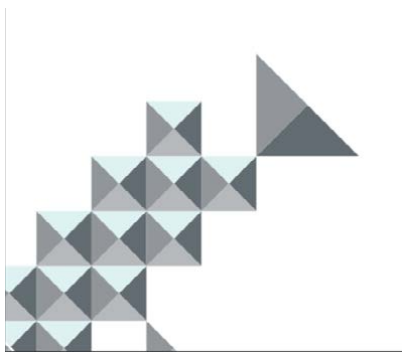
Mr. M. A, a Qatari national who was born in 1987 contacted the NHRC and gave his testimony. “On 5 June 2017, after the decision to sever relations with the State of Qatar, I could not enter Saudi Arabia to perform Umrah, and in addition to being denied travel, I lost the amount I had paid for the hotel reservation in the city of Mecca.” He said.

"On 11 June 2017, I was prevented from entering Saudi Arabia to perform Umrah following the decision to sever relations with Qatar," said Mr. B. A. a Qatari national who was born in 1984, to the NHRC.

H. Incitement of violence and hate speech:

The NHRC has recorded hundreds of cases of hate speech, some of which went as far as inciting the carrying out of bomb blasts in the State of Qatar. In some of the TV series, children have been indoctrinated and incited against Qatar. It is clear that all this amount of incitement, hate speech and violence will generate tendency towards extremist reactions from the various segments of society, intellectuals and the illiterate alike. This may lead to the perpetration of criminal acts not only against Qatari citizens, but it may generate reactions from the Qatari society towards the nationals of these three countries and the State of Egypt as well. This will threaten peace, security and stability in the entire region. The NHRC has recorded the names and details of each person involved in hate speech and violence, particularly those who have been monitored by our researchers. They will be held legally responsible for any incident of racist, terrorist violence against any Qatari citizen or any citizen of the three countries and Egypt.

International law clearly criminalizes hate speech and violence as set forth in Article 20 of the International Covenant on Civil and Political Rights, as well as Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. These articles prohibit any advocacy of hate on the basis of nationalism, racism or religion, and consider it an incitement to enmity and violence.



I. Violation of the right to Health - Especially for persons with Disabilities

Hundreds of patients from the three sanctioning countries were receiving medical treatment in hospitals in the State of Qatar. Some Qataris were also receiving treatment in hospitals in these countries. All of them have been affected, as they were asked leaver without any exception or exclusion of the sick, injured, pregnant women, children or those with disability. It shows beyond doubt how the three countries blatantly disregard the rights of their sick citizens, as well as indifference towards their most basic human rights. The most fundamental aspect of the right to health is non-discrimination. The three countries should have not expelled Qatari patients for political differences, because the right to health is enshrined in several international treaties and conventions, such as the Universal Declaration of Human Rights, Article 25, and the International Covenant on Economic, Social and Cultural Rights, Article 12.

IV. Conclusions and Legal Description

In their resolutions, KSA, UAE, and Kingdom of Bahrain, violated a number of principle international human rights laws and rules, which are related to the most fundamental human rights, which are treated as international norms. These resolutions violate a number of articles of the Universal Declaration of Human Rights, other articles included in the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, in addition to articles in the: Arab Charter on Human Rights, the GCC Declarations of Human Rights, and the Economic Agreement between the GCC States. Therefore, those states are responsible for protecting and preserving the rights and interests of the individuals living on their lands.

The Articles that were violated by the three Gulf states:

First: Universal Declaration of Human Rights

Article 5
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9
No one shall be subjected to arbitrary arrest, detention or exile.

Article 12
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1.Everyone has the right to freedom of movement and residence within the borders of each State.

2.Everyone has the right to leave any country, including his own, and to return to his country.

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.

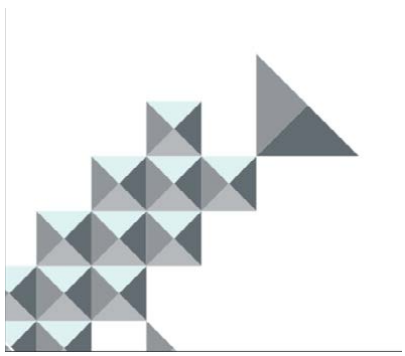
Article 23

1.Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

Article 25

(1) 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.

(2) 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

1.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.

2.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.

3.Parents have a prior right to choose the kind of education that shall be given to their children.

Second: International Covenant on Civil and Political Rights

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, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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.

Third: International Covenant on Economic, Social and Cultural Rights

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.

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 labor should be prohibited and punishable by law.

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

The States Parties to the present Covenant recognize the right of everyone to education. 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.

Fourth: International Convention on the Elimination of All Forms of Racial Discrimination

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.

Fifth: Arab Charter on Human Rights

Article 3
1.Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, color, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.

Article 8

1.No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.

Article 26

1.Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force.

Article 32

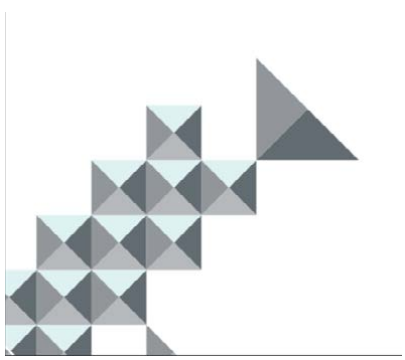
1.The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.

2.Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.

Article 33

1.The family is the natural and fundamental group unit of society; it is based on marriage between a man and a woman. Men and women of marrying age have the right to marry and to found a family according to the rules and conditions of marriage.

No marriage can take place without the full and free consent of both parties. The laws in force regulate the rights and duties of the man and woman as to marriage, during marriage and at its dissolution.



2.The State and society shall ensure the protection of the family, the strengthening of family ties, the protection of its members and the prohibition of all forms of violence or abuse in the relations among its members, and particularly against women and children. They shall also ensure the necessary protection and care for mothers, children, older persons and persons with special needs and shall provide adolescents and young persons with the best opportunities for physical and mental development.

3.The States parties shall take all necessary legislative, administrative and judicial measures to guarantee the protection, survival, development and well-being of the child in an atmosphere of freedom and dignity and shall ensure, in all cases, that the child's best interests are the basic criterion for all measures taken in his regard, whether the child is at risk of delinquency or is a juvenile offender.

Sixth: Human Rights Declaration for the Member States of the Cooperation Council for the Arab States of the Gulf

Article (6)

The Freedom of belief and the practice of religious rites is a right of every person according to the regulation (law) without disruption of the public order and public morals.

Article (9)

Everyone has the right to freedom of opinion and expression, and exercising such freedom is guaranteed insofar as it accords with Islamic Sharia law, public order and the regulations (laws) regulating this area.

Article (14)

The family is the natural and fundamental group unit of society, originally composed of a man and a woman, governed by religion, morals and patriotism; its entity and bonds are maintained and reinforced by religion. Motherhood, childhood and members of the family are protected by religion as well as the State and society against all forms of abuse and domestic violence.

Article (24)

Every person, who has the capacity of doing so, has the right to work and has the right to free choice of employment according to the requirements of dignity and public interest, while just and favorable employment conditions, as well as employees' and employers' rights, are ensured.

Article (27)

Private property is inviolable and no one shall be prevented from the disposition of his property except by the regulation (law), and it may not be expropriated unless for public interest with fair compensation.

V. Recommendations

To the international community:

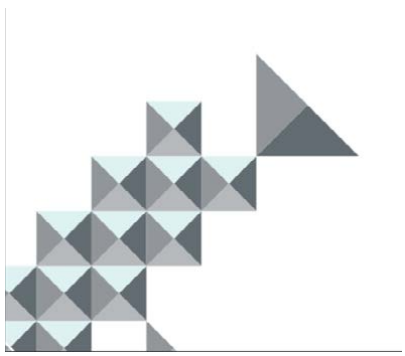
To take urgent action to lift the siege, and make every possible effort to mitigate its repercussions on the people of the State of Qatar and citizens of the three countries.

The United Nations and the Office of the United Nations High Commissioner for Human Rights (OHCHR)

1- The great amount of social violations constitute a threat to the stability of the region, and is stared to have a negative impact on the economic and social levels. Speedy steps must be taken to force the states that issued these unjust decisions to repeal their actions.

2- The OHCHR to prepare reports and statements documenting the various types of violations that affected great numbers of people, especially the families that were

separated, including the negative consequences on women and children as a result of the separation of their families. Also, the OHCHR to call on these states to respect the basic freedoms of the people living on their lands.



Human Rights Council

To Take every possible action in order to end the blockade and its ramifications, and call for the compensation of all people who were harmed and affected.

Human Rights Council Special Rapporteurs

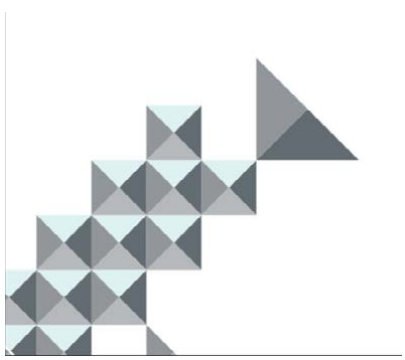
To Document forms of the various types of violations that occurred, and contact the certain concerned governments in that regard as soon as possible. NHRC is fully prepared to share all the related data.

General Secretariat of the Gulf Cooperation Council

The Dispute Settlement Commission of the Supreme Council at the Gulf Cooperation Council to take urgent actions and do everything in its power to convince the concerned governments to start settling the dispute and the social, civil, and cultural situation for the affected families and citizens.

KSA, UAE, and Kingdom of Bahrain

1- Respect the nature of the Gulf societies, and to refrain from making any decisions that sever the relations and ties between families and societies , and to repeal these decisions as early as possible.2- Respect the basic human rights related to freedom of movement, private property, work, residence, and freedom of expression and opinion that are enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and the Arab Charter on Human Rights.



3- The political disputes must not affect the humanitarian and social rights and will being of citizens, which is considered a violation of the international law and the international human rights law.

To the Qatari Government:

To take all possible steps at the international level, at the level of the Security Council and the international forums, to lift the siege on the people of Qatar, to defend their rights in the face of violations against them, and to hold accountable the preparators.

Annex 133

Twitter Post, Regarding the Arrest of Ghanem Mattar,
@AmnestyAR (10 July 2017 at 2:14am)
(with certified translation)

Amnesty International
@AmnestyAR

Follow

If the arrest of Ghanem Mattar in #Emirates is because of his peaceful comments on the crisis with #Qatar, then he is a prisoner of conscience and we demand his immediate release.

2:14 AM - 10 Jul 2017

1,936 Retweets **1,588** Likes

206 1.9K 1.6K

منظمة العفو الدولية
@AmnestyAR

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إذا كان اعتقال غانم مطر في #الامارات سببه تعليقاته السلمية حول الأزمة مع #قطر، فإنه سجين رأي ونطالب بالافراج عنه فوراً.

2:14 AM - 10 Jul 2017

1,936 Retweets **1,588** Likes

206 1.9K 1.6K

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CERTIFICATION

This is to certify that the attached translation is, to the best of my knowledge and belief, a true and accurate translation from Arabic into English of the attached Tweet, dated July 10, 2017.

Hannah Hughes

Hannah Hughes, Proofreader
Geotext Translations, Inc.

Sworn to and subscribed before me

this 31st day of March, 2019.

LAURA E MUSICH
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MU6386791
Qualified in Queens County
My Commission Expires 01-28-2023

Annex 134

Human Rights Watch, *Qatar: Isolation Causing Rights Abuses* (12 July 2017), *available at* https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses

HUMAN RIGHTS WATCH

JULY 12, 2017 6:01PM EDT

Qatar: Isolation Causing Rights Abuses

Families Separated; Workers Stranded; Education, Medical Care Interrupted

(Beirut) – The isolation of Qatar by Saudi Arabia, Bahrain, and the United Arab Emirates (UAE) is precipitating serious human rights violations, Human Rights Watch said today. It is infringing on the right to free expression, separating families, interrupting medical care – in one case forcing a child to miss a scheduled brain surgery, interrupting education, and stranding migrant workers without food or water. Travel to and from Qatar is restricted, and the land border with Saudi Arabia is closed.

A road sign is seen near Abu Samra border crossing to Saudi Arabia, Qatar June 12, 2017.

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On June 5, 2017, Saudi Arabia, Bahrain, and the UAE cut off diplomatic relations with Qatar and ordered the expulsion of Qatari citizens and the return of their citizens from Qatar within 14 days. The three countries applied the travel restrictions suddenly, collectively, and without taking individual situations into account. On June 23, the three countries and Egypt issued a list of 13 demands to Qatar for ending the crisis that included shutting down Al Jazeera and other media they claim are funded by Qatar; downgrading diplomatic ties with Iran; severing ties with "terrorist organizations," including the Muslim Brotherhood; and paying reparations to other Gulf countries for "loss of life" and "other financial losses" resulting from Qatar's policies.

"Gulf autocrats' political disputes are violating the rights of peaceful Gulf residents who were living their lives and caring for their families," said Sarah Leah Whitson, Middle East director at Human Rights Watch. "Hundreds of Saudis, Bahrainis, and Emiratis have been forced into the impossible situation of either disregarding their countries' orders or leaving behind their families and jobs."

Human Rights Watch researchers interviewed and documented the cases of 50 citizens of Qatar, Bahrain, and Saudi Arabia, as well as 70 foreign migrant workers living in Qatar, many of whose rights have been violated by restrictive policies imposed since June 5. More than 11,327 Gulf nationals were living in Qatar and nearly 1,927 Qataris in other Gulf countries, Qatar's national human rights body reported on July 1.

Gulf nationals told Human Rights Watch that parents had been forcibly separated from their young children and husbands from their wives, and that family members were prevented from visiting sick or elderly parents. Qatari media reported that family members of a Saudi man who died in Qatar on June 8 could not enter to retrieve his body, and authorities eventually buried him in Qatar. Article 26 of the Arab Charter on Human Rights, which Saudi Arabia, Bahrain, and the UAE have ratified, prohibits arbitrary expulsion of foreigners and any collective expulsion.

One Qatari man said he is cut off from his pregnant Saudi wife, who was visiting family members in Saudi Arabia when the restrictions were imposed. A Qatari woman said that she left her ailing 70-year-old Bahraini husband in Bahrain because her embassy advised her to return to Qatar. A Bahraini woman virtually went into hiding to keep her government from discovering she had remained with her Qatari husband and 2-month-old daughter, who is a Qatari citizen.

Some Gulf states have threatened citizens who remain in Qatar with specific punishments. Saudi Arabia's General Directorate of Passports placed Qatar on its list of countries to which Saudi citizens are not allowed to travel under penalty of a three-year travel ban and a fine of 10,000 Saudi Riyals (US$2,600). On June 13, Bahrain's Interior Ministry issued an order stating that "anyone who violates the ban … shall have his personal passport withdrawn and his request to renew it shall be denied."

On June 12, in response to reports of family separations, Saudi Arabia, Bahrain, and the UAE announced that they would grant exceptions for "humanitarian cases of mixed families" for travel back and forth from Qatar and each country established hotlines. Yet, of the 12 Gulf nationals who said they tried to contact these hotlines, only two managed to get permission to go back and forth. Others said that they did not call because they worried that the three countries would use the hotlines to discover the identities of citizens who remained in Qatar.

Other Gulf nationals said that the travel restrictions had interrupted ongoing medical treatment or studies. Two Qatari parents said that their children missed scheduled surgeries in Saudi hospitals, including one girl whose mother said if she does not receive specialist treatment she could end up paralyzed, and a 67-year-old Saudi man who had to end ongoing heart and kidney treatment in Qatar. The exceptions Saudi Arabia, the UAE, and Bahrain announced made no reference to medical treatment.

A Qatari woman who had been in her third year at a UAE university showed Human Rights Watch a screenshot of an email from a university administrator on June 7, informing her that the university had withdrawn her from her summer and fall courses, wishing her “success in your educational journey.” Another Qatari woman in the final year of her medical degree in the UAE also was abruptly withdrawn from her studies. All Qatari students interviewed said that the travel restrictions forced them to return to Qatar.

Four Qataris said that migrant workers they sponsor are stranded in Saudi Arabia without adequate food or water. Human Rights Watch also interviewed 70 migrant workers at various locations in Doha, nearly all of whom complained about the rise in food prices in Qatar because of increasing import costs due to the land border closure. The border closure also exacerbates existing abuses that workers said they faced, including non-payment of salaries.

Saudi Arabia, Bahrain, and the UAE have sought to use their political measures against Qatar to shutter critical media outlets in their countries, especially Al Jazeera, which Gulf leaders have accused of fomenting terrorism and unrest across the region. Bahrain and the UAE have threatened to punish their own citizens for “expressing sympathy” for Qatar online.

"Gulf countries need to take a step back and see the harm they are doing to their own citizens,” Whitson said. "Gulf countries should put people’s well-being before their harmful power games.”

Family Separation

Saudi Arabia, Bahrain, and the UAE ordered the expulsion of all Qatari citizens from their countries and mandated the return of their citizens from Qatar within 14 days – by June 19. The three countries ended all commercial direct flights to and from Doha, forcing returning Gulf nationals to lay over in a third country, usually Oman or Kuwait, and redirected flights to Qatar outside of their airspace. Some Gulf states have threatened citizens who remain in Qatar with specific punishments.

A July 1 report by the state-funded Qatari National Human Rights Committee says that approximately 8,254 Saudis, 2,349 Bahrainis, and 784 Emiratis lived in Qatar prior to the crisis and that 1,927 Qataris

lived in the three neighboring countries. The report said that the committee had received 480 family separation cases since June 5.

No Gulf Cooperation Council (GCC) country allows dual nationality, and all discriminate against women by not allowing women to pass nationality to their children on the same basis as men. Qatar, like other Gulf states, allows men to pass citizenship to their children, whereas children of Qatari women and non-citizen fathers can only apply for citizenship under strict conditions. The 2005 acquisition of Qatari nationality law provides that individuals resident for more than 25 years can apply for nationality, with priority for those with Qatari mothers, under specific conditions.

“Sami,” a 36-year-old Bahraini man born in Qatar to a Qatari mother and Bahraini father, said, “I was born here, studied here, and work here.” He applied for Qatari nationality six years ago, but had not been notified of a decision: “There is a committee. I did a medical test, CID [a check with Criminal Investigation Department], and paid 3000 riyals (US$823). They said all fine, but said that I have to wait for government approval. But they didn’t call me.”

Of the 50 Gulf nationals Human Rights Watch interviewed, 22 reported that the travel restrictions cut them off from immediate family members. Human Rights Watch interviewed 15 people who said they were married to someone holding another one of these nationalities or were divorced but had children with them.

“Maher,” a 37-year old Qatari, said the travel restrictions cut him off from his Saudi wife, who had been visiting her mother in Saudi Arabia’s Eastern Province. He said his wife, who is from his own extended family, is not allowed to fly because she is in her last trimester of pregnancy, and that Saudi authorities will not allow her to cross the land border into Qatar: “On Thursday [June 15], I went to the border at noon and spoke to them, and they said I have to speak with the Interior Ministry. I talked to them on the number they gave me and they said they would call me back. I waited there 2 hours, from 12 to 2 p.m. ... I went back [home] eventually because my car had no petrol [left].”

Maher said the situation is complicated by the fact that he never registered his marriage in either country: “I just want my wife and to be with the baby. We didn’t finish our marriage papers, so there is no confirmation of marriage for us. Now I can’t complete the papers. I am afraid they will take my child away and make his nationality Saudi.” He said he also fears potential criminal sanction against his wife because of her pregnancy. Sexual relations outside of marriage are criminalized in Gulf states, and flogging penalties can be imposed on Muslims.

“Leila,” a 26-year old Bahraini woman, said that she frequently traveled back and forth between Qatar and Bahrain with her Qatari husband. She said she delivered a baby girl in Qatar several weeks before the

travel restrictions were imposed, and was forced to decide between complying with the order to return to Bahrain or remain with her daughter and husband. She said she was deeply worried over Bahrain's order to cancel passports of citizens who remain in Qatar, and hoped she could keep Bahraini authorities from learning that she is in Qatar. She said she would not travel until the crisis is resolved: "I'm scared to travel anywhere. What if they get information about me and are able to cancel my passport? I don't want any information in the system anywhere." She said she had tried to call the Bahraini hotline but was told she had to return to Bahrain and asked for her passport number.

A sign indicating a route to Qatar embassy is seen in Manama, Bahrain, June 5, 2017.

Human Rights Watch interviewed two Qataris who were forced to return but were staying in hotels in Doha because they did not have homes in Qatar. "Reem" said that she had lived in Bahrain with her Bahraini husband and children for 36 years. She called the Qatari embassy in Manama, which she says informed her that she had to return to Qatar. She said that she left behind her 70-year-old Bahraini husband and two sons: "There is nobody in Bahrain to take care of [my husband]. He is 70, he can barely take care of himself, and my other sons have their own families. They were very upset I was leaving."

She said that she brought to Qatar her 25-year old son, a Bahraini national, who suffers from an intellectual disability and epilepsy and requires regular medical treatment. She said she worries what will happen if Bahraini authorities discover that he is in Qatar. In Qatar, she has limited foreign currency in cash that she had difficulty exchanging, and is now dependent on the Qatari authorities and charities to provide her with accommodation and financial assistance.

Another Qatari man, "Ahmed," who is married to an Emirati woman and lives in the UAE, said that the UAE had denied his entry around the time it imposed the travel restrictions and forced him back to Qatar, where he was staying in a hotel. "Does anyone want this?" he said. "Does this comply with international laws and customs? In Holy Ramadan [the Muslim holy month], there is a complete lack of mercy and families are broken apart, children from their father and a husband from his wife."

"Nora," a 36-year old Saudi woman living in Qatar said she has a 3-year-old Qatari son from a previous marriage to a Qatari. She said that she has legal custody over her son and is entitled to monthly financial and child support, but that her former husband was encouraging her to return to Saudi Arabia so that he could regain custody and stop his support payments.

Of the 50 Gulf nationals interviewed, only 12 said that they had attempted to contact the family separation hotlines. The rest said that they did not think they would receive permission to travel back and forth, or that they were worried that the hotlines were intended to collect information on which citizens had failed to return to or from Qatar.

Only 2 of the 12 people who had contacted the hotlines, one Saudi and one Bahraini, said they had obtained permission to live in Qatar and travel back and forth.

Forced separation of families often violates the right of all individuals to have their established family life respected. The right to family life is enshrined in article 16 of the Universal Declaration of Human Rights, article 23 of the International Covenant on Civil and Political Rights, and article 23 of the Arab Charter on Human Rights. The Convention on the Rights of the Child prohibits states from separating children from their parents against their will, except when necessary for their own best interests (article 9), and from discriminating against children on the basis of their parents' status (article 2). Article 26 of the Arab Charter states that "[n]o State party may expel a person who does not hold its nationality but is lawfully in its territory, other than in pursuance of a decision reached in accordance with law and after that person has been allowed to submit a petition to the competent authority" and that "collective expulsion is prohibited under all circumstances."

Interrupted Medical Treatment

Five Gulf nationals said that the travel restrictions disrupted medical treatment for themselves or family members.

"Amani," a Qatari woman, said that her 15-year-old daughter was born with a spinal problem and had undergone a series of operations at two hospitals in Riyadh since she was an infant. She said that in February, her daughter had brain surgery, and that she was scheduled for another surgery in Riyadh on June 17, which she missed because of the travel restrictions. She said such specialist treatment is not available in Qatar: "[There is] no chance to travel and the headaches are becoming more severe. … It could become paralysis. She needs an immediate solution. … We don't have money to go elsewhere for such treatment."

"Mahmoud," a 67-year old Saudi man, said that he has lived and worked in Qatar for more than 10 years. He said he missed the 14-day deadline as he had medical appointments every day. He said he would return to Saudi Arabia and forgo follow-up medical treatment because he feared fines or prison: "I have medical conditions – one in my heart, and one in my kidney. My current medical treatment is in Qatar. … I have two appointments [in Qatar] that I will miss. … I feel confused, I want to see my family, but I want to work here. I am scared of actions that may be taken against me." Shortly after meeting with Human Rights Watch, he was able to enter Saudi Arabia.

"Walid," 56, a Qatari, said that his son had been scheduled for required facial surgery at a hospital in Riyadh on June 9. He said the treatment plan following the operation is not available in Qatar. He said he would speak with the Qatari Health Ministry to see if they would provide financial support to seek the surgery and necessary treatment outside the Gulf.

Interrupted Education

Eleven Qataris who had been attending university programs or specialized training courses in the UAE when the restrictions were imposed all said that their universities summarily withdrew them from their courses and told them to return to Qatar. They expressed concerns that universities in Qatar or other countries might not allow them to transfer and accept academic credits for completed courses, or that certain courses are not available in Qatar.

"Hassan," 34, said that he was among 13 Qataris attending aviation school in the UAE. He said that his group had only completed two of the five courses necessary to graduate: "We cannot sit for the exam and we will not graduate this year. It is the only aviation school in the region with this program, otherwise we have to go to the UK or US, but I don't know if the credits would transfer."

Another Qatari man, "Samer," one of around 25 to 30 students attending a part-time university degree course in the UAE, described the problems resulting from his expulsion: "We have rented apartments, furniture, and clothes that are still there and have to pay internet and telephone bills. The owner [of the apartment] has our checks – we have to provide four checks in advance which they will take from the account. The rental contract is one year. If there is no balance left in the account, then the owner can make a police case file. Anytime you go back you can be arrested…"

"Rana," a 22-year old Qatari, said that her withdrawal from a prominent university in the UAE had set back her plan to eventually pursue higher education in France: "All I can say is that this siege has robbed me of the right to pursue the quality of education that I aimed to achieve. This siege has harmed our dreams and our futures."

Identity Documentation Issues

Saudi Arabia, Bahrain, the UAE, and Egypt have withdrawn their embassies and staff from Qatar, making passport renewal difficult for nationals of those countries who do not have permission to remain in Qatar. They also face significant obstacles obtaining documents for newborn children.

Residency visas in Qatar are linked to valid passports, and some foreign nationals expressed concern about what will happen to their residency visas once their passports expire.

“Hussein,” a 38-year old Saudi, said that he has lived in Doha for 25 years, and that his wife gave birth to a son the day the travel restrictions were imposed. His son has a Qatari birth certificate, but Hussein said he cannot add the baby to his Saudi family book, a form of ID that is commonly used as children’s main form of identification in the Middle East, or obtain a passport for him, because the process in Saudi Arabia requires him to come in person. He said, “the system in Saudi Arabia is that a newborn in the first week must obtain a Saudi ID, but Saudi Arabia requires me to go back to complete [the procedure]. But I feel in danger going back. How can I leave Saudi Arabia if I go there?”

Another Saudi man, “Assem,” said that his 12-year old sister’s Saudi passport expired, and he worried that he may not be able to enroll her in school in Qatar, as Qatar requires that foreign students have valid passports.

All Bahraini interviewees told Human Rights Watch that they feared the consequences of Bahrain’s announcement that it would revoke the passports of Bahraini citizens who remain in Qatar. One divorced Qatari woman whose adult children have their father’s Bahraini nationality, but are estranged from him, said that she cannot travel abroad with her children as she feared that their passports may be invalidated.

Human Rights Watch spoke to seven Egyptian employees of Al Jazeera who said that they cannot renew their Egyptian passports and therefore are worried about losing their Qatari residency permits. Many of them moved to Qatar after they were threatened, intimidated, beaten, or arrested by authorities in Egypt. One journalist said he applied for his Egyptian passport in January, but that Egyptian embassy officials told him in April that he would not receive the passport. It will expire in one month.

Effects on Non-Gulf Migrant Workers

The isolation of Qatar has negatively affected non-Gulf foreign migrant workers, primarily from South Asia. Four Qataris interviewed said that migrant workers they sponsor are stranded in Saudi Arabia.

One Qatari, “Omar,” said that he employed two Bangladeshi workers at a 14,000-square meter farm he owns just over the border in Saudi Arabia. He said the workers are registered in Qatar, but that Saudi

Arabia previously allowed Qataris to bring workers in for three-month periods for a fee. He said he can no longer reach his farm and worries about the two workers: “I can send their salaries to Bangladesh, but how can I feed them? ... The supermarket [in Saudi Arabia] refused to give them anything [because they have no money], and we are scared the police will take them. There is no way to pay their salaries to them.” He added, “They are humans, they are calling me every day saying they have nothing to drink or eat, and they are scared.”

Omar called one of the Bangladeshi men on his phone in front of a Human Rights Watch researcher, and the man confirmed their plight.

“Salim,” a 50-year old Qatari, said that he owns two houses and 150 camels in Saudi Arabia. He said he has group of Qatar-registered migrant workers from India, Sudan, and Nepal caring for his camels and property who are now stranded in Saudi Arabia.

“Anwar,” another Qatari, said that he and his brothers own 50 camels and three cars in Saudi Arabia, which are looked after by three migrant workers – two from Bangladesh and one from Sudan – who are stranded. He said he lost contact with them a week into the crisis because they ran out of phone credit. He said he cannot get their salary to them and is concerned that they are running out of food. “A week before [the] crisis I gave food for one month. But now they don’t have petrol for the [generator-run] refrigerator and the air conditioner.” He does not have friends nearby to help.

The problems for these workers are compounded by the fact that in March, Saudi Arabia declared a large-scale campaign, “A Homeland with no Violator,” to locate and expel foreigners violating residency laws.

In addition to the migrants trapped in Saudi Arabia, Human Rights Watch interviewed 70 migrant workers – most from Nepal, India, Bangladesh, and Pakistan – at various locations in Doha, including the Corniche, al-Attiyah Market, and Musheirib. Some reported long-standing abuses such as non-payment or late payment of salaries or unsanitary living conditions, but nearly all complained that the closure of the land border had caused a rise in food prices in Qatar that was causing serious economic hardship.

A 43-year-old Nepalese man working in a plumbing shop in Qatar said that from his monthly salary of 1,200 Qatari Riyals (US$327), he normally spends around 200 Riyals ($55) on food, but that the increase in food prices would cost him an extra 100 to 300 Riyals ($27 to $82) per month, up to a third of his salary. Another 21-year-old Nepalese construction worker said he earns 800 Riyals ($220) a month but that his food expenses would increase to 350 Riyals ($96), nearly half of his salary.

Human Rights Watch researchers visited four supermarkets in Doha on June 22-23, including two smaller markets frequented by migrants, and two high-end supermarkets. Nearly all migrants said that, before the

land border closure, tomatoes cost between 3-4 Qatari Riyals ($0.82-$1.10) a kilo. For the lower end supermarkets in migrant worker areas, researchers observed that poor quality tomatoes were now selling for 6.5 Riyals ($1.79) per kilo in one market and better-quality tomatoes for 8 Riyals ($2.20) in another market. In the high-end markets, one had no tomatoes in stock, while another sold only expensive imported tomatoes from Holland, for 24.75 Riyals ($6.80) per kilo. One of the low-end markets was selling cucumbers for 8 Riyals ($2.20) per kilo, up from 3 Riyals ($0.82) prior to the crisis.

A corporate social responsibility officer at a large company in Qatar said by phone that she heard from two other companies with migrant worker employees that fruit companies were not selling their produce “in supermarkets for workers” but did not know why. She said that her company was focused on nutrition for its migrant workers and looking at alternatives for perishable fruits and vegetables such as fruit juice, and frozen fruits and vegetables.

Two construction workers also said that their work sites had run out of building materials because of the land border closure, and that they worried about their companies’ stability.

Region / Country

- Middle East/North Africa
- Qatar

More Reading

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July 1, 2017 News Release

Qatar/Saudi Arabia: Allow Man Trapped at Border to Enter

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June 14, 2017 News Release

Media Blocked, Threatened in Dispute with Qatar

Source URL: https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses

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Annex 135

National Human Rights Committee, *100 Days Under the Blockade: NHRC Third report on human rights violations caused by the blockade imposed on the state of Qatar* (30 August 2017)


NHRC
اللجنة الوطنية لحقوق الإنسان
National Human Rights Committee
Doha - Qatar
100 Days
Under the Blockade
NHRC Third report on human rights violtions caused by the blockade imposed on the state of Qatar
www.nhrc-qa.org

Report Content

i. Summary:

This is the third of a series of reports issued by Qatar National Human Rights committee since the beginning of the blockade which was imposed on 5 June 2017 by Saudi Arabia, the United Arab Emirates and the Kingdom of Bahrain. It contains new testimonies of victims from Qatar, Saudi Arabia, The United Arab Emirates and the Kingdom of Bahrain who have been subjected to serious violations of their fundamental rights. The NHRC shall continue to update and issue reports as long as the blockade continues, and complaints are received.

Since Monday, 5 June 2017, hundreds of complaints have been submitted to the NHRC via e-mail, phone, or personal visits to the NHRC headquarters in Doha, Qatar's capital. According to the data received, approximately 11,360 citizens from the three states live in Qatar, and approximately 1927 Qatari citizens live in those states. All of those people have been affected in different areas and ways to varying degrees. In some cases, the actions taken by these states separated a mother from her children.

On Sunday, 11 June, (Six days after the decision), KSA issued a royal order to take into consideration the humanitarian situation of mixed families (Saudi-Qatari), then the UAE followed their footsteps, and then Kingdom of Bahrain. While the NHRC appreciates this step and sees it as a step in the right direction, NHRC also calls on the three states to clarify the implementation mechanisms, emphasizes that it has to include all human rights

and legal areas, and calls for ending the blockade and all violations in all its forms, and compensating the affected families and individuals.

Dr. Ali al Marri, Chairman of NHRC, stated that:

"Every day that passes without lifting of the blockade leads to more violations and suffering, and thus more legal, economic and humanitarian consequences. We wished that the blockade would be lifted and families to be reunified in Eid Al-Adha."

ii. Brief On The NHRC:

The National Human Rights Committee of Qatar is one of the most prominent national human rights institutions (NHRIs), established in accordance with the Paris Principles adopted by the General Assembly of the United Nations. These institutions are members of the Global Alliance of National Human Rights Institutions (GANHRI) after being accredited by the Sub-Committee on Accreditation (SCA) of the GANHRI, and under the supervision of National Institutions Division and Regional Mechanisms and Civil Society affiliated to the office of the High Commissioner for Human Rights (OHCHR), which serves as the Secretariat of the SCA in the GANHRI. The National Committee was established in 2002 with its competencies and mandate to protect and promote human rights as defined by the Paris Principles. The Committee received an A-status in 2010 for a period of 5 years, and was reaccredited status A in 2015 for another 5 years. This is the highest rating given to a national institution and demonstrates its credibility and independency as well as its full compliance with the Paris Principles.

iii. Report Methodology:

Since June 5, 2017, the National Human Rights Committee has received daily visits from victims affected by the decisions of the besieging countries. The Committee officials received the victims, and report their statements, and sort their complaints according to the type of violation. Complaints can be submitted via e-mail and hotlines.

During the period covered by the report, researchers opened files, filled in complaints forms prepared by NHRC, with attaching copies of identification documents, while some complainants attached university and school reports, work contracts, family related information, and other documents that are available in the NHRC archive. NHRC will, and is, progressively sharing these files with the concerned international human rights and legal parties. It is worth noting that an individual might be subjected to more than one type of violations. Therefore, the total number of files reflecting the total number of violations is certainly greater than the total number of individuals.

In this report, we shed light on the most notable violations that occurred. We refer to the most notable two, or three forms of each violation, in order to maintain the size of the report. Please note that the concerned parties can acquire all of these forms and documents. Also, we referred to names using initial letters in order to preserve their safety and security, in light of unprecedented procedures by the UAE that involved imposing penalties including to 3-15 years' imprisonment and fines of 500,000 AED for merely showing sympathy towards the state of Qatar.

Surely, the data provided by the victims differ from one case to another. However, all

of these cases are of a high level of credibility. Most of the data were acquired personally through personal visits from the affected parties. Additionally, we received complaints from people regarding violations against their first-degree relatives, where the victims were in other countries and are, as they claimed, unable to visit the NHRC headquarters, contact it, or send an e-mail -which we are still receiving on a daily basis- in this regard, we encourage all the citizens of the four states who suffer from any violations as a result of these abusive decisions to submit their complaints at the NHRC or any other national or international organizations. In light of this, what the NHRC was able to report and document is still the bare minimum, considering that many of those whose rights were violated don't know of the existence of any mechanisms for complaint submission. In addition, many of them seriously are afraid to reveal their identities due to that measures and actions that could be taken against them by their countries' local authorities if they contacted or submitted a compliant.

The Qatari government has not taken any action against the citizens of the three states, and we didn't receive any complaint of that nature.

iv. Most Notable Violations:

The following table includes classifications of the 745 files we reported, and their distribution according to each of the 3 states:

Violation/ Country	Education	Property	Family Separation	Movement	Health	Religious Practices	Work	Residence	Total
Saudi Arabia	55	633	331	724	19	158	76	58	2045
UAE	130	367	78	307	2	-	8	4	896
Bahrain	28	50	211	124	14	-	37	32	496
Other	-	-	-	9	-	-	-	-	9
Total	213	1050	620	1164	35	158	112	94	3446

a. Violation To The Right Of Family Reunification:

The besieging countries have not respected the distinguished season which is very dear to the hearts of the Arab, Islamic and Gulf peoples. The blockade was not lifted during Eid al-Fitr, and continued until Eid al-Adha, which have critical psychological and social repercussions on the peoples of these countries which have made unjust decisions against them and their families; this violation is considered the most serious and the most terrible, because it affects and threatens the Gulf family, and threatens the most vulnerable groups in society (women, children, people with disabilities and the elderly) The National Human Rights Committee has reported 620 cases of violation of the right to family reunification, but we are sure that the real impact is greater.

- Mrs. (N.H.), Saudi born in 1990, visited the NHRC headquarters and stated the violations she suffered from: "I have been a widow for three years. I live in the State of Qatar along with my two minor children who have a Qatari nationality. I don't have a job, but I am supporting my family financially from my late husband's family, which is paid by the State of Qatar. I am enrolled in Qatar University, and living in a rented house until the inheritance case is settled at court. On 8 June, Saudi authorities informed me to go back to the Saudi Arabia without my children. I can't leave my children alone in Qatar, but I am afraid arbitrary actions will be taken against me if I didn't comply."
- Mr. H, a Qatari who was born in 1987, visited the headquarters of the Committee and gave details of the violation he was subjected to: "I am married, my wife is Emirati, we are expecting our second child, she is in her seventh month of pregnancy but she cannot go to her family In the UAE and give birth there, my first baby is Qatari and cannot travel with her. I am afraid of racial treatment that they may be subjected to. "We have been deprived of our most basic rights, in addition to the material losses incurred. I have businesses and projects in the Kingdom of Saudi Arabia and the UAE, all of which are now suspended as a result of the decision to sever relations."
- Ms. W.A, born in 1987, an Emirati lady living in Qatar, She visited the headquarters of the Committee and reported the details of the violation she was subjected to: I have lived since my birth in Qatar and my mother is Qatari who is old, suffering from pressure sickness and diabetes. "I built a life here, I am working here and my family is here and I cannot leave my mother alone, but I am afraid of any punitive action the UAE authorities might take against me if I remain in Qatar."
- Ms. S. A, a Qatari lady born in 1974, visited the Committee and stated that: "I am a divorcee and I live in the UAE. I have four children who are Emirati, My family in Qatar planned to travel to Saudi Arabia to perform Umrah and before I return back to UAE, the decision to sever relations with the State of Qatar was issued and therefore I could not travel to the UAE to see my children. this unjust decision has separated my family."

b. The Right To Education:

The UAE and the State of Bahrain are still preventing Qatari students from entering Qatar and preventing their citizens from going to Qatar to complete their education. Hundreds of students will lose their seats and many of them have lost their funds. The universities in the blockading countries refused to refund financial dues. In addition, students were prevented from obtaining certificates from the university proving that the student passed the stage that they had completed.

The National Human Rights Committee reported 213 forms relating specifically to this violation, including the following four cases:

- Mr. A.G, Qatari born in 1997, he studies in the UAE, he visited the Committee to give details of the violation he was subjected to: "I am a student in the last year of secondary school in the UAE, my mother is Emirati, because of the blockade I returned to Qatar and could not go to Abu Dhabi to complete the exam for the second round of one of the subjects and get my secondary school certificate, knowing that I submitted a complaint at the Department of Education in Abu Dhabi to raise only 3 degrees for this course but my request was rejected. I cannot apply for any university."
- Ms. H, Qatari mother whose children are Saudi, they applied to the Australian University in Dubai and the fees were paid, the school year is planned to start on 13/9/2017, now she cannot travel to Dubai with her my children and not even to Saudi Arabia to claim any dues.
- Ms. N.A, a Qatari citizen who came to the National Human Rights committee and stated the following "I am a law student in the second year of Ajman University, in Fujairah. I returned to Qatar in the middle of the final exams. I lost the ability to concentrate in my studies because of the developments due to the blockade imposed on the State of Qatar, and although I left the residence in which I lived in the UAE, we are required to pay rent and the bills of electricity, water and the Internet."
- A Qatari student came to the National Human Rights Committee and stated the details of the violation: "I received a circulation on June 4, 2017, from Al-Jazira University in Dubai concerning the requirement to pay for the summer term (15,750 AED). After the decision to cut off relations with the State of Qatar, I contacted the university on 7/6/2017 in order to refund the amount paid but the university refused. I lost the money paid and also lost my studies in the summer term this year. This leads to the delay of my graduation from the university. "
- (F.M.), an Emirati student, born in 1998, he was deprived of the opportunity to complete his education. Also, he was separated from his mother who has a Qatari nationality.

c. Violation Of The Right To Work :

As with education, hundreds of business owners were affected after those states abruptly stopped -in order to cause as much harm as possible- all trading convoys, and thousands of tons of food or health supplies have expired. Hundreds of business owners lost great, immeasurable sums of money. What is even more crucial is that there are entire families that rely completely on traveling between Gulf states, and those families' only source of income has been cut off. However, none of the three states have compensated those families or sought an alternative for them, which intensified popular resentment even further.

Moreover, many citizens who are employed at public, private, or government sectors and used to move freely between the four countries are now jobless with no source of income and with no compensations from the three states that initiated the blockade.

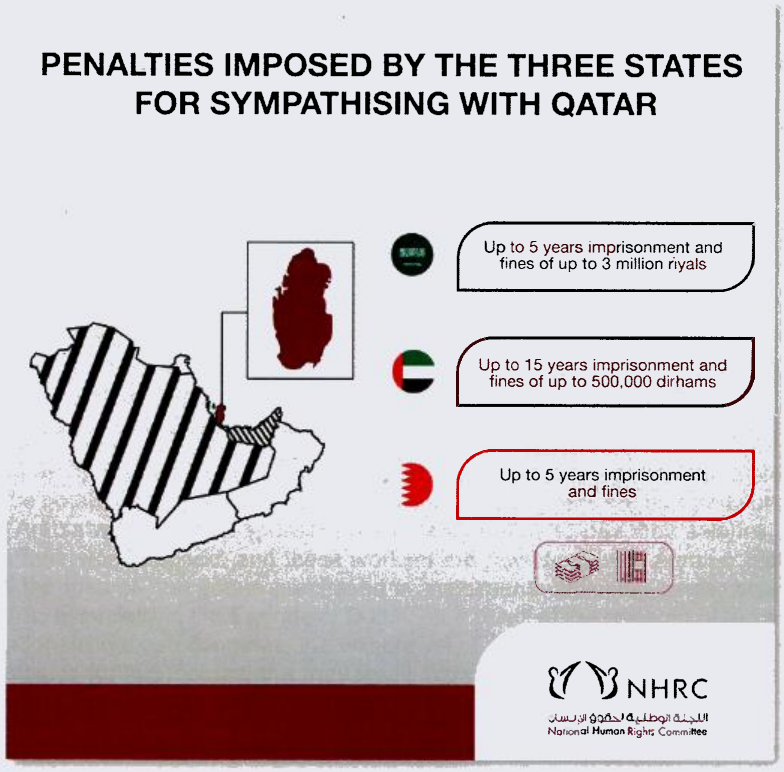
NHRC received no less than 112 complaints from individuals who are affected by the blockade.

- Ms. A.M, a Saudi born in 1988. She works as a teacher in the State of Qatar. She visited the National Human Rights Committee and stated that: "After the decision to sever relations with the State of Qatar, the Saudi authorities informed me that I should leave Qatar. I will lose my job if I went back to Saudi Arabia, but I am afraid of any consequences or punitive measures that might be taken against me if I stay here. "
- Mr. H. A, a Qatari national born in 1953, contacted the National Human Rights Committee, then visited its headquarters and stated: "I reside in the Emirate of Abu Dhabi in the UAE since 30 years and I am working there. After the decision to sever relations with the State of Qatar, I was forced to leave everything in Abu Dhabi and return to my country, and I lost my work and my life.
- Ms. T.S, a Saudi national, came to the National Human Rights Committee and gave details of the violation: "I have been living in the State of Qatar for 3 years and I work as a project manager. I have a brother with special needs who need special treatment and enrolled in rehabilitation center. After relations with the State of Qatar has been severed, the Saudi authorities contacted us to return to the Kingdom, but the 14 days' notice period was not enough to handle the situation especially for my brother, bearing in mind that my father is dead and we do not have a breadwinner."
- In an interview with Mr. H, a Bahraini citizen, came to the headquarters of the National Human Rights Committee, and stated that The Bahraini authorities asked him to leave Qatar: "I work in Qatar at the Ministry of Education and Higher Education. I do not want to leave the State of Qatar. I consider it my second country. I have many memories and achievements, most notably the award of the best university student for the year 2013 and the best actor award at the Qatar Professional actor Festival in 2013."

d. Violations To The Right Of Freedom Of Opinion And Expression:

It must be emphasized that the mandate of Qatar National Human Rights Committee does not imply reporting the violations of the freedom of opinion and expression in the three besieging states and Egypt, however NHRC reports violations and sanctions imposed on the citizens of these countries after severing relations and imposing the blockade on Qatar, including the media campaigns launched against the State of Qatar, blocking sports channels, which certainly do not broadcast political or news programs, the situation becomes very critical to the extent that wearing a Barcelona or Paris St Germain shirt is considered a form of showing sympathy with Qatar which is criminalized!

UAE imposes penalties 3-15 years' imprisonment and fines of 500,000 AED just for merely showing sympathy towards the State of Qatar by even a word, a like, or a tweet on social media in an unprecedented threat to freedom of expression. Bahrain's Ministry of Interior imposes five-year imprisonment, while KSA considered this an internet crime.



These very extreme and harsh actions betray the fragility of the grounds and legitimacy of the blockade decision by those three states, and reflect how much those states' authorities are afraid from citizens' freedom to express any opinions that don't agree with their will. This blatantly goes against many of international and regional declarations and covenants as we will detail further in the Legal Description portion of this report. In the media field, the NHRC received 103 media figures from the three states that imposed the blockade, who used to work at several Audio, Print, and Visual Media in the State of Qatar, have all been

subjected to various types of violations, including forcing them to resign from their jobs. Accordingly, 10 of those were forced to submit and forcibly asked for their resignation, lost their jobs and source of income. There are still great pressures on everyone who didn't submit his resignation. These actions constitute a blatant violation to the freedom of the press, freedom to work, freedom of residence, and freedom of opinion at the same time.

e. Violations Of The Right To Movement And Residence (Even For The Dead):

- Mr. S.S, a Bahrain citizen, stated that: "After the decision to sever relations with the State of Qatar, the Bahraini authorities informed us to return to Bahrain, or we would be subject to penalties of 15 years imprisonment, fines that may reach to more than half a million riyals and the threat of withdrawal of nationality. This has coincided with the expiration of the passports of my children. "I have learned that the Bahraini authorities are spying and recording phone calls of my eldest son who lives there, which is unusual and violates our national rights."
- Ms. F.A, a Saudi lady, stated that: "I am 40 years old. I have been living in Qatar since 2007. I am working in Qatar. I have financial commitments and an independent life. How can I resume my life again and how I can repay the debt that I committed to."
- Mr. A.A, a Qatari national born in 1971, visited the headquarters of the National Human Rights committee and gave details of the violation; "I planned to travel to the UAE in June and booked a ticket on Emirates Airways and on the date of the decision to sever relations with the State of Qatar I was told by an office of the UAE Airlines that the airline should be replaced and that my nationality does not allow me to enter the UAE or transit through its territory. The reservation was canceled and I lost the money I paid"

f. Violation Of The Right Of Private Property:

The blockade imposed by the three countries caused huge losses of property of tens of thousands of people. This indicates the disrespect of their basic rights when making decisions. Money and property were stolen because their owners could not travel. All persons prohibited from traveling use or dispose their properties.

In view of the great overlap and intertwining of business between the Gulf state (which may not be notable in many countries), we have known that there are hundreds of workers in Saudi Arabia whose Qatari sponsors are no longer able to pay their salaries. Money, and thus their work stopped, and these workers are now displaced. Another blatant example is the loss of real estate purchased in instalments including lands, buildings or apartments, especially in the Emirate of Dubai. As a result of the freezing of the assets of Qatari nationals in these countries, the withdrawal of checks has stopped and if the situation continues for two months, this may result in the loss of the property in full, and may even lead to a legal liability due to the failure to pay the monthly instalments.

In addition to the above, the three countries have continued to limit financial transfers to any of the citizens or residents of Qatar which deliberately violates fundamental freedoms; there are no measures have been taken so far to remove the critical repercussions on the citizens of the three countries and citizens of the State of Qatar.

The National Committee also reported a large number of cases of workers who hold Qatari residence and work in companies owned by Qatari citizens, whom were prevented from returning to Qatar after they stopped working.

- Mr. A.A. a Qatari born in 1985, holds a Qatari nationality, states that: "I have businesses regulated by contracts worth more than QR 226,640.000 and after the blockade imposed on the State of Qatar by Saudi Arabia and the UAE Bahrain, I lost large sums of money I have bought goods from Saudi Arabia and I could not bring them to the State of Qatar to meet my obligations."
- Mr. Y.A. a Qatari national who has properties in the Kingdom of Bahrain: "My wife and I had two commercial properties, one in Manama and the other in Muharraq and I have a durable power of attorney to manage the architecture that she owns. Since the decision to sever relations with the State of Qatar, I have lost the ability to manage my property. I have received financial dues from the tenants, causing me considerable material losses. I also have a residential building that is still under construction. Due to measures taken by Bahrain, i am deprived of the most basic human rights."
- Ms. M.H, a Qatari lady, stated that: "The decision to sever relations with the State of Qatar prevented me from accessing my two residential apartments in the Kingdom of Bahrain and from meeting with my sick mother who is Bahraini."
- Three Qatari brothers explained their concerns and stated that: "We inherited several properties from our father in the industrial zone in Sharjah, UAE. We have filed a lawsuit (No. 785/2015) in the Dubai Court, to get our financial amounts (amounted 133 million dirhams) which have been frozen after the decision to sever relations with the State of Qatar; we can no longer access our property or even get our dues from rents".

g. Violations Of The Right To Practice Religious Rituals:

Makkah and Madinah are two holy cities located in KSA. They are constantly visited to perform Umrah. The blockade imposed by the Kingdom of Saudi Arabia affected nearly 1.5 million Muslims in Qatar. And instead of a one-and-a-half-hour trip to Jeddah Airport, the citizen and residents of Qatar have to travel from the city of Muscat in Oman. The trip may take up to 12 hours, adding to this the doubling of the cost; the Kingdom of Saudi Arabia should shoulder the religious, moral and legal responsibility.

The authorities in Saudi Arabia prevented a group of Qatari citizens from entering Jeddah and forced them to return to Qatar, although they were on board or at Jeddah airport when the decisions were announced.

As of the date of preparation of this report, despite the approach of the pilgrimage season, which is the fifth obligations in Islam, Saudi Arabia continues to put obstacles to the practice of religious rites in which about 1250 pilgrims have been affected, where losses reached to tens of millions of dollars.

Photos of a Qatari citizen in a video in Jeddah airport, where the Saudi authorities prevented him from entering the city of Mecca for the performance of Umrah:

https://www.youtube.com/watch?v=wPVX-xm33DE

- Mr. A.M. a Qatari pilgrim, visited the headquarters of the National Human Rights Committee and stated the following: "I registered in a Hajj and Umrah campaign and paid the full amount. The obstacles imposed by the besieging countries prevented me to perform Umrah, I am afraid to be insulted and I do not know how the security measures will be taken against us. This has caused me great psychological harm. My dream of pilgrimage this year has been lost."

- Mr. Y.A, a Qatari expressed his regret for his inability to perform Hajj this year and stated that: "I have completed all the procedures for the performance of pilgrimage with the campaigns organized by the State of Qatar and I have not encountered any problem, however the obstacles that Saudi Arabia has put in place prevented our travel, how can Muslims be prevented from performing their religious rituals?"
- Mr. M.H, a Qatari national, stated that: "I planned to go to Hajj with my family through the land port, but the measures taken by Saudi Arabia after the decision to sever relations with Qatar and The closure of the land crossing made me afraid to go and I was afraid of any risks we might face or any discriminatory measures that might be taken against me as a Qatari."
- Mr. Y.A, a Yemeni resident in Qatar, stated that: "Four years ago, I planned to go to Hajj and I arranged with my family and with the Hajj campaigns for everything with ease, but the measures taken by Saudi Arabia prevented me from traveling and performing Hajj this year."
- Mr. A.J, a Jordanian citizen who lives in the State of Qatar, stated that: "I planned to perform Hajj with my son through one of the campaigns organizing Hajj and Umrah in Qatar. The measures taken by Saudi Arabia hindered the arrangements for the Hajj, adding to this the closure of land ports, the disruption of air traffic and the closure of the Saudi embassy in Qatar; all this prevented me to perform Hajj this year."

h. Being Subjected To Inhumane Degrading Treatment:

The National Human Rights Committee has reported hundreds of cases of hate speech and incitement to carry out terrorist acts in the State of Qatar. In some of the series, the children have been indoctrinated to neighboring Qatar. This discourse has escalated violently because of the involvement of some official advisers and some of the very well- known media officials, which will definitely generate intellectuals and illiterate reactions This may lead to the perpetration of criminal acts not only against the citizens of Qatar. Rather, reactions may be generated from the Qatari society towards the societies of these three countries and Egypt. This in turn threatens the peace, security and stability of the entire region. The NHRC reported the names of everyone who incited to hatred, and hold them legally responsible for any racist terrorist violence affecting any Qatari citizen or any citizen of the three countries and citizens of Egypt.

International law clearly criminalizes hate speech and violence as set forth in article 20 of the International Covenant on Civil and Political Rights, as well as article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

i. Violation Of The Right To Health - Especially For Persons With Disabilities:

Hundreds of people from the three besieging countries receive treatments in hospitals in Qatar, in addition to hundreds of Qataris who are receiving treatment in hospital in these countries. Citizens without exception have been asked to leave the countries including, injured persons, pregnant women, children, especially infants. The three blockading states should not expel Qatari patients, due to political disputes.

- Ms. R.A, a Qatari national and mother of three Bahraini children, two with special needs, stated that: "I have two children with special needs who live with me in Qatar and their father lives in the Kingdom of Bahrain. I used to travel with them every week to see their father. However, since the beginning of the blockade my children and I are deprived of seeing my husband."

Mr. H.K, a Qatari who receives treatment at Al-Sharqiya Psychiatric Hospital in Saudi Arabia, stated that his mother has been informed that that he should be transferred from the hospital because he is Qatari".

v. Conclusions and Legal Description:

In their resolutions, KSA, UAE, and Kingdom of Bahrain, violated a number of principle international human rights laws and rules, which are related to the most fundamental human rights, which are treated as international norms. These resolutions violate a number of articles of the Universal Declaration of Human Rights, other articles included in the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, in addition to articles in the: Arab Charter on Human Rights, the GCC Declarations of Human Rights, and the Economic Agreement between the GCC States. Therefore, those states are responsible for protecting and preserving the rights and interests of the individuals living on their lands.

The Texts of the Articles that were violated by the three Gulf states:

First: Universal Declaration of Human Rights:

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

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 23

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

Article 25

1. 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.

Article 26

1. 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.

2. 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.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Second: International Covenant on Civil and Political Rights:

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, color,

sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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.

Third: International Covenant on Economic, Social and Cultural Rights:

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.

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 labor should be prohibited and punishable by law.

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.

Fourth: International Convention on the Elimination of All Forms of Racial Discrimination:

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.

Fifth: Arab charter of human rights:

Article 3

Each State Party to the present Charter un- dertakes to ensure to all individuals within its territory and subject to its Jurisdiction the right to enjoy all the rights and freedoms recognized herein, without any distinction on grounds of race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status and without any discrimination between men and women.

Article 8

Everyone has the right to liberty and security of person and no one shall be arrest- ed, held in custody or detained without a legal war- rant and without being brought promptly before a judge.

Article 26

Everyone has a guaranteed right to freedom of belief, thought and opinion.

Article 32

The State shall ensure that its citizens enjoy equality of opportunity in regard to work, as

Article 33

1. The family is the natural and fundamental group unit of society; it is based on marriage between a man and a woman. Men and women of marrying age have the right to marry and to found a family according to the rules and conditions of mar- riage. No marriage can take place without the full and free consent of both parties. The laws in force regulate the rights and duties of the man and woman as to mar- riage, during marriage and at its dissolution.

2. The State and society shall ensure the protection of the family, the strengthen- ing of family ties, the protection of its members and the prohibition of all forms of violence or abuse in the relations among its members, and particularly against women and children. They shall also ensure the necessary protection and care for mothers, children, older persons and persons with special needs and shall provide adolescents and young persons with the best opportunities for physical and mental development.

3. The States parties shall take all necessary legislative, administrative and judi- cial measures to guarantee the protection, survival, development and well-being of the child in an atmosphere of freedom and dignity and shall ensure, in all cases, that the child's best interests are the basic criterion for all measures taken in his regard, whether the child is at risk of delinquency or is a juvenile offender.

Sixth: GCC human rights declaration:

Article (6)

The Freedom of belief and the practice of religious rites is a right of every person according to the regulation (law) without disruption of the public order and public morals.

Article (9)

Everyone has the right to freedom of opinion and expression, and exercising such freedom is guaranteed insofar as it accords with Islamic Sharia law, public order and the regulations (laws) regulating this area.

Article (14)

The family is the natural and fundamental group unit of society, originally composed of a man and a woman, governed by religion, morals and patriotism; its entity and bonds are maintained and reinforced by religion. Motherhood, childhood and members of the family are protected by religion as well as the State and society against all forms of abuse and domestic violence.

Article 24

Every person, who has the capacity of doing so, has the right to work and has the right to free choice of employment according to the requirements of dignity and public interest, while just and favorable employment conditions, as well as employees' and employers' rights, are ensured.

Article 27

Private property is inviolable and no one shall be prevented from the disposition of his property except by the regulation (law), and it may not be expropriated unless for public interest with fair compensation.

vi. Recommandations:

To the international community:

To take urgent action to lift the blockade, and make every possible effort to mitigate its repercussions on the people of Qatar, and the citizens of the three countries.

To The United Nations and the Office of the United Nations High Commissioner for Human Rights (OHCHR):

1- The great amount of social violations constitutes a threat to the stability of the region, and is stared to have a negative impact on the economic and social levels.

Speedy steps must be taken to force the states that issued these unjust decisions to repeal their actions.

2- The OHCHR to prepare reports and statements documenting the various types of violations that affected great numbers of people, especially the families that were separated, including the negative consequences on women and children as a result of the separation of their families, and to call on these states to respect the basic freedoms of the people living on their lands.

To the Human Rights Council:

To take every possible action in order to end the blockade and its ramifications, and call for the compensation of all people who were harmed and affected.

Human Rights Council Special Rapporteurs:

To Document forms on the various types of violations that occurred, and contact certain the concerned governments in that regard as soon as possible. NHRC is fully prepared to share all the related data.

Secretary General of the Gulf Cooperation Council:

The Dispute Settlement Commission of the Supreme Council of the Gulf Cooperation Council to take urgent actions and do everything in its power to convince the concerned governments to start settling the dispute and the social, civil, and cultural situation for the affected families and citizens.

KSA, UAE, and Kingdom of Bahrain:

1- Respect the nature of the Gulf societies, and to refrain from making any decisions that sever the relations and ties between families and societies, and to repeal these decisions as early as possible.

2- Respect the basic human rights related to freedom of movement, private property, work, residence, and freedom of expression and opinion that are enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and the Arab Charter on Human Rights.

3- Neutralize political developments in a way that do not to affect the humanitarian and social situations as stipulated in the international law and the international human rights law.

To the Qatari Government:

To take all possible steps at the international level, at the level of the Security Council and the international tribunals, to lift the blockade on the people of Qatar, to defend their rights in the face of violations against them, and to hold accountable those who are responsible for them.

Citizens of the three countries residing in Qatar affected by their country's decision

VIOLATIONS TO THE RIGHT TO FREEDOM OF MOVEMENT, RESIDENCE AND PRIVATE PROPERTY

11387 The total of residents from the three countries in Qatar

8254 residents

2349 residents

784 residents

NHRC

Citizens of the three countries residing in Qatar affected by their country's decision

VIOLATIONS TO THE RIGHT TO WORK

1053 employees — 23% — 77%

830 employees — 34% — 66%

71 employees — 75% — 25%

Private sector
Government sector

NHRC

Citizens of the three countries residing in Qatar affected by their country's decision

VIOLATIONS TO THE RIGHT TO EDUCATION

706

ONLY IN QATAR UNIVERSITY

- 33% Bahraini students
- 59% Saudi students
- 8% Emirati students

4600 (approximately) Students from the three gulf countries enrolled at public schools

Note: These figures do not include the number of students of the 3 countries in other schools and universities in Qatar

NHRC

Citizens of the three countries residing in the State of Qatar who are affected by these decisions

VIOLATIONS TO MIXED FAMILIES

Qatari women married to:

380 Emirati

401 Bahraini

556 Saudi

Qatari men married to:

1055 Emirati

944 Bahraini

3138 Saudi

NHRC

Citizens of the three countries residing in the State of Qatar who are affected by these decisions

VIOLATIONS OF THE RIGHT TO FREEDOM OF THE PRESS AND FREEDOM OF OPINION AND EXPRESSION

93 Media personnel are being forced by their states to leave their jobs

10 Media personnel were forced to resign

103 faced various violations

Media outlets blocked in the three countries

NHRC

Types of Human Rights Violations resulted from Cutting the Diplomatic Ties :

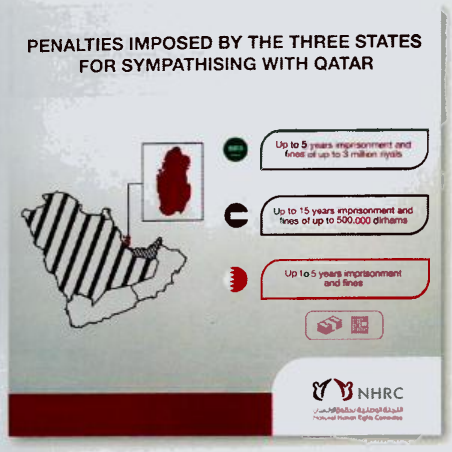
Violations of the right to

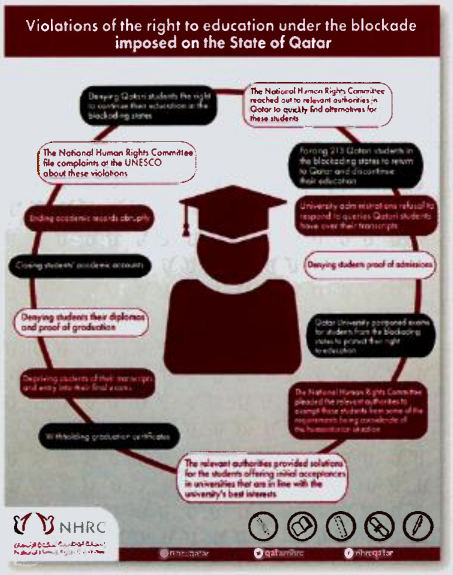
- Freedom of movement
- Education
- Private property
- Religious practice
- Freedom of opinion and expression
- Healthcare
- Family reunification and forced deportation
- Work

Affected groups:

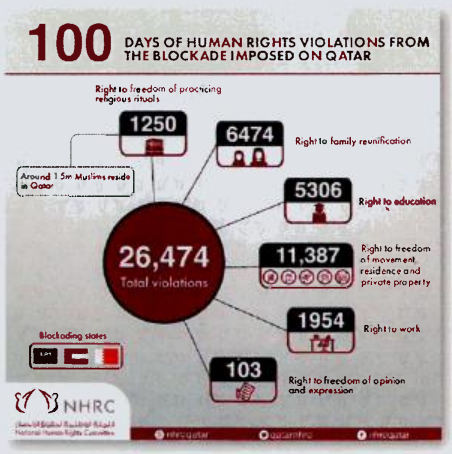
women, children, mixed families, persons with disabilities, nationals, residents

NHRC


PENALTIES IMPOSED BY THE THREE STATES FOR SYMPATHISING WITH QATAR
Up to 5 years imprisonment and fines of up to 3 million riyals
Up to 15 years imprisonment and fines of up to 500,000 dirhams
Up to 5 years imprisonment and fines
NHRC


Violations of the right to education under the blockade imposed on the State of Qatar
Denying Qatari students the right to continue their education in the blockading states
The National Human Rights Committee reached out to relevant authorities in Qatar to quickly find alternatives for these students
The National Human Rights Committee file complaints at the UNESCO about these violations
Forcing 213 Qatari students in the blockading states to return to Qatar and discontinue their education
Ending academic records abruptly
University administrations refusal to respond to queries Qatari students have over their transcripts
Closing students' academic accounts
Denying student proof of admissions
Denying students their diplomas and proof of graduation
Qatar University postponed exams for students from the blockading states to protect their right to education
Depriving students of their transcripts and entry into their final exams
The National Human Rights Committee pleaded the relevant authorities to exempt those students from some of the requirements facing prevalence of the humanitarian situation
Withholding graduation certificates
The relevant authorities provided solutions for the students offering united acceptances in universities that are in line with the university's best interests
NHRC
nhrcqatar
qatarnhrc
nhrcqatar


Right to freedom of practicing religious rituals
The blockade imposed on Qatar led by the kingdom of Saudi Arabia has the following negative impacts:
The fifth pillar of Islam
Around 1.5m Muslims reside in Qatar
Around 1250 average number of pilgrims from the State of Qatar annually
All the agencies concerned with booking airline tickets, facilitating visa issuance and reservation of hotels for pilgrims have been affected by the blockade, where their losses reached tens of millions of dollars
Limiting Qatari pilgrims with only two air ports of entry on their way to the holy sites, through transit, which led to an increase in journey time and financial cost
Incitement and hate speech that is broadcasted on official media outlets from the blockading states heightened the fears of Qatari residents and citizens from performing Al-Hajj
NHRC
nhrcqatar
qatarnhrc
nhrcqatar


100 DAYS OF HUMAN RIGHTS VIOLATIONS FROM THE BLOCKADE IMPOSED ON QATAR
Right to freedom of practicing religious rituals
1250
6474
Right to family reunification
Around 1.5m Muslims reside in Qatar
5306
Right to education
26,474
Total violations
11,387
Right to freedom of movement, residence and private property
1954
Right to work
Blockading states
103
Right to freedom of opinion and expression
NHRC

Annex 136

National Human Rights Committee, *6 Months of Violations, What Happens Now? The Fourth General Report on the Violations of Human Rights Arising from the Blockade on the State of Qatar* (5 December 2017)
(with certified translation)

NHRC

اللجنة الوطنية لحقوق الإنسان

National Human Rights Committee

Doha, Qatar

6 MONTHS OF VIOLATIONS

WHAT HAPPENS NOW?

THE FOURTH GENERAL REPORT ON THE VIOLATIONS OF HUMAN RIGHTS ARISING FROM THE BLOCKADE ON THE STATE OF QATAR

DECEMBER 5, 2017

Table of Contents

ONE: SUMMARY

The inhumane blockade imposed upon the State of Qatar has been ongoing since June 5, 2017 and it continues to this day by the Kingdom of Saudi Arabia, the United Arab Emirates, and the Kingdom of Bahrain, as well as the Arab Republic of Egypt. The violations associated with it have also continued without any responsiveness on the part of those countries to remedy these violations.

It is for this reason that the National Human Rights Committee (NHRC) has compiled a series of special reports regarding these violations and has observed and recorded their humanitarian effects and the social and economic ramifications associated with them.

In this regard, the NHRC has contacted some 450 human rights entities and governmental and non-governmental national and regional organizations to plead with them to take urgent action to deal with the effects of the humanitarian crisis that is being caused by the blockade. The NHRC has also conducted 33 visits to European and world capitals to make them aware of the scale of the violations taking place in Qatar by the blockading countries. This is the fourth general report issued by the NHRC to document these violations, and it joins **the series of general reports already prepared by the NHRC**:

1. The First Report on Human Rights Violations arising from the blockade of the State of Qatar dated June 13, 2017;
2. The Second Report on Human Rights Violations arising from the blockade of the State of Qatar dated July 1, 2017; and
3. The Third Report on human rights violations arising from the blockade of the State of Qatar dated August 30, 2017.

These are in addition to the special reports on the violations:

1. The Report on the Violation of the Right to Education dated September 5, 2017;
2. The Report on the Deprivation of the Right to Perform Religious Observances dated August 24, 2017;
3. The Report on the Violation of the Right to Own Property dated August 30, 2017; and
4. The Report on the Violation of the Right to Food and Medicine dated September 3, 2017.

This report is based on new testimony of new victims who have suffered violations of their basic rights as a consequence of the blockade. The NHRC will continue to update the basic report while the blockade continues and the stream of complaints from its victims continues to flow.

The NHRC has met with numerous international human rights organizations, both governmental and non-governmental, such as the Technical Delegation of the Office of the High Commissioner for Human Rights of the United Nations (OHCHR) during the period from November 18-23, 2017, the office of Amnesty International twice during the periods from June 6-8, 2017 and November 28-30, 2017, the office of Human Rights Watch (HRW) during the period from June 19-20, 2017, and the international organization AFD during the period from July 22-25, 2017. The NHRC has also met with parliamentary delegations from European countries in order to familiarize them with the violations taking place against the State of Qatar due to the blockade.

According to information we have obtained, approximately 11,387 nationals of the three blockading Gulf States reside in the State of Qatar and 1,927 Qatari nationals reside in those states.

TWO: A BRIEF OVERVIEW OF THE NATIONAL COMMITTEE FOR HUMAN RIGHTS (NHRC)

The NHRC is one of what is known as the National Human Rights Institutions (NHRIs), which were established in accordance with the so-called Paris Principles, which were endorsed by the United Nations General Assembly. These organizations obtain membership in the Global Alliance of Human Rights Institutions (GANHRI) after having been subjected to an accreditation process approved by the Sub-Committee on Accreditation (SCA) of the GANNRI Alliance under the supervision of the National Institutions, Regional Mechanisms and Civil Society Section (NRCS) of the Office of the High Commissioner of Human Rights (OHCHR), which is the equivalent of the General Secretariat of the Sub-Committee on Accreditation (SCA) of the GANHRI alliance. The NHRC was established in 2002 and vested with powers and jurisdiction to protect and uphold human rights in accordance with the Paris Principles, and obtained a rating of "A" in 2010 for five years. It was again given the same rating in 2015 for a period of 5 years, which is the highest rating that can be awarded to a national organization and serves to confirm its reliability, independence, and complete adherence to the Paris Principles.

THREE: METHODOLOGY

The blockade against the State of Qatar has been in place for 184 days as of this date, and the NHRC's official headquarters in the Qatari capital, Doha, continues to receive complaints from victims who have been harmed by the decisions of the blockading countries, which have committed **violations of a number of human rights in the following areas:** Family reunification, education, property rights, movement and residence, performance of religious rituals, health, employment, and others.

The decisions of the blockading states and their consequences have caused harm at all levels of society and constitute a violation of all of provisions on human rights under all international laws, statutes, and customs. These measures, which were suddenly announced publicly on June 5 of last year, forced the citizens of the State of Qatar to leave the three Gulf States within 14 days. Qatari citizens were prohibited from entering their territories and, in some cases, women were separated from their husbands, and mothers from their children. This struck a devastating blow against legal and humanitarian principles and standards.

- It should be mentioned here that single individuals have certainly, in some cases, been subjected to more than one type of violation. Therefore, the combined files are more than a collection of reports on a group of individuals; we have also recorded incidents in which an individual has been separated from his/her family, cases in which education has had to be discontinued, and others where movement has been prohibited. In some of these cases, a single individual has suffered from all three of these violations.
- When the Committee receives reports from the victims of the blockade, it documents the violations against their rights and then shares these violations on an ongoing basis with the competent legal and human rights bodies.
- The NHRC monitors the responsiveness of the blockading countries to its reports.
- The NHRC monitors instances of violations reported to the competent international legal and human rights bodies and continues to report them. We will cover this in detail for each right.

In this report we shine a light on the most important violations that have been inflicted on the State of Qatar as a result of the currently ongoing blockade. We have selected and presented the testimony of a selection of victims of each type of violation in order to keep the report within a manageable size. However, we confirm that it is possible for the competent authorities to obtain adequate supporting forms. In this report, we refer to individuals by their initials in order to protect their privacy, security, and safety.

At this juncture, we must point out that the Qatari Government has not taken any similar action against the nationals of the blockading states, and the NHRC has received no complaint in this regard. The State of Qatar set up a Compensation Claim Committee for damages arising from the blockade on June 22, 2017. **That committee has been tasked with the following:**

1. To receive complaints and claims for compensation from individuals, private organizations, and the public sector;
2. To investigate complaints from a legal point of view to ascertain whether it was the blockade that caused harm to the injured parties;
3. To instruct international law firms to investigate the possibility of initiating lawsuits against the blockading states to obtain compensation for the injured parties;
4. To supervise and coordinate among state authorities, the private sector, individuals, and law firms in order to ensure that they are furnished with the documentation they need; and
5. To closely monitor the claim filed by the State of Qatar to the World Trade Organization and provide the requirements thereof.

A cooperative relationship exists between the NHRC and the Compensation Claim Committee, to which the NHRC refers all of the complaints it receives. Numerous meetings continue to be held with it in order to categorize the victims in order to redress injuries in accordance with the relevant international and regional treaties.

As part of ongoing efforts to deal with the violations, the NHRC has corresponded with the following:

- The Saudi National Society for Human Rights (NSHR), September 24, 2017;
- Three letters were sent to the Emirates Human Rights Association:

1. October 8, 2017,
2. October 15, 2017,
3. October 23, 2017; and

- The Egyptian National Council for Human Rights (NCHR), October 2, 2017.

The NHRC sent to the above organizations all lists of the victims in order to help them to contact the authorities in their own countries for assistance with the violations. However, the Committee has not received any response as of the present time, apart from the Egyptian NCHR, which responded positively to our letter. We point out that there have been continuous but unsuccessful attempts to contact the Bahraini National Human Rights Committee (NHRC).

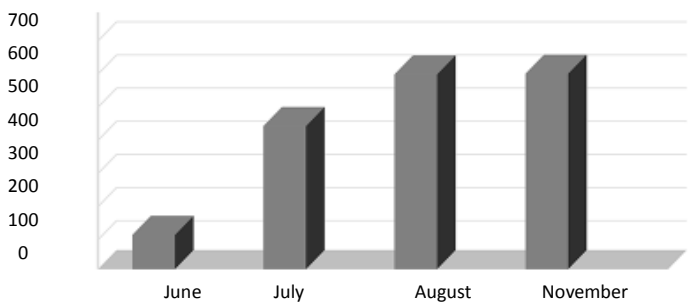
FOUR: THE MOST SIGNIFICANT VIOLATIONS

The following table shows a breakdown of the violations recorded by the NHRC, which amount to 3,970 reports as of the date of publication of this report. They have been classified by the country that committed the violation and according to the type of violation against the rights of the citizens and residents of the State of Qatar:

Date of record	Violations / Violating country	Education	Ownership	Family Reunification	Movement	Health	Perform Religious Observances	Work	Residence	Total
December 5, 2017	Saudi Arabia	62	677	336	753	19	163	66	57	**2,133**
	Emirates	146	423	80	334	4	-	6	4	**997**
	Bahrain	28	52	213	126	14	-	37	32	**502**
	Various others	268	22	-	39	-	-	-	-	**329**
	Total	-	-	-	9	-	-	-	-	**9**
		504	1,174	629	1,261	37	163	109	93	**3,970**

This table sets out the latest statistics of the violations against the State of Qatar since the beginning of the blockade on June 5, 2017 until December 5, 2017. There were 504 violations against the right to education, 1,174 violations against the right to ownership, 629 violations against the right of family unity, 1,261 violations against the right to movement, 37 violations against the right to health, 163 violations against the right to perform religious observances, 109 violations against the right to work, and 93 violations against the right to residence.

A. FAMILY REUNIFICATION, PARTICULARLY WOMEN AND CHILDREN



This chart shows the increase in violations of family unity from June to November 2017.

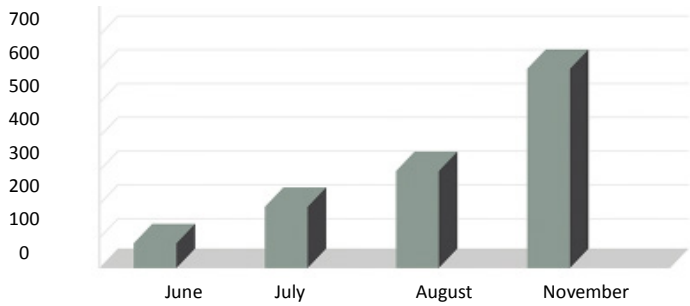
The Committee has received thousands of complaints about violations caused by the blockade imposed upon the State of Qatar. The most common among them were those relating to the violation of the right to keep members of the same Gulf families together, which have resulted in the separation of women, children, people with disabilities, and the elderly, and deprivation of parents of the right to remain with their children.

The citizens of the Gulf are interconnected by familial bonds of kinship that have existed for hundreds of years. The demand that Qatari citizens should leave the blockading states and that the citizens of the blockading states should leave Qatar has created inhumane situations, quite apart from constituting a violation of the right to travel as provided by numerous international conventions. This effectively means compulsory deportation and splitting of families and prevention of mothers from being able to remain with their children.

Due to these violations, the NHRC has recorded 629 cases relating to families that have been separated, but it is certain that the true figure must be much higher. There are certainly some instances of violations where families have been permitted to enter but for only one time and in a random fashion without any clear mechanism, after which the borders have been firmly sealed.

- Mr. S.F. is a Saudi national and sound engineer born in the State of Qatar in 1991. He contacted the NHRC in a state of great anxiety, saying: “My family and I were greatly affected by the news of the blockade. We have been ordered to leave the State of Qatar and have been forced to leave our family and extended family to comply with the orders. My wife is six months pregnant and is Qatari. I am suffering psychological distress.”
- According to the testimony of Mrs. I. R. to the NHRC, she was banned from travelling to see her children because she is a Qatari national. “I am a Qatari mother who is divorced from her Bahraini husband. I have children with him and I travel to the Kingdom of Bahrain four times a year to see my children. After this decision, I am unable to do so and the father is unwilling to send the children to Qatar so I can see them.”
- Mrs. A. F., a Qatari national born in 1987, gave testimony to the NHRC in which she set out in detail the nature of the violations she has been subjected to: “I was married to an Emirati citizen. When he divorced me, he initiated a lawsuit to deprive me of custody of my children and has now married another woman. After the decision to impose the blockade, the judge in the Emirates ordered that I should be deprived of custody without justification, and I have been deprived of all of my rights.”
- Mr. Kh. A., a Qatari national born in 1968, visited the headquarters of the NHRC and made a statement in which he detailed the violations he and his family have been subjected to: “My wife is Saudi and I am Qatari. Ever since the decision to impose the blockade, when all [Saudi] citizens were ordered to return to Saudi Arabia and leave Qatar, I have been unable to get my wife back because my situation does not allow it.”

B. STOPPAGE OF CONTINUING EDUCATION



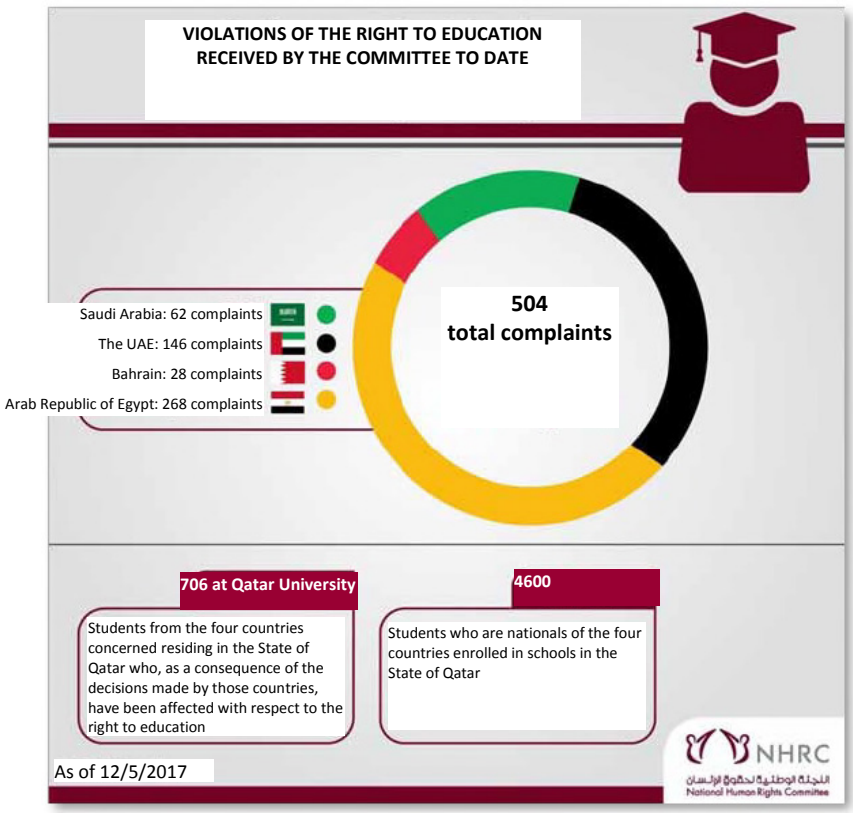
This chart shows the statistical increase in violations of stoppage of continuation of education from June to November 2017.

The Committee has been inundated by complaints under this heading concerning some 236 cases where Qatari students who were studying at universities in Saudi Arabia, the Emirates, and Bahrain have found themselves deprived of the opportunity to continue their studies; they have been forced to return to their countries after the decision of these countries to sever relations with Qatar on June 5, 2017. Due to those arbitrary measures and decisions, hundreds of students have been deprived of the opportunity to complete their studies, which constitutes a flagrant violation of the right to education. The blockading countries have also forced their students studying at Qatar University to return to their own countries (Saudi Arabia, the Emirates, and Bahrain) and have prevented 706 male and female students from completing their university studies.

- H. A., a student of Qatari nationality born in 1986 told the NHRC: "I am a student at the University of Applied Sciences in Bahrain and this is the last semester before graduation. I have two courses to complete and then I should receive my degree. There are lectures to attend and examinations to take but I have not been able to go because of the decision to impose the blockade, which has seriously disrupted my studies."
- N.M., a Saudi female student at Qatar University born in 1995, told the NHRC: "I am married to a Qatari husband. My father died four years ago and we have two children together. I am a student at Qatar University. The Embassy of the Kingdom of Saudi Arabia asked me to return to the territory of the Kingdom but I am unable to leave my children and my university studies."
- H. A. was born in the State of Qatar in 1986 and is another victim of the blockade. He told the NHRC: "I am a student at the American University in the Emirates but due to the decision to impose a blockade on the State of Qatar I am unable to complete my university studies in the Emirates, in addition to the monetary losses and psychological stress I have suffered."

The continuing monitoring by the NHRC of instances of violations of the right to education shows that the Emirates has not permitted students from the State of Qatar to resume their studies in any way, aside from some international universities which have transferred their students to other branches outside the Emirates at increased costs of travel and living to the students and their dependents, and with financial and psychological costs suffered by those concerned.

The NHRC has also documented the response of the Qatari universities, which have accommodated some 64 affected students. The Qatari Ministry of Education has also made some exceptions for other students who have suffered as a consequence of the blockade.



STUDENTS STUDYING IN THE [ARAB] REPUBLIC OF EGYPT

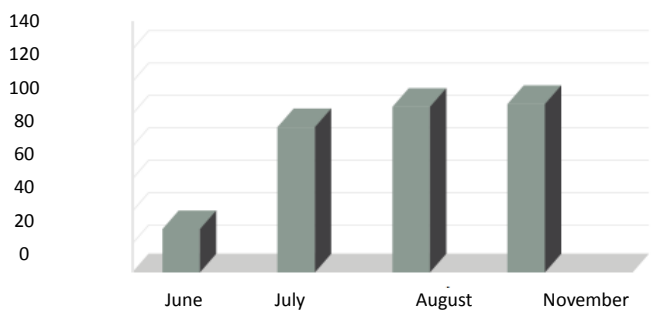
The NHRC has also recorded some 268 complaints from students who are Qatari nationals or residents who are enrolled at Egyptian universities and have been prevented from completing their studies. Some of these students were also prevented from sitting for the end-of-year academic examinations in September 2017. This prohibition is due to the actions taken by the Egyptian authorities, which have put restrictions on Qatari students enrolled at Egyptian universities by making it a condition that they must each obtain a security clearance before granting them entry visas.

The NHRC has corresponded with the Director of the Egyptian National Council for Human Rights concerning this matter in order to help the students complete their studies and alleviate the difficulties they are facing. The NHRC has been successful in convincing the Egyptian authorities to remove the restrictions placed on their studies and the Egyptian authorities have now issued new directives ordering entry visas to be granted to the students and the requirement for prior security clearance has been revoked.

Some examples of the complaints received by the NHRC:

- A. F., a Qatari national born in 1992, is a student in Egypt. He recounted to the NHRC the details of the violation he suffered: "I am a Qatari student studying law at Ain Shams University since 2015. I am now in my third year and have been prevented from completing my education in the Arab Republic of Egypt due to the current crisis. Because I am Qatari, I have been banned for security reasons and am unable to enter [Egypt] without a security visa. I have contacted the Egyptian embassy to obtain one, but so far one has not been issued."
- S. H., a Qatari national born in 1982, has been deprived of the opportunity to continue his higher education at the University of Alexandria in Egypt, even though he is in the final year of his Masters studies. He gave the following testimony to the NHRC: "The Egyptian authorities made an arbitrary decision to prohibit Qatari students from attending its universities. We are not permitted to enter the country without a security visa and this has affected us and caused psychological and material damage amounting to some 12 thousand dollars."
- H. M., a female Palestinian national born in 1997, visited the headquarters of the NHRC and provided details on how she has been deprived of the right to education by the decision to sever relations with the State of Qatar: "I am a student at Cairo University under an open education program and have completed a year and a half of my studies, which have been stopped because of the blockade. So far, five months have passed without receiving a reply from Cairo University regarding my requests and my rights."
- A. H., a Qatari national and born 1982, complains of the violation he suffered as a consequence of the blockade of the State of Qatar by Egypt. In his complaint, he told the NHRC: "I am a student at Cairo University in Egypt at the Faculty of Law, and I am in my fourth year of studies. I have been harmed by the blockade of the State of Qatar because I have been unable to complete my studies at Cairo University."

C. STOPPAGE OF WORK



This chart shows the statistical increase in violations of the right to work from June to November 2017.

The inhumane actions and violations committed by the blockading countries against Qatari citizens or residents have not stopped there, but have also extended into all areas, including violations of the right to work.

The right to work is one of the most important economic and social rights; it is an economic right because it provides an individual with financial and economic security and enables the individual to pay for life's necessities. It is also a social right because it contributes to the stability of society.

These violations have had a negative effect on the business sector because commercial and labor interests are closely intertwined. The decisions made by the blockading countries have caused hundreds of people to lose their jobs, which has affected their livelihoods and their families' circumstances. There is a continuous stream of complaints being received from this sector because the countries concerned suddenly imposed orders designed to cause maximum damage to all areas of business. More seriously, there are entire families that depend for their livelihood on the transportation business among the Gulf States and whose sole means of earning a living was cut off at a stroke. None of the three countries concerned has acted to compensate any of those people or find them an alternative.

Additionally, there is a large number of citizens and residents who are employed in public, private, or governmental companies who had been able to work and move freely between those countries whose source of income has also been cut off at a stroke. They have become unemployed without any compensation from the three countries that imposed the blockade.

The NHRC has recorded no fewer than 109 cases of people who have been deprived of the right to continue to work as a consequence of those arbitrary decisions. Among these, 66 are in the Kingdom of Saudi Arabia, 6 are in the Emirates and 37 are in the Kingdom of Bahrain.

- Mrs. J. S., an Emirati national born in the year 1977, suffered a violation of her right to work. She told the NHRC when she visited it: "I am a resident in Doha and I work there. My children were born in the State of Qatar. My husband is Bahraini and also works in Qatar. We are unable to return because of the decisions imposed upon us as a consequence of the blockade of the State of Qatar and because the source of our livelihood is here."
- Mr. Y. A., a Bahraini national born in 1986, spoke to the NHRC about the violation he has suffered, saying: "I am a Bahraini citizen and have been a resident of the State of Qatar for ten years with my family and my new-born baby daughter. I work here and I can't leave my work and family because of the decisions made by those countries that have imposed a blockade on the State of Qatar."
- Mr. F. A., a Saudi national born in 1996, expressed to the NHRC his great anxiety and concern about the violation he has suffered, saying: "I was born in the State of Qatar and am a Saudi national. My mother is Qatari. I am a resident of and work in the State of Qatar. The decision taken by my country that I should leave Qatar will have an effect on my work because I live with my mother."

D. VIOLATION OF FREEDOM OF OPINION AND EXPRESSION

From the outset, it must be emphasized that it is not the NHRC's function to record violations of freedom of opinion and expression in the three blockading states and Egypt. We record only those violations and punishments suffered by the citizens of those countries that have reached unprecedented extremes, such as criminalizing any expression of sympathy with Qatar on social media, shutting down and blocking media outlets funded by the State of Qatar, including sports channels, that certainly do not broadcast news or political programs. This is an indication of the abyss into which freedom of opinion and expression has fallen in the three blockade states and Egypt.

The United Arab Emirates has enacted penalties of 3-15 years in prison and fines of up to AED 500,000 just for showing sympathy for the State of Qatar with a comment, "like," or tweet on social media, in an unprecedented threat to freedom of expression. The Bahraini Ministry of Interior followed that up by threatening 5 years' imprisonment. As for the Kingdom of Saudi Arabia, it considers such acts an Internet crime subject to up to 5 years in prison and a fine of up to SAR 3 million.

These extreme and harsh measures demonstrate the frailty of the grounds and legitimacy of the blockade decision by those three states. They demonstrate that the authorities in those states are afraid of their citizens' freedom to express an opinion contrary to the will of the authorities. This is blatantly at odds with several international and

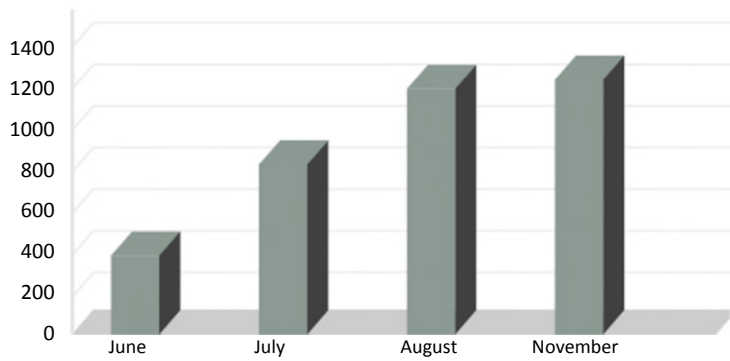
regional declarations and covenants, which will be addressed in the section on Legal Characterization.

In the media sector alone, NHRC recorded 103 cases of media figures from the three countries who used to work at a number of visual media outlets in the State of Qatar who were all subjected to various types of violations, including pressuring them to resign. Based on such pressure, 10 media figures were forced to submit their resignations, consequently losing their jobs and source of income. Great pressure is still exerted against those who have not resigned. These actions are a blatant violation of freedom of the press, the freedom to work, freedom of residency, and freedom of opinion all at the same time.

It should also be mentioned that the blockading states blocked Qatari channels, governmental and private. This was carried out through decrees issued by the blockade states' governments to warn all parties to delete all channels from the State of Qatar and the imposition of a fine of 100,000 riyals against any person who violates these directives. **The channels covered by the decree include:**

- Qatar Television channel
- Al-Rayyan channel
- Al-Kass channel
- Al-Jazeera Satellite Network
- beIn Sports channel

E. VIOLATION OF THE RIGHT OF MOVEMENT AND RESIDENCE



This chart shows the rising numbers of violations in deprivation of movement and residence between June and November 2017.

The definition of this right is that an individual must be able move within or beyond the territorial boundaries of his or her state and have the right to return to that state without restrictions or barriers. The blockading states have violated this right with its unjust blockade on the State of Qatar by preventing Qatari citizens and residents from moving within or residing in those states.

There reside in the State of Qatar 11,387 citizens of the three Gulf States, and approximately 1,927 Qataris live in those states. All persons forced to return to their home countries were harmed in various ways.

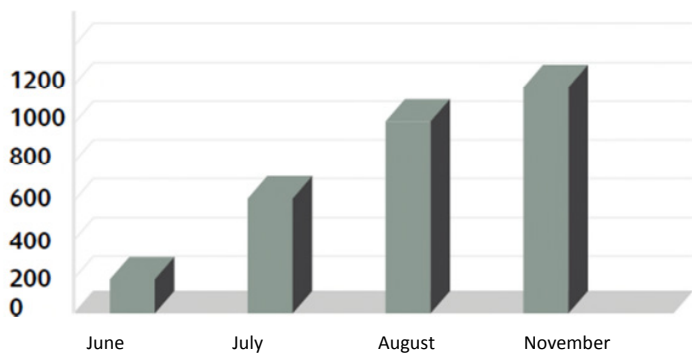
The blockading states have imposed penalties and issued decrees compelling them to exit their countries and prohibiting passage through their entry points. This caused many of the violations recorded by NHRC, totaling 1,354 cases related just to this right alone.

The blockading states also closed all Qatar Airways offices in their countries as soon as the blockade was announced, without prior warning to the people employed at those offices that would have allowed them to take their belongings from their offices.

Although the Saudi authorities had partially opened the Salwa border crossing on an individual, intermittent basis, it reverted and closed the crossing completely, even in the face of humanitarian cases such as patients, cross-border families, and individuals with disabilities. The crossing remains completely closed as of the writing of this report, which is a persistent violation of this right by the Saudi authorities.

- Mr. A.F., an Egyptian national, told NHRC when he gave his testimony: "On 11/19/2017, I reserved five plane tickets to Egypt for 7,400 riyals. I was surprised that the airline on which I made the reservation cancelled them and refunded the amount paid because I reside in the State of Qatar. This prevented me and my children from traveling."
- Ms. E.A., a Jordanian national, told NHRC about being denied freedom of movement, stating: "My mother and I were unable to perform the [religious] obligation of Umrah despite paying the visa fee because the land crossing between Qatar and Saudi Arabia was closed and the process of transporting my car from Jordan to the State of Qatar was stopped."
- Mr. A.M., a Bahraini national born in 1993, visited NHRC headquarters and recounted the details of the violation he suffered: "I was born in the State of Qatar and studied there until high school. My father is a businessman, and we have no family in the Kingdom of Bahrain. My mother's family is in Qatar, and my sister is married to a Qatari man. The decision to blockade the State of Qatar and the order to return to the Kingdom of Bahrain is hard on us because of all of these connections."

F. VIOLATION OF OWNERSHIP RIGHTS



This chart shows the increasing number of ownership rights violations between June and November 2017.

The right to property is one of the rights that a citizen enjoys within his or her own country or outside it and has the right to use or dispose of the property he or she owns without pressure from any party.

The sudden blockade laws imposed by the three states caused tens of thousands of people to suffer exorbitant

losses of funds and property. This indicates the decision makers' total recklessness and indifference to fundamental rights when making these decisions. Money and property have been snatched away because their owners were unable to travel to them. All persons prevented from traveling are no longer able to use or dispose of their property.

Given the extensive interaction and interconnectedness among the Gulf States, which might not be noticed by many organizations and countries, but there are hundreds of workers employed for Qataris and doing business in Saudi Arabia whose Qatari supervisors can no longer pay their wages because of the stoppage of money transfers, and so their work has stopped.

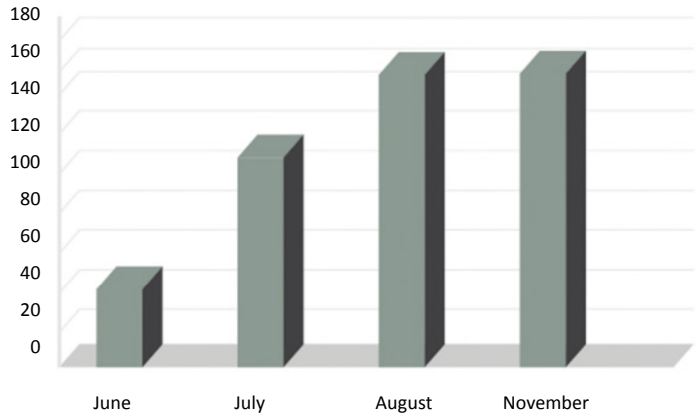
Another extreme example is the loss of real estate purchased in instalments, including land, buildings, and apartments, particularly in the Emirate of Dubai. Due to the freezing of Qatari citizens' assets in those countries, check debits have been stopped. If this situation continues, it could result in the complete loss of the property and even to the owner being legally prosecuted due to non-payment of obligatory monthly instalments, without the slightest misdeed on the part of the owner.

In addition to the above, the three states went so far as to prohibit financial transfers and postal money orders for any citizen or resident of the State of Qatar in order to shut the door on the possibility of forestalling financial losses. In our opinion, all of this demonstrates that the three blockading states' decisions were not spontaneous; they intentionally violated basic freedoms and sought to do so from the outset. This is underlined by the fact that no measures have been taken thus far to eliminate the grave repercussions on citizens of the three states and citizens of the State of Qatar.

The NHRC also recorded the existence of a large number of workers with Qatari residency who work for companies owned by Qatari citizens in those states. After the blockade was imposed, these workers were prevented from returning to Qatar. They are no longer working and no one is spending on them. We provide a few examples to illustrate the magnitude of the violations. For instance, the complaints we have received include:

- Ms. N.A., a Qatari national born in 1971, told the NHRC the details of the violation she suffered: "I bought a villa in a residential development in Dubai. I am now prohibited from entering Dubai and enjoying my own property, despite the fact that I made the first payment. I request a refund of the full amount."
- Mr. A.H., a Qatari national born in 1960 who has property in the Kingdom of Saudi Arabia, came to the NHRC's headquarters and gave us his testimony, detailing the violation he has suffered: "I have camels and cars in Saudi Arabia, and workers whose residency ended. Because of the blockade on the State of Qatar, I can't go."
- Mr. N.A., a Qatari national born in 1952, visited the NHRC's headquarters and detailed the property rights violation he suffered: "I have 200,000 riyals at the Bahrain Islamic Bank. I couldn't withdraw the money from the bank because we were not allowed to enter the Kingdom of Bahrain after the blockade decision against the State of Qatar."

G. DEPRIVATION OF THE RIGHT TO PERFORM RELIGIOUS OBSERVANCES



This chart shows the increasing numbers of property rights violations between June and November 2017.

Mecca and Medina, two cities that are holy to all Muslims, are located in the Kingdom of Saudi Arabia, and they are a constant destination for Muslims to perform the rites of the Hajj and the Umrah.

The blockade decision, to which the Kingdom of Saudi Arabia is a party, has deprived approximately 1.5 million Muslims living in the State of Qatar of their right to engage in their religious observances, which is a flagrant violation of the right to worship.

The Saudi authorities made no exceptions from the unjust blockade measures for anyone wishing to exercise his or her right to perform the rites of the Hajj and the Umrah. Instead, they involved religious observances in political and diplomatic disputes and used the observances as a tool to exert political pressure, blatantly violating international human rights agreements.

In light of the continued blockade, air embargo, land border closure, along with the abusive measures taken by the Saudi authorities regarding the right to worship and engage in religious observances, **starting with actions to:**

- Prevent Qatari Umrah performers from entering Saudi territory during last Ramadan to perform the rites of the Umrah;
- Compel those present in the Kingdom to exit Saudi territory quickly without completing those rites;
- Stop dealing with Qatari currency and Qatari bank cards;
- Mistreat Qataris at land and air entry and exit points in the Kingdom of Saudi Arabia; and
- Prevent Qatar Airways aircraft from landing at airports in the Kingdom of Saudi Arabia, which resulted in Qatari Umrah performers returning to Doha via Saudi Arabia, who were forced to return on other airlines through the State of Kuwait and the Sultanate of Oman without consideration for humanitarian cases such as patients, women, children, elderly persons, and individuals with disabilities.

  It should be noted that all of the abusive measures carried out during last Ramadan led [Qatari] citizens and residents to fear to perform their religious observances if they were allowed to do so, out of concern that events would be repeated.

- **This is in addition to the actions of the authorities during the 2017 Hajj season:**

With the approach of the 2017 Hajj season, the Saudi authorities erected impediments and barriers to Qatari citizens and residents wishing to perform the obligation of the Hajj, "the fifth pillar of Islam."

These barriers amounted to a prohibition, because the authorities refused to work or coordinate with the Ministry of Religious Endowments and Islamic Affairs in the State of Qatar to enable those wishing to perform the obligation to do so.

The authorities have continued thus far to erect impediments and barriers to performing religious rites and observances before Qatari citizens and residents. This is in addition to the complaints submitted by the owners of Hajj and Umrah carriers in the State of Qatar about the complications and difficulties that have beset the performance of Umrah rituals for residents of the State, including:

- Closure of the electronic registration portal for the Hajj and Umrah and all Umrah performers from the State of Qatar not being allowed to register;
- Prevention by the authorities in the Kingdom of Saudi Arabia of monetary transfers between Qatari carriers and Saudi Umrah agents authorized to grant Umrah permits; and
- The Saudi authorities' continued refusal to work or coordinate with the Ministry of Religious Endowments and Islamic Affairs in the State of Qatar.

All of this definitively confirms that the Saudi authorities are continuing the policy of politicizing religious observances, which has inflicted enormous harm and financial losses on the State of Qatar since the beginning of the blockade because performance of Hajj and Umrah is prevented. Such harm and financial loss is exemplified in:

- The loss to the Ministry of Religious Endowments and Islamic Affairs in connection with Hajj and Umrah affairs, which amounts to approximately SAR 4,500,000, and other losses resulting from the blockade imposed on the State of Qatar; and
- Burdensome losses to Hajj and Umrah carriers. **We have communicated with nine carriers and obtained an accounting of their losses for this year:**

Carrier Name	Monetary Losses
Al-Forgan Carrier	7 million
Fifth Pillar Carrier	4 million
Al-Hamadi Carrier	2 million
Labbaik Carrier	6 million
Al-Hoda Carrier	2.7 million
Tawba Carrier	2.7 million
Qatar Carrier	400 thousand riyals
Hatem Carrier	2.7 million
Al-Quds Carrier	3 million
Total	**QAR 30.5 million**

In connection with material harm and losses, there is definite, serious psychological and intangible harm that have befallen all Qatari citizen and resident Muslims as a result of their being deprived of their right to work and engage in religious observances, and the Kingdom of Saudi Arabia bears full religious, moral, rights-based, and legal responsibility therefor.

Since the start of the blockade up to this day, the NHRC has noted 163 violations. Here are some testimonies of victims who suffered such violations:

- Mr. A. Sh., a Qatari national born in 1978, visited the NHRC's headquarters and gave his testimony, detailing the violation he suffered: "I made a reservation at a hotel in Mecca, Saudi Arabia, and I bought travel tickets for 27,000 riyals in order to perform the obligation of the Umrah, but the decision prevented me from performing this religious observance, and the hotel refused to refund the money for my reservation."
- Ms. F.A., a Palestinian born in 1950, expressed her regret that she could not perform the obligation of the Hajj in 2017. She gave her testimony to the NHRC: "After waiting five years to perform the Hajj obligation, my children and I were barred from performing it this year, and I am a sick and elderly widow."
- Mr. A.A., a Qatari national born in 1981, detailed the violation he suffered to the NHRC: "I made reservations at a hotel in Mecca, Saudi Arabia, and I paid 104,650 riyals for hotel reservations. I booked travel tickets to go for the Umrah, but I was blocked from going because of the blockade decision against the State of Qatar that bars its citizens from traveling to the blockading states."

H. INCITEMENT OF VIOLENCE AND HATRED

The NHRC has recorded hundreds of instances of hate speech which, in some cases, reached the level of incitement and provocation to commit terrorist bombings in the State of Qatar. Some television series have resorted to inciting children against the neighboring country of Qatar. We have also recorded discriminatory speech that aims to disparage and shame Qatari citizens. Such speech has increased dramatically due to the blatant involvement of some official advisors and media personalities in it. Indeed, merely wearing the uniforms of FC Barcelona or Paris Saint Germain has come to be viewed as an expression of sympathy, and the wearer is punished due to the presence of the names and logos of Qatar Airways and QNB on those uniforms.

We can summarize the cases of hate speech and incitement of violence as follows:

- Use of hate speech in songs, television series, and documentary films;
- Use of social media celebrities to disparage the State of Qatar, including its people and symbols;
- Disparagement of the symbols of the State in newspaper cartoons in neighboring states; and
- Incitement to conduct acts of sabotage and terrorism in the State of Qatar, and incitement to strike the State of Qatar and its media with missiles.

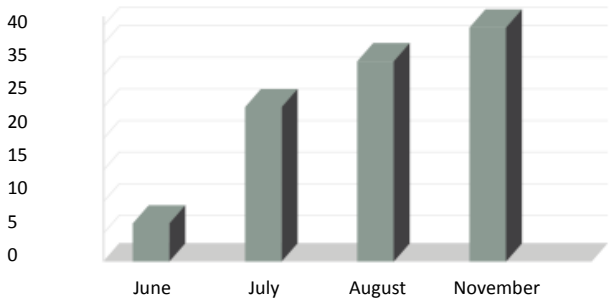
It is no secret that all of this media and artistic effort to incite hatred and violence will generate extreme reactions among the various segments of society that may bring about the commission of criminal acts not just against Qatari citizens, but also may generate reactions among the Qatari population against the three states and Egypt. This poses a threat to the peace, security, and stability of the entire region. We at the NHRC have recorded the names and capacities of every person who has incited violence and hatred that our researchers have been able to identify. We hold them responsible for any act of discriminatory terrorist violence that harms any Qatari citizen or any citizen of the three states and Egypt.

International law clearly criminalizes hate speech and violence, as provided by Article 20 of the International

Covenant on Civil and Political Rights, as does Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, which prohibits any call for national, racial, or religious hate, and deems such calls to be incitement of hostility and violence.

Due to the incitement of violence and hate speech by the blockading states, Qataris in the blockading states have been subject to defacement of their vehicles and have had stones thrown at them. Further, hatred, hostility, and discrimination toward Qatari citizens by some citizens of neighboring states has been a result.

D. VIOLATION OF THE RIGHT TO HEALTH, PARTICULARLY FOR WOMEN, CHILDREN, AND THE DISABLED



This chart shows the increase in violations of the right to health from June to November 2017.

Hundreds of patients from the three blockade countries who were being treated in Qatari hospitals were harmed, as well as Qataris who were receiving treatment in these three countries' hospitals. Citizens were instructed to leave without any exceptions for cases of illness or special groups such as pregnant women, young children, or even infants and the handicapped. This clearly demonstrates the extent of the blatant recklessness being shown by the three blockading countries toward their own ailing citizens, and the depth of their disregard for the most fundamental human rights. The most basic right to health is the right not to be discriminated against. Therefore, the three blockade countries have no right to expel Qatari patients based on a political disagreement. The right to health is explicitly provided for in several international charters and treaties, including Article 25 of the International Declaration of Human Rights and Article 12 of the International Covenant on Economic, Social and Cultural Rights.

- Mrs. N. A., a citizen of the UAE who has a Qatari son, stated: "I can't go to the UAE because of the blockade on the State of Qatar. My passport will expire in two months, and I can't travel for fear that I might not be able to return to Qatar. I'm sick and I need to be treated outside the country, but because of my passport [being about to] expire, I haven't been able to go for treatment because I'm currently receiving treatment in Qatar."
- A young man, R. M., a Qatari national born in 1994, told the NHRC, "I had an operation on my right cornea in Bahrain in January this year, and now I have pain in the eye after the stitches on the cornea opened up. When I

went to a hospital in Qatar, they told me I would need to see the doctor who performed the procedure in Bahrain, but because of the blockade against Qatar, I haven't been able to. I need to do so as soon as possible because the pain is getting worse, and I have infections [in the wound]."

- Mrs. R. T., a Qatari woman born in 1986, told the NHRC she was afraid she wouldn't be able to complete treatment in Bahrain. "I had an operation in Bahrain in January, and I need to complete the remaining part of the operation during the same year, but I haven't been able to travel because of relations with Qatar being cut off."

J. THE RIGHT TO LITIGATION

The right of access to the judiciary is the legitimate and legal means of protecting human rights, preventing human rights violations, keeping them from recurring, and ensuring justice for victims in keeping with the principle of reparation set forth in human rights agreements through recourse to litigation and through the provision of procedures necessary to achieve this end. Given the consequences of the blockade against Qatar, however, Qatari citizens and residents have not been able to access the courts in the blockade countries.

What has happened as a result of the blockade being imposed against Qatar has caused many violations which require recourse to the blockading countries' local judiciaries. Such violations include the following:

1. Violation of the right to ownership. These individuals possess the right to litigation because they have properties and businesses due to previous commercial activities or inheritances. However, they have been prevented from completing the necessary litigation procedures or following up on cases already before the courts.

2. The right to education. These individuals were studying in the blockading countries, and some of them had paid their tuition as well as their residency fees. However, they have not been able to recover their money.

3. Hotel and airplane reservations were made, and the victims have not been able to claim their rights.

The NHRC has recorded egregious violations of the right to litigation. The following are the most salient aspects of these violations:

- Hindering Qatari citizens and residents from exercising their right to litigation before the courts in the blockading countries, particularly the UAE and Saudi Arabia.
- Not allowing Qatari citizens and residents to appear before the courts by preventing them from entering the blockade countries. This constitutes a violation of their right to litigation and other rights related thereto, such as the right to defense.
- Making it difficult for their legal representatives to initiate legal proceedings on their behalf.
- Refusal by law firms in the blockade countries to take on the cases of litigants who are Qatari citizens or residents and neglecting to follow up on cases they had already taken on.
- Non-implementation of verdicts issued in favor of Qatari citizens.
- Nullification of verdicts issued in favor of Qatari citizens and residents due to their inability to pursue their cases and exercise their right to litigation and legal defense.
- Mr. (I. A.), a Qatari national born in 1964, told the NHRC, "I have land, real estate, and private automobiles in the UAE, so I need to check on my property, collect financial returns, and follow up on committees and real

estate administrative procedures. However, because of the blockade and the fact that Qatari citizens aren't allowed into the blockade countries, I've faced fines, I've been delayed in my ability to make use of facilities, and my real estate properties have been frozen. This has caused me major financial harm, including a monthly loss of around 40,000 riyals, and a commercial loss of more than 16 million UAE dirhams."

- Mr. (B. Th. [and] A. M.), both Qatari nationals, presented their complaint to the NHRC, saying, "We inherited several real estate properties from our late father in the UAE (Sharjah). But the properties are still in our father's name, and still haven't been transferred. There is an executive case, as well as approximately 133 million dirhams, bearing in mind that the real estate properties are located in the industrial zone, and some of them are being rented out."

Fifth: Conclusions and legal profile:

Through their arbitrary decisions and illegal measures, the governments of the blockade countries have violated, and continue to violate, several rules and principles of international human rights law. They have, for example, clearly violated several articles of the International Declaration of Human Rights, and articles of both the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, as well as articles of other legal instruments, the most salient of these being:

The Arab Human Rights Charter, the Declaration of Human Rights of the Gulf Cooperation States, and the Economic Agreement Between the Countries of the Gulf Cooperation Council

The blockade countries have also violated the Chicago Agreement by banning Qatari civil aircraft from flying over their regions without justification, war-related necessity, or reasons of relevance to public security.

The articles which the three Gulf countries have violated are as follows:

First: The International Declaration of Human Rights:

Articles 2, 5, 7, 8, 9, 10, 12, 13, 19, 23, 25, and 26

Second: The International Covenant on Civil and Political Rights:

Part II (Article 2), and Part III (Articles 9, 12, 13, 14, 20, 23, and 24)

Third: The International Covenant on Economic and Social Rights:

Part III (Articles 6, 10, 12, and 13)

Fourth: The International Convention on the Elimination of All Forms of Racial Discrimination:

Article 4

Fifth: The Arab Human Rights Charter:

Article 3

1. Every state which is party to this Charter pledges to guarantee to each individual under its mandate the rights and freedoms provided for in this Charter without discrimination based on race, color, gender, language, religious belief, opinion, thought, national or social origin, wealth, birth, or physical or mental disability.

Article (8)

1. No person may be tortured physically or psychologically, or subjected to cruel, degrading, demeaning, or inhumane treatment.

Article (11)

All persons are equal before the law and have the right to be protected thereby without discrimination.

Article (12)

1. All persons are equal before the judiciary, and Party States shall guarantee the independence of the judiciary and protect judges from any interference, pressures, or threats. They shall also guarantee the right to litigation in its various degrees to every person under their mandate.

Article (13)

1. Every person shall have the right to a fair trial with sufficient guarantees by a competent, independent, and partial court previously established by law in the face of any criminal accusation raised against him or her, or to rule on his or her rights and obligations. Moreover, each Party State shall guarantee that those who are financially incapable will receive legal aid to defend their rights.
2. The trial shall be public unless, in exceptional circumstances, the interests of justice dictate otherwise in a society which respects freedoms and human rights.

Article (26)

1. Every person legally present in the territory of a Party State shall enjoy freedom of movement and the freedom to choose where he or she shall reside in said territory within the limits of the laws in force.

Article (32)

1. This Charter guarantees the right to [access] the media, freedom of thought, opinion, and expression, as well as the right to obtain news and transmit it to others by any means and without consideration for geographical boundaries.
2. These rights and freedoms shall be exercised within the framework of the fundamental components of society and shall only be subject to those restrictions imposed by respect for others' rights or reputation, or by the need to preserve national security or public order, health or morals.

Article (33)

1. The family is the natural and fundamental unit of society. The basis for the family's formation is marriage between a man and a woman, who, from the time when they reach marriageable age, shall have the right to marry and establish a family in keeping with the conditions and pillars of marriage. Marriage shall only take place with the full consent of both parties thereto, and without compulsion. The man's and the woman's rights and duties shall be regulated by the legislation in force when the marriage goes into effect, throughout its duration, and upon its dissolution.
2. The state and society shall guarantee families' protection, strengthen their bonds, protect the individuals belonging to them, and prohibit all forms of violence and mistreatment by its members, particularly against women and children. Mothers, young children, the elderly, and those with special needs shall be ensured the necessary protection and care, while teenagers and young adults shall be guaranteed maximum opportunities for physical and mental development.

3. Party States shall take all legislative, administrative, and judicial measures necessary to guarantee a child's protection, survival, development and welfare in an atmosphere of freedom and dignity. The child's best interest shall be the fundamental criterion for determining all measures taken in this connection in all circumstances and whether he or she is delinquent or liable to become so.

Sixth: The Declaration of Human Rights of the Gulf Cooperation Council

Article (6)

Freedom of religious faith and practice is the right of every person in keeping with the Law insofar as the exercise of such freedom does not prejudice public order or public morals.

Article (9)

Freedom of opinion and expression is the right of every person, and the exercise of this right is guaranteed to everyone insofar as it is consistent with Islamic Law, public order, and the laws regulating such matters.

Article (14)

The family, consisting of a man and a woman and governed by religion, morals, and love of country, is the natural and fundamental unit of society. The family entity is preserved, and its ties strengthened, by religion, which protects mothers, young children, and other members of the family from all forms of abuse and domestic violence. The protection of the family is to be ensured by society and the State.

Article (24)

Work is a right of every able-bodied person. Each individual shall have the right to choose the type [of work he or she engages in] in keeping with the requirements of dignity and the public interest. The fairness of the terms of employment and the rights of both employees and employers shall be guaranteed.

Article (27)

Private property is protected. No person shall be prevented from disposing of his or her personal property beyond the bounds of the Law. Nor may anyone's property be wrested from him or her except in the service of the public interest and in return for just compensation.

Article (32)

People are equal before the judiciary, and the right to litigation is guaranteed to everyone within a fully independent judiciary.

Sixth: Recommendations of the National Human Rights Council:

Freedom of religious faith and practice is the right of every person in keeping with the Law insofar as the exercise of such freedom does not prejudice public order or public morals.

To the international community:

It is vital that immediate action is taken to end the blockade, and that every possible effort be made to mitigate its repercussions for the residents of Qatar and citizens of the blockade countries.

To the United Nations and the High Commission on Human Rights:

The UN High Commissioner for Human Rights constituted and sent a technical mission to Doha from November 18 and 23 2017 to determine the effects of the blockade on the human rights situation of the citizens and residents of Doha, Qatar and some citizens of the GCC countries. On this basis we demand:

First: That the blockade countries be addressed concerning the need to cease and desist their blockade of Qatar; that they correct the violations caused by the arbitrary, unilateral measures they have taken; and that they ensure justice for the victims and compensate them for the material and psychological damages they have suffered.

Second: That a presentation be made of the reports and statements documenting the various types of violations that have affected huge numbers of people, particularly as they relate to the splitting of families. Such reports and statements should address the alarming implications of family disintegration for women and children, and the blockade countries should be pressed to respect the basic freedoms of those residing in their territories.

Third: That a detailed report on human rights violations be submitted to the Council on Human Rights, state rapporteurs, and contractual mechanisms to address these violations and ensure that they are not repeated.

To the Human Rights Council:

- To issue a resolution, take all possible measures toward lifting the blockade, put an end to the violations to which it has led, and provide compensation to all individuals who suffered damages.
- To form a fact-finding committee and conduct direct interviews with the victims.

To the special rapporteurs on the Human Rights Council:

First: To respond quickly to the reports of the National Human Rights Council and to letters from victims, and issue urgent and joint calls to act in this connection.

Second: To urge the governments of the blockading countries to eliminate the violations and extend justice to the victims.

Third: To make field visits to Qatar and the blockading countries to gather information on the human rights violations resulting from the blockade.

Fourth: To record the violations committed by the blockading countries in the periodic reports that are submitted to the Human Rights Council.

To the Secretariat-General of the Gulf Cooperation Council:

To call upon the legal affairs sector in the Secretariat-General of the Gulf Cooperation Council, an in particular its Human Rights Bureau, to demand that the blockading countries eliminate the violations, extend justice to the victims, and put a stop to any new arbitrary measures.

To the blockade countries:

First: Commit to respect the pledges listed in the human rights agreements which you have ratified and joined.

Second: Cease these violations, correct them, and extend justice to the victims.

Third: Respond to the NHRC's reports and international reports.

Fourth: Allow international organizations and missions to make field visits to familiarize themselves closely with the humanitarian situations, identify responsibilities, and extend justice to the victims.

Fifth: Cease allowing politics to impact humanitarian and social conditions and stop using them as a bargaining chip because doing so is a violation of international law and international human rights law.

To the Government of Qatar:

First: Take all possible steps at the international level, at the level of the Security Council, and before the international courts and arbitration tribunals to lift the blockade on Qatar's citizens and residents, and to provide justice for the victims.

Second: Call upon the Compensation Commission to expedite litigation procedures in order to ensure justice for the victims.

Third: Facilitate procedures to integrate students into Qatari universities and the Qatari educational system and address the humanitarian situations of those who have been injured.


NHRC
اللجنة الوطنية لحقوق الإنسان
National Human Rights Committee
Doha, Qatar

NHRC

اللجنة الوطنية لحقوق الإنسان
National Human Rights Committee
الدوحة - قطر

٦ أشهر من الانتهاكات .. ماذا بعد؟!

التقرير العام الرابع لانتهاكات حقوق الإنسان جراء حصار دولة قطر

٥ ديسمبر ٢٠١٧ م

فهرس التقرير

أولاً: ملخص:

يستمر الحصار غير الإنساني المفروض على دولة قطر منذ تاريخ ٥ يونيو ٢٠١٧م و حتى يومنا هذا من

قبل كل من المملكة العربية السعودية والإمارات العربية المتحدة ومملكة البحرين بالإضافة إلى جمهورية مصر العربية. كما تستمر معه الإنتهاكات دون أية تجاوب من هذه الدول لمعالجتها

و لهذا تقوم اللجنة الوطنية لحقوق الإنسان NHRC بإعداد سلسلة تقارير خاصة بتلك الإنتهاكات ، ورصد وتوثيق الآثار الإنسانية، والتداعيات الاجتماعية والاقتصادية المترتبة عليها .

و بهذا الخصوص خاطبت اللجنة الوطنية لحقوق الإنسان NHRC نحو ٤٥٠ جهة حقوقية ومنظمات دولية وإقليمية حكومية وغير حكومية مناشدةً لهم بالتحرك العاجل لمعالجة آثار الأزمة الإنسانية التي تسبب بها الحصار. وقامت بـ ٣٣زيارة لعواصم أوروبية وعالمية لتعريفهم بحجم الانتهاكات القائمة على دولة قطر من قبل دول الحصار. وهذا هو التقرير الرابع العام الذي تصدره اللجنة لتوثيق هذه الانتهاكات بجانب **سلسلة التقارير العامة التي أعدتها**:-

١. التقرير الأول لانتهاكات حقوق الإنسان لدولة قطر جراء الحصار ١٣يونيو ٢٠١٧.

٢. التقرير الثاني لانتهاكات حقوق الإنسان لدولة قطر جراء الحصار ١يوليو ٢٠١٧.

٣. التقرير الثالث لانتهاكات حقوق الإنسان لدولة قطر جراء الحصار ٣٠ أغسطس٢٠١٧.

أيضاً تقارير الانتهاكات الخاصة:-

١. تقرير انتهاك الحق في التعليم ٥ سبتمبر ٢٠١٧.

٢. تقرير الحرمان من تأدية الشعائر الدينية ٢٤ أغسطس ٢٠١٧.

٣. تقرير انتهاك الحق في الملكية ٣٠ أغسطس ٢٠١٧.

٤. تقرير انتهاك الحق في الغذاء والدواء ٣ سبتمبر ٢٠١٧.

وسيتطرق هذا التقرير إلى ذكر شهادات جديدة لضحايا جدد انتهكت حقوقهم الأساسية من جراء الحصار ، . كما ستسمر اللجنة الوطنية لحقوق الإنسان NHRC بتحديث هذا التقرير الأساسي طالما استمر الحصار، واستمر تدفق الشكاوى من الضحايا .

وقد استقبلت اللجنة الوطنية لحقوق الإنسان NHRC العديد من المنظمات الدولية لحقوق الإنسان الحكومية منها و غير الحكومية مثل البعثة الفنية التابعة للمفوضية السامية لحقوق الإنسان بالأمم المتحدة OHCHR خلال الفترة من ١٨ – ٢٣ نوفمبر ٢٠١٧، بعثة منظمة العفو الدولية (Amnesty) مرتين خلال الفترة من ٦–٨ يونيو٢٠١٧ و ٢٨–٣٠ نوفمبر ٢٠١٧، وبعثة منظمة هيومن رايس وتش HRW خلال الفترة من ١٩–٢٠ يونيو ٢٠١٧، ومنظمة AFD الدولية خلال الفترة ٢٢–٢٥ يوليو ٢٠١٧. كما استقبلت اللجنة الوطنية لحقوق الإنسان NHRC أيضاً وفود برلمانية من دول أوروبية بغرض الاطلاع على الانتهاكات الواقعة على دولة قطر بسبب الحصار.

بحسب البيانات التي حصلنا عليها، يُقيم في دولة قطر قرابة ١١٣٨٧ مواطناً من دول الحصار الخليجية الثلاث، ويُقيم قرابة ١٩٢٧ مواطناً قطرياً في تلك الدول،

ثانياً: نبذة تعريفية عن اللجنة الوطنية لحقوق الإنسان

الوطنية لحقوق الإنسان بدولة قطر NHRCهي جزء مما يعرف بالمؤسسات الوطنية لحقوق الإنسان NHRIs، التي تُنشأ وفق ما يسمى بمبادئ باريس والتي اعتمدتها الجمعية العامة للأمم المتحدة، وتحصل هذه المؤسسات على العضوية في التحالف العالمي للمؤسسات الوطنية لحقوق الإنسان GANHRI بعد خضوعها لعملية اعتماد من اللجنة الفرعية للاعتماد SCA التابعة للتحالف GANNRI، وبإشراف قسم المؤسسات الوطنية والآليات الإقليمية والمجتمع المدني NRCS التابع للمفوضية السامية لحقوق الإنسان OHCHR وهي بمثابة الأمانة العامة وسكرتارية اللجنة الفرعية للاعتماد (SCA) في التحالف GANHRI، وأنشأت اللجنة الوطنية NHRC في عام ٢٠٠٢ باختصاصاتها وولايتها لحماية وتعزيز حقوق الإنسان كما حددتها مبادئ باريس وحصلت على تصنيف A في عام ٢٠١٠ لمدة ٥ سنوات، وتم إعادة تصنيفها ب A مرة أخرى في ٢٠١٥ لمدة ٥ سنوات، وهو أعلى تصنيف يعطى لمؤسسة وطنية ويدل على المصداقية والاستقلالية والامتثال التام لمبادئ باريس.

ثالثاً: منهجية التقرير:

مر على حصار دولة قطر ١٨٤ يوماً، ولازالت اللجنة الوطنية لحقوق الإنسان NHRC تتلقى في مقرها الرسمي بالعاصمة القطرية الدوحة شكاوى من ضحايا متضررين من قرارات دول الحصار التي تسببت في **انتهاكات عدة لحقوق الإنسان طالت المجالات التالية**: لم شمل الأسر، التعليم، الملكية، التنقل والإقامة، وممارسة الشعائر الدينية، والصحة، والعمل وغيرها من الانتهاكات الأخرى.

وتعتبر قرارات دول الحصار وما ترتب عليها من أضرار على كافة الأصعدة الإنسانية، انتهاكاً لجميع بنود حقوق الإنسان المنصوص عليها في كافة الشرائع والقوانين والأعراف الدولية، وأجبرت تلك الإجراءات المعلنة فجأة في ٥ من يونيو الماضي مواطني دولة قطر على الخروج من الدول الخليجية الثلاث في غضون ١٤ يوما، ومنعت أي مواطن قطري من الدخول إلى أراضيها، وقضت أحيانا بالتفريق بين المرء وزوجه والأم ووليدها، وذلك بقرارات تضرب عرض الحائط بجميع المبادئ والمعايير الحقوقية والإنسانية.

- لابُدَّ من التذكير هنا أن الفرد الواحد قد يتعرَّض لأكثر من نوع واحد من الانتهاكات، وبالتالي فإنَّ حصيلة الملفات التي تُعبِّر عن جميع الانتهاكات هي بالتأكيد أكبر من مجموع الأفراد، فقد سجلنا حوادث تعرَّض فيها الفرد للتشرُّد عن أُسرته، ومُنع من مواصلة تعليمه، ومن التَّنقل، فهذه ثلاثة انتهاكات وقعت على فرد واحد.
- تقوم اللجنة بعد استقبالها لضحايا الحصار وتوثيق الانتهاكات الواقعة بحقهم، بمشاركة حالات تلك الانتهاكات على نحوٍ متتالٍ مع الجهات الحقوقية والقانونية الدولية المختصة.
- متابعة مدى تجاوب دول الحصار مع تقارير اللجنة الوطنية لحقوق الإنسان NHRC.
- متابعة حالات الانتهاكات من قبل اللجنة الوطنية لحقوق الإنسان NHRC التي تم رفعها للجهات الحقوقية والقانونية والدولية المختصة ومحاولة رفع الانتهاك عنها، وهذا ما سنذكره بشكلٍ مفصل لكل حق على حده.

وفي هذا التقرير سلطنا الضوء على أهم الانتهاكات التي وقعت على دولة قطر جراء الحصار و التي لا تزال مستمرة حتى الآن، وذلك باختيار وعرض شهادات بعض الضحايا لكل نوع من أنواع الانتهاكات، حفاظاً على حجم مُعيَّن للتقرير، مع التأكيد أنَّ بإمكان الجهات المختصة الحصول على الاستمارات والوثائق كافة، كما قمنا بالإشارة إلى الأحرف الأولى من أسماء الضحايا حفاظاً خصوصياتهم وأمنهم وسلامتهم.

وننوه هنا بأن الحكومة القطرية لم تَقُم بأي إجراء مماثل بحق مواطني دول الحصار، ولم نتلقَ في اللجنة الوطنية لحقوق الإنسان NHRC أية شكوى في هذا الخصوص. كما قامت دولة قطر بإنشاء لجنة المطالبة بالتعويضات عن الأضرار الناجمة من الحصار بتاريخ ٢٢ يونيو ٢٠١٧، **وتختص هذه اللجنة بالآتي**:-

١. استقبال شكاوى المطالبة بالتعويضات من قبل الافراد والمؤسسات الخاصة والقطاع العام.

٢. البحث في تلك الشكاوى من الناحية القانونية بحيث يكون الحصار سبب في الضرر الذي اصاب المتضررين.

٣. تكليف مكاتب محاماة دولية لبحث أوجه إمكانية رفع دعاوى على دول الحصار لتعويض المتضررين.

٤. الإشراف والتنسيق بين جهات الدولة والقطاع الخاص والافراد وبين مكاتب المحاماة لتزويدهم بالوثائق اللازمة.

٥. المتابعة عن كثب دعوى دولة قطر في منظمة التجارة العالمية وتزويدها باللازم.

وهناك علاقة وتعاون بين اللجنة الوطنية لحقوق الإنسان NHRC و لجنة المطالبة بالتعويضات حيث تقوم اللجنة الوطنية بإحالة كافة ملفات الشكاوى التي استقبلتها من المتضررين إليها واستمرارية عقد العديد من الاجتماعات معها، من أجل إنصاف الضحايا وتحقيق مبدأ جبر الضرر المنصوص عليه في الاتفاقيات الدولية والإقليمية.

وفي إطار سعيها الدائم إلى معالجة الانتهاكات قامت اللجنة الوطنية لحقوق الإنسان NHRC بمخاطبة كلاً من:

- الجمعية الوطنية لحقوق الإنسان – السعودية بتاريخ ٢٤ سبتمبر ٢٠١٧.
- جمعية الإمارات لحقوق الإنسان وجهت لها ثلاث خطابات:-

١. بتاريخ ٨ أكتوبر ٢٠١٧.

٢. بتاريخ ١٥ أكتوبر ٢٠١٧.

٣. بتاريخ ٢٣ أكتوبر ٢٠١٧

- المجلس القومي لحقوق الإنسان بمصر بتاريخ ٢ أكتوبر ٢٠١٧م.

حيث أرسلت لهم اللجنة الوطنية لحقوق الإنسان NHRC كافة قوائم الضحايا بغرض السعي و التواصل مع سلطاتهم لمعالجة تلك الانتهاكات، ولم تتلقى اللجنة أي ردود من طرفهم حتى الآن، عدا المجلس القومي لحقوق الإنسان بمصر الذي تعامل بإيجابية مع خطابها ، ونشير هنا إلى محاولات اللجنة المستمرة للتواصل مع المؤسسة الوطنية لحقوق الإنسان NHRC في مملكة البحرين دون جدوى.

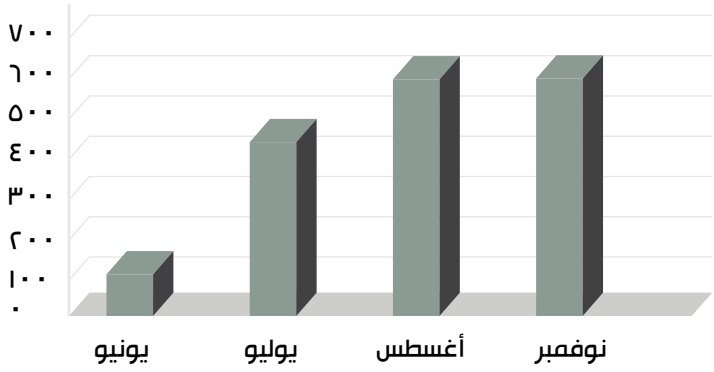
رابعاً: أهم الانتهاكات التي وقعت:

يُظهِرُ الجدول التالي فرزاً بحسب الانتهاكات التي سجلتها اللجنة الوطنية لحقوق الإنسان NHRC والتي وصلت إلى ٣٩٧٠ حالة حتى تاريخ إعداد هذا التقرير، وقد تم توزيعها بحسب الدولة التي قامت بالانتهاك، وبحسب نوع كل انتهاك وقع بحق مواطني ومقيمي دولة قطر:

تاريخ الإحصائية	الانتهاك البلد التي قامت بالانتهاك	التعليم	الملكية	لم شمل الأسرة	التنقل	الصحة	ممارسة الشعائر الدينية	العمل	الإقامة	الإجمالي
٥ ديسمبر ٢٠١٧	السعودية	٦٢	٦٧٧	٣٣٦	٧٥٣	١٩	١٦٣	٦٦	٥٧	٢١٣٣
	الإمارات	146	٤٢٣	٨٠	٣٣٤	٤	-	٦	٤	٩٩٧
	البحرين	٢٨	٥٢	٢١٣	١٢٦	١٤	-	٣٧	٣٢	٥٠٢
	متنوع	٢٦٨	22	-	٣٩	-	-	-	-	٣٢٩
	المجموع	-	-	-	9	-	-	-	-	٩
		٥٠٤	١١٧٤	٦٢٩	1261	٣٧	١٦٣	١٠٩	٩٣	٣٩٧٠

يوضح هذا الجدول آخر الإحصائيات الخاصة بالانتهاكات الواقعة على دولة قطر منذ بداية الحصار الموافق ٥ يونيو ٢٠١٧ وحتى ٥ ديسمبر ٢٠١٧، حيث وقع ٥٠٤ انتهاكاً للحق في التعليم، ١١٧٤ انتهاكاً للحق في الملكية، ٦٢٩ انتهاكاً للحق في لم شمل الأسر، ١٢٦١ انتهاكاً للحق في التنقل، ٣٧ انتهاكاً للحق في الصحة، ١٦٣ انتهاكاً للحق في ممارسة الشعائر الدينية، ١٠٩ انتهاكاً للحق في العمل، و٩٣ انتهاكاً للحق في الإقامة.

ألف: قطع شمل الأسر، خصوصاً النساء والأطفال:



رسم بياني يوضح ارتفاع نسب الانتهاكات في قطع شمل الأسر من شهر يونيو وحتى نوفمبر٢٠١٧

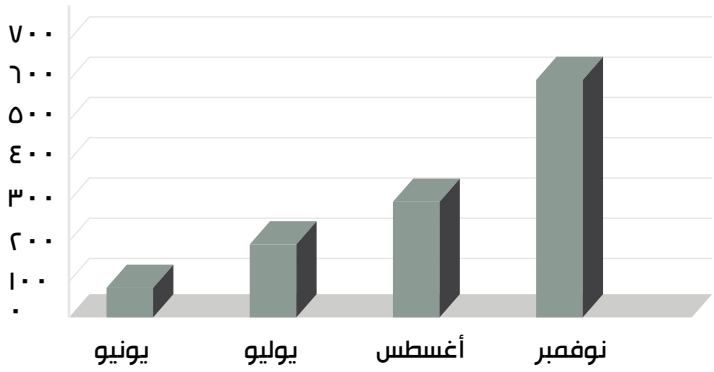
تلقت اللجنة آلاف الشكاوى بشأن انتهاكات الحصار المفروض على دولة قطر ، و أبرزها تلك التي طالت الحق في لم شمل ، حيث قطعت أواصر الأسر الخليجية الواحدة، و نتج عن ذلك تشتيت النساء، والأطفال، والأشخاص ذوي الإعاقة، وكبار السن، وحرمان الأمهات والآباء من البقاء مع أبنائهم وأطفالهم.

ويرتبط مواطنو دول الخليج بعلاقات نسبٍ وقرابة ومصاهرة تعود لمئات السنين، حيث تسبب طلب مغادرة المواطنين القطريين لدول الحصار وأيضاً ترحيل مواطني دول الحصار من دولة قطر بإيجاد أوضاع غير إنسانية عدا عن كونها انتهاكاً سافراً لعدة مواد في القوانين الدولية، من خلال الترحيل الإجباري للعائلات وتشتيتها، وحرمان الأمهات والآباء من أبنائهم وأطفالهم.

وبسبب هذا الانتهاك سجلت اللجنة الوطنية لحقوق الإنسان قرابة ٦٢٩ استمارة تتعلق بحالات قطع شمل الأسر وتشتيتها، لكنَّها على ثقة أنَّ الحصيلة الحقيقية أضخم بشكل كبير. مع العلم بأن هناك بعض حالات الانتهاك الأسرية سُمح لها بالدخول، ولكن لمرة واحدة فقط و بطريقة عشوائية ومن دون آلية واضحة، وتم إغلاق الحدود تماماً بعدها.

- السيد (س. ف) سعودي الجنسية، من مواليد دولة قطر لعام ١٩٩١م يعمل كمهندس صوت يتحدث مع اللجنة الوطنية لحقوق الإنسان NHRC بكل أسى قائلاً: "قد تأثرت أنا وعائلتي كثيراً بعد سماع خبر الحصار الذي أمرنا من خلاله بمغادرة دولة قطر وترك أسرنا وعائلاتنا وأطفالنا لتنفيذ تلك القرارات، وزوجتي حامل بالشهر السادس وهي قطرية وأنا أعاني من اضطرابات نفسية".
- وبحسب شهادة السيدة (إ . ر) التي أدلت بها للجنة الوطنية لحقوق الإنسان فقد تمَّ حرمانها من السفر إلى أطفالها كونها تحمل الجنسية القطرية: " أنا أم قطرية مطلقة من زوج بحريني الجنسية، ولدي أطفال منه ، وأذهب أربع مرات في السنة إلى مملكة البحرين من أجل رؤية أطفالي، لكن بعد القرار لم أستطع ذلك ولم يقبل الأب بإرسال الأولاد لقطر من أجل أن أراهم".
- أدلت السيدة (أ. ف) قطرية الجنسية من مواليد عام ١٩٨٧ بشهادتها للجنة الوطنية لحقوق الإنسانNHRC، وذكرت تفاصيل الانتهاك الذي تعرضت له : "كنت متزوجة من مواطن إماراتي الجنسية ورفع مطلقي علي قضية إسقاط حضانة أبنائي وهو متزوج من امرأة اخرى ، وبعد قرار الحصار أمر القاضي في دولة الإمارات بإسقاط الحضانة عني بدون أي سبب وجردني من جميع حقوقي".
- زارَ السيد (خ. ع) من مواليد ١٩٦٨ يحمل الجنسية القطرية مقرَّ اللجنة الوطنية لحقوق الإنسانNHRC، وذكر تفاصيل ما تعرَّض له هو وعائلته من انتهاك: "زوجتي سعودية وأنا قطري الجنسية، وبعد قرار الحصار وقرار رجوع كافة المواطنين إلى السعودية ومغادرة قطر، لم أستطع إرجاع زوجتي لأن وضعي لا يسمح بذلك".

باء: التوقف عن متابعة التعليم:



رسم بياني يوضح نسب ارتفاع احصائية الانتهاكات في حق متابعة التعليم من شهر يونيو وحتى نوفمبر ٢٠١٧

استقبلت اللجنة في انتهاك هذا الحق سيلاً من الشكاوى حيث بلغت ما يقارب ٢٣٦ حالة من طلاب قطريين يدرسون في جامعات السعودية والإمارات والبحرين، وجدوا أنفسهم فجأة محرومين من متابعة دراستهم، بل أجبروا على المغادرة إلى وطنهم، بعد قرار تلك الدول قطع علاقاتها مع قطر في الخامس من يونيو ٢٠١٧. وبسبب الإجراءات والقرارات التعسفية في حرمان المئات من الطلبة من استكمال دراستهم شكل هذا انتهاكاً صارخاً للحق في التعليم. حيث أجبرت دول الحصار أيضاً طلابها الدارسين في جامعة قطر على العودة إلى دولهم (السعودية، الإمارات، والبحرين) ومنعتهم من استكمال دراستهم الجامعية ويبلغ عددهم ٧٠٦ طالب وطالبة.

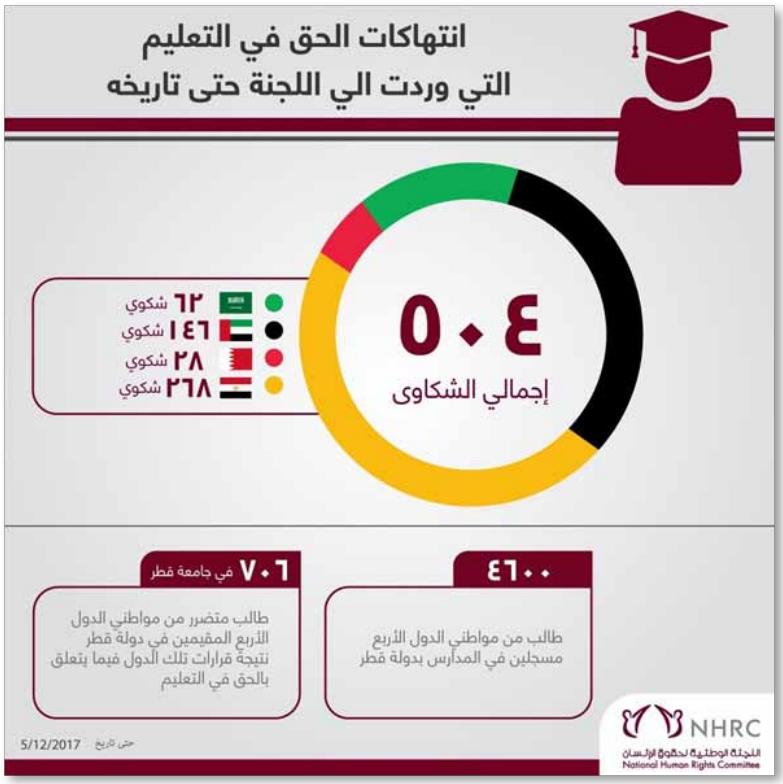
- يقول الطالب (ح. ع) قطري الجنسية من مواليد عام ١٩٨٦ للجنة الوطنية لحقوق الإنسانNHRC التالي: " أنا طالب في جامعة العلوم التطبيقية في البحرين وهذا آخر فصل دراسي للتخرج، بقي لي مادتان ورسالة التخرج، هناك محاضرات وامتحانات ولم أستطع الذهاب بسبب قرار الحصار الذي أدى إلى عرقلة دراستي".

- تقول (ن. م) للجنة الوطنية لحقوق الإنسان NHRC وهي من مواليد عام ١٩٩٥م، سعودية الجنسية، طالبة في جامعة قطر: "أنا متزوجة من زوج قطري الجنسية وتوفي قبل ٤ سنوات ولدي ولدان منه، وأدرس في جامعة قطر. وقد طلبت مني سفارة المملكة العربية السعودية العودة إلى أراض المملكة وأنا لا أستطيع أن أترك أولادي ودراستي الجامعية".

- (ح،أ) من مواليد دولة قطر لعام ١٩٨٦م وهو ضحية أخرى من ضحايا الحصار، يروي قصته للجنة الوطنية لحقوق الإنسانNHRC: "أدرس في الجامعة الأمريكية في دولة الإمارات وبسبب قرار الحصار على دولة قطر لم أتمكن من الذهاب لإكمال دراستي الجامعية في دولة الإمارات بالإضافة إلى الخسائر المادية والمعنوية".

ومع متابعة اللجنة الوطنية لحقوق الإنسان NHRC لحالات انتهاك الحق في التعليم، لم تسمح دولة الإمارات لطلبة من دولة قطر باستئناف دراستهم بأي شكل من الأشكال، عدا بعض الجامعات الدولية التي حولت الطلبة الدارسين فيها إلى أفرع أخرى خارج الإمارات ولكن بتكاليف سفر ومعيشة أكبر، مما كبد الطلبة ومرافقيهم متطلبات ورسوم مادية ومعنوية أكثر من ذي قبل.

كما رصدت اللجنة الوطنية لحقوق الإنسان تجاوب الجامعات القطرية التي قامت بإدماج ما يقارب ٦٤ طالبا متضررا ، حيث قامت وزارة التعليم القطرية ببعض الاستثناءات للطلاب الآخرين المتضررين جراء الحصار.



الطلاب الدارسون في جمهورية مصر

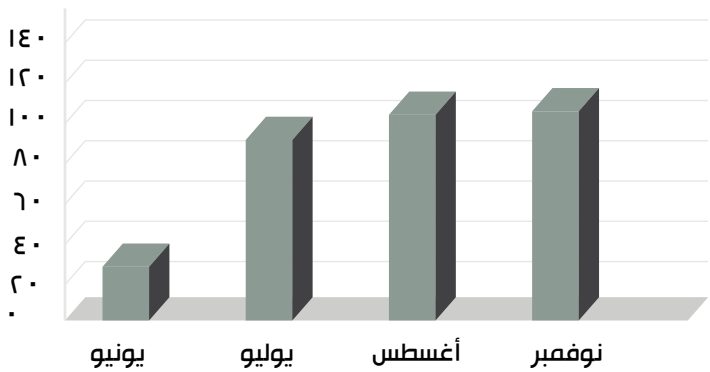
كما رصدت اللجنة حوالي ٢٦٨ شكوى من طلاب قطريين ومقيمين في دولة قطر يدرسون بالجامعات المصرية منعوا من استكمال دراستهم، كما منع بعضهم من دخول امتحانات نهاية العام الدراسي في شهر سبتمبر ٢٠١٧، وقد جاء هذا المنع بسبب الإجراءات التي قامت بها السلطات المصرية من وضعها قيودا على الطلبة القطريين الذين يدرسون بالجامعات المصرية تمثلت في شرط الحصول على موافقة أمنية قبل منحهم تأشيرة دخول لاستكمال دراستهم بالجامعات المصرية وأداء الامتحانات بها .

وقد خاطبت اللجنة الوطنية لحقوق الإنسان NHRC رئيس المجلس القومي لحقوق الإنسان بمصر في هذا الشأن من أجل مساعدة الطلاب لإكمال دراساتهم وتذليل الصعاب أمامهم ، وقد قام المجلس القومي بذلك ، عن طريق السعي لدى السلطات المصرية برفع الإجراءات التي أعاقت انتظامهم في الدراسة ، وذلك بقيام السلطات المصرية بإصدار تعليمات جديدة تقضي بمنح الطلبة تأشيرة دخول وإلغاء الموافقة الامنية المطلوبة منهم سابقاً.

ومن أمثلة الشكاوى التي كانت قد تلقتها اللجنة الوطنية لحقوق الإنسان NHRC:-

- ذكر الطالب (ع. ف) من مواليد عام ١٩٩٢، يحمل الجنسية القطرية ويدرس في جمهورية مصر، للجنة الوطنية لحقوق الإنسان NHRC تفاصيل الانتهاك الذي تعرَّض له: "أنا طالب قطري التحقت بجامعة عين شمس منذ عام ٢٠١٥ لإكمال تعليمي في مجال القانون، وأنا الان في السنة الدراسية الثالثة وتم منعي من تكميل تعليمي من قبل جمهورية مصر العربية بسبب الأزمة الحالية ولأني قطري تم منعي لأسباب امنية ، ولا استطيع الدخول الا بفيزا امنية، وراجعت السفارة المصرية لإصدارها ولم تصدر إلى الآن".
- تعرض الطالب (ص . ح) قطري الجنسية من مواليد عام ١٩٨٢، للحرمان من متابعة دراساته العليا في جامعة الاسكندرية في جمهورية مصر وهو في السنة الأخيرة من الماجستير، وقد أدلى بشهادته للجنة الوطنية لحقوق الإنسان NHRC وذكر تفاصيل الانتهاك الذي تعرَّض له: "لقد اتخذت السلطات المصرية قراراً تعسفياً بمنع الطلاب القطريين من الالتحاق بجامعاتها. وعدم السماح بدخول الدولة إلا بفيزا أمنيه وهذا ما أثر علينا وسبب لنا صدمة نفسية وخسائر مادية تقارب ١٢ ألف دولار".
- زارَت الطالبة (ح. م) تحمل الجنسية الفلسطينية وهي من مواليد عام ١٩٩٧م، مقرَّ اللجنة الوطنية لحقوق الإنسانNHRC، وذكرت تفاصيل ما تعرَّضت له من حرمان للتعليم في ظلِّ قرار قطع العلاقات مع دولة قطر: "أنا أدرس في جامعة القاهرة للتعليم المفتوح، أكملت سنة ونصف وتوقفت دراستي بسبب الحصار ومرت إلى الآن خمسة أشهر ولم تستجب جامعة القاهرة لمطالبنا أو لحقوقنا".
- الطالب (ع.ح) قطري الجنسية، مواليد عام ١٩٨٢م، يشكي الانتهاك الذي وقع عليه جراء الحصار على دولة قطر من قبل جمهورية مصر، قائلاً للجنة الوطنية لحقوق الإنسان NHRC في شكواه: "أنا طالب في جامعة القاهرة بمصر في كلية الحقوق سنة رابعة، متضرر من الحصار الحاصل على دولة قطر حيث لم يتسنى لي إكمال دراستي في جامعة القاهرة".

تاء: التوقف عن العمل:



رسم بياني يوضح نسب ارتفاع احصائية الانتهاكات في حق العمل من شهر يونيو وحتى نوفمبر٢٠١٧

لم تتوقف الانتهاكات والممارسات اللاإنسانية التي ترتكبها دول الحصار بحق المواطنين القطريين أو المقيمين على أرضها عند حد ما، بل امتدت لكافة المجالات والأصعدة ومن ضمنها الحق في العمل.

ويعد الحق في العمل من أهم الحقوق الاقتصادية والاجتماعية؛ فهو من الحقوق الاقتصادية، لأنه يؤمن الفرد مادياً واقتصادياً ويوفر له متطلبات معيشته. وهو من الحقوق الاجتماعية لارتباطه الوثيق بالمجتمع.

وهذا الانتهاك أثر سلباً على قطاع الأعمال، نظرا لتشابك المصالح التجارية والعمالة، كما ترتب على قرارات دول الحصار فقدان مئات الأشخاص لوظائفهم مما أثر على معيشتهم وعلى وضع أسرهم، ومازالت التداعيات على هذا القطاع تتوالى بشكل مستمر، فقد أوقفت البلدان وعلى نحو مفاجئ؛ –بهدف إحداث أكبر ضرر ممكن– جميع القوافل التجارية، لكن الأخطر أن هناك عائلات بأكملها تعتمد على مهنة النَّقل بين البلدان الخليجية، وقد انقطع مصدر عيشها الوحيد، ولم تُبادر أيٌّ من الدول الثلاث بتعويض هؤلاء أو إيجاد بدائل لهم.

إضافة إلى ذلك فإن هناك عدداً كبيراً من المواطنين والمقيمين الموظفين في شركات عامة أو خاصة، أو حكومية، كانوا يعملون ويتنقلون بحُريَّة بين تلك البلدان وقد قطع مصدر دخلهم، وأصبحوا عاطلين عن العمل، دون أية تعويضات من الدول الثلاث التي قامت بالحصار.

وقد سجلت اللجنة الوطنية لحقوق الإنسان NHRC ما لا يقل عن ١٠٩ استمارة، لأشخاص حُرموا من متابعة أعمالهم جراء هذه القرارات التَّعسفية. منهم ٦٦ في المملكة العربية السعودية، و ٦ في دولة الإمارات، و ٣٧ في مملكة البحرين.

- السيدة (ج.ص) إماراتية الجنسية من مواليد عام ١٩٧٧ و تعرضت لانتهاك حقها في العمل، ذكرت للجنة الوطنية لحقوق الإنسان NHRC عند زيارتها قائلة: " أنا مقيمة في الدوحة وأعمل فيها، وأبنائي من مواليد دولة قطر، وزوجي بحريني الجنسية ويعمل في قطر أيضاً. ولا نستطيع العودة بسبب القرارات المفروضة علينا جراء الحصار على دولة قطر، ولان مصدر رزقنا هنا".
- السيد (ي.أ) وهو بحريني الجنسية من مواليد عام ١٩٨٦ تحدث للجنة الوطنية لحقوق الإنسان NHRC عن ما تعرض له من انتهاك حيث قال: "أنا مواطن بحريني مقيم في دولة قطر لمدة عشر سنوات مع عائلتي وطفلتي حديثة الولادة، وأعمل هنا، ولا أستطيع ترك عملي وعائلتي بسبب القرارات الصادرة من دولتي جراء حصار دولة قطر".
- أعرب السيد (ف.ع) من مواليد ١٩٩٦، سعودي الجنسية للجنة الوطنية لحقوق الإنسان NHRC عن قلقه وأسفه الشديدين من ما حدث له من انتهاك ذاكراً الآتي: " أنا من مواليد دولة قطر وسعودي الجنسية وأمي قطرية، مقيم وموظف في دولة قطر، وقرارات دولتي بمغادرة قطر سوف تؤثر على عملي و كوني أعيش مع والدتي ".

ثاء: انتهاك حرية الرأي والتعبير:

لابدَّ بداية من التأكيد على أن اللجنة الوطنية القطرية لحقوق الإنسان NHRC ليس من اختصاصها تسجيل انتهاكات حرية الرأي والتعبير لدول الحصار الثلاث ومصر، ونحن نُسجِّل فقط ما تعرَّض له مواطنو تلك الدول من انتهاكات وعقوبات ، وصلت إلى حدود غير مسبوقة كتجريم التعاطف عبر وسائل التواصل الاجتماعي، بل وإغلاق وحجب وسائل إعلام ممولة من دولة قطر، بما فيها القنوات الرياضية والتي بالتأكيد لا تبثُّ نشرات أو برامج إخبارية أو سياسية، وهذا مؤشر عن الهاوية التي سقطت فيها حرية الرأي والتعبير لدول الحصار الثلاث ومصر.

لقد سنَّت دولة الإمارات العربية المتحدة عقوبات تصل إلى السجن ما بين ٣ – ١٥ عاماً وغرامة مالية تصل إلى ٥٠٠ ألف درهم لمجرد التعاطف مع دولة قطر، ولو بالكلمة أو الإعجاب أو التغريد على صفحات التواصل الاجتماعي، في تهديد غير مسبوق لحرية التعبير، تلتها وزارة الداخلية البحرينية حيث هدَّدت بالسجن خمس سنوات، أما المملكة العربية السعودية فقد اعتبرت ذلك جريمة جنائية من جرائم الإنترنت، وعاقبت عليها بعقوبة تصل إلى السجن ٥ سنوات وغرامة مالية تصل إلى ٣ ملايين ريال سعودي.

إنَّ هذه الإجراءات بالغة الشدة والقسوة تُشير إلى ضعف حجة ومشروعية قرار الحصار من قبل تلك الدول الثلاث، ويعبر عن خشية سلطات تلك الدول من حرية المواطنين في التعبير عن رأي يُخالف إرادتها ، وهذا

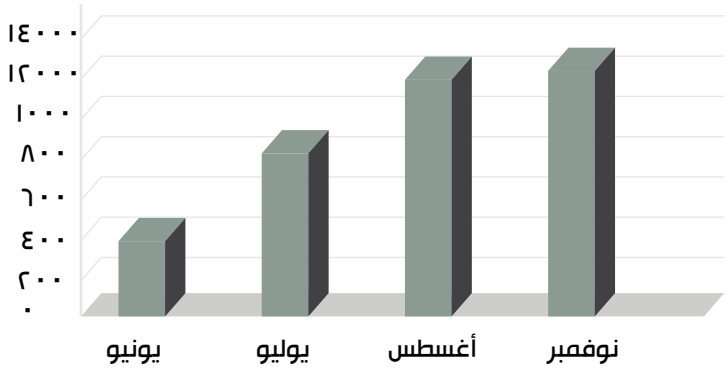
مخالف بشكل صارخ للعديد من الإعلانات والمواثيق الدولية والإقليمية كما سيرد في فقرة التوصيف القانوني.

وفي المجال الإعلامي وحده سجلت اللجنة الوطنية لحقوق الإنسان NHRC ١٠٣ حالات لإعلاميين من مواطني البلدان الثلاثة، والذين كانوا يعملون في عدد من وسائل الإعلام المرئي الموجودة في دولة قطر، تعرضوا جميعاً لأنواع مختلفة من الانتهاكات، من بينها الضغط عليهم بهدف إجبارهم على تقديم استقالتهم، وبناءً على هذا الضغط اضطر ١٠ إعلاميين منهم للرضوخ، وقدموا مجبرين استقالاتهم، وبالتالي فقدوا أعمالهم ومصدر رزقهم، ومازالت هناك ضغوطات كبيرة تمارس على كل من لم يُقدم استقالته، وفي هذا التصرف انتهاك صارخ لحرية الصحافة، والعمل، والإقامة، والرأي، في آن واحد.

ومما يجب ذكره أيضاً قيام دول الحصار بحجب القنوات القطرية سواءً كانت هذه القنوات حكومية أو خاصة، وهذا ما أتى في قرارات حكومات دول الحصار منوهةً الجميع إلى حذف قنوات دولة قطر وفرض غرامة مالية قدرها ١٠٠ ألف ريال لمن يخالف هذه التوجيهات. **ومن ضمن القنوات التي شملها القرار**:-

- قناة قطر التلفزيونية.
- قناة الريان.
- قناة الكأس.
- شبكة الجزيرة الفضائية.
- قناة بي إن سبورت

جيم: انتهاك الحق في التَّنقل والإقامة:



رسم بياني يوضح نسب ارتفاع احصائية الانتهاكات في الحرمان من التنقل والإقامة من شهر يونيو وحتى نوفمبر ٢٠١٧

يقصد بهذا الحق أن يتمكن الفرد من التنقل في حدود إقليم دولته أو خارجها مع حرية العودة إليها من دون قيود أو موانع، وهذا الحق قامت بانتهاكه دول الحصار من خلال حصارها الجائر على دولة قطر بمنع الأفراد القطريين أو المقيمين على أرض دولة قطر من التنقل والإقامة في تلك الدول.

حيث يقيم في دولة قطر ١١٣٨٧مواطنا من الدول الخليجية الثلاث ، ويقيم نحو ١٩٢٧ قطرياً في تلك الدول، وجميع هؤلاء ممن فرض عليهم العودة قسراً إلى أوطانهم تضرروا في نواح مختلفة.

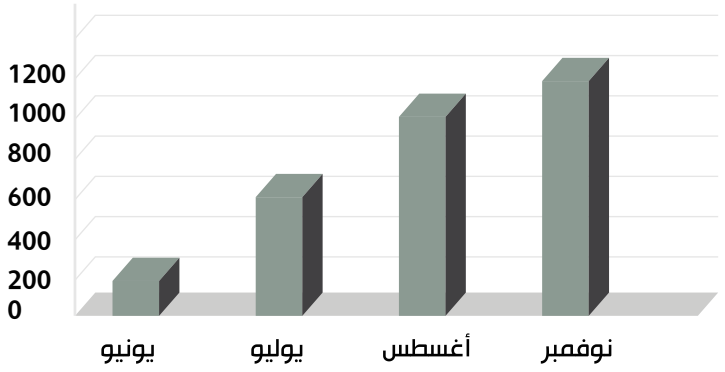
فرضت دول الحصار عقوبات وقرارات بمغادرة بلدانها وعدم العبور من منافذها، وهذا ما تسبب في كثير من الانتهاكات التي سجلتها اللجنة الوطنية لحقوق الإنسان NHRC والتي بلغت ١٣٥٤ حالة انتهاك فيما يتعلق فقط بهذا الحق تحديداً.

كما قامت دول الحصار أيضاً بإغلاق كافة مكاتب الطيران الخاصة بدولة قطر في بلدانها بمجرد إعلان قرار الحصار، ومن دون سابق إنذار لمن يعملون في هذه المكاتب، من غير أخذ أي ممتلكات خاصة بمكاتبهم.

ورغم قيام السلطات السعودية بفتح منفذ سلوى الحدودي جزئياً وبشكل فردي على فترات إلا أنها عادت وأغلقته بشكل كامل و تام حتى أمام الحالات الإنسانية بما فيها المرضى والأسر المشتركة والأشخاص من ذوي الإعاقة، ولايزال المعبر مغلقاً بشكل كامل حتى تاريخ إعداد هذا التقرير، مما يعد إمعاناً من جانب السلطات السعودية في انتهاك هذا الحق .

- وحسب ما ذكر السيد (ع . ف) مصري الجنسية للجنة الوطنية لحقوق الإنسان NHRC عندما أدلى بشهادته: "أنه في يوم ٢٠١٧/١١/١٩م قمت بحجز ٥ تذاكر طيران إلى مصر بمبلغ ٧,٤٠٠ ريال وفوجئت بعد ذلك بأن شركة الطيران التي حجزت عليها قامت بوقف الحجوزات وارجاع كافة المبلغ المدفوع وذلك بسبب إقامتي في دولة قطر، وهذا ما منعني وأولادي من السفر" .
- كما ذكرت السيدة (إ. ع) أردنية الجنسية للجنة الوطنية لحقوق الإنسان NHRC الحرمان من التنقل الذي تعرضت له: "عدم القدرة على أداء فريضة العمرة لي ولوالدتي على الرغم من دفع رسم إصدار الفيزا و بسبب إغلاق المعبر البري بين قطر والسعودية توقفت أيضا عملية نقل سيارتي من الأردن الى دولة قطر".
- السيد (ع.م) بحريني الجنسية من مواليد عام ١٩٩٣م زار مقر اللجنة الوطنية لحقوق الإنسان NHRC ذكر تفاصيل الانتهاك الذي تعرض له: "أنا من مواليد دولة قطر ودرست إلى الثانوية فيها، ووالدي رجل أعمال وليس لدينا أي عائلة في مملكة البحرين، ووالدتي أهلها في قطر وأختي متزوجة من قطري فقرار الحصار على دولة قطر والأمر بالعودة إلى مملكة البحرين يعد صعباً علينا بسبب كل هذه الارتباطات".

حاء: انتهاك حق الملكية:



رسم بياني يوضح نسب ارتفاع احصائية الانتهاكات في حق الملكية من شهر يونيو وحتى نوفمبر٢٠١٧

الحق في الملكيّة هو أحد الحقوق التي يتمتّع بها الفرد المواطن في دولته أو خارجها، ويحق له استعمال أو التصرف بما يملكه دون أيّ ضغط من أي جانب.

تسبَّبت قوانين الحصار المفاجئة التي فرضتها الدول الثلاث بخسائر فادحة في الأموال والأملاك لعشرات

آلاف الأشخاص، وهذا يُشير إلى استهتار كامل وعدم مبالاة لدى صانع القرار في مراعاة الحقوق الأساسية عند اتخاذ هذه القرارات، لقد سُلبَت أموال وأملاك نظراً لعدم تمكن أصحابها من السفر إليها، ولم يعد بمقدور جميع من مُنعوا من السفر استعمَال أملاكهم أو التَّصرف بها.

ونظراً للتداخل والتَّشابك الكبير في الأعمال بين دول الخليج –وهذا الأمر قد لا يكون ملحوظاً لدى كثير من المنظمات والدول– هناك مئات العمال الذين يعملون لدى قطريين ويباشرون أعمالا في السعودية لم يعد بمقدور مدرائهم قطريي الجنسية دفعَ رواتبهم؛ نظراً لإيقاف تحويل الأموال، وبالتالي فقد توقف عملهم .

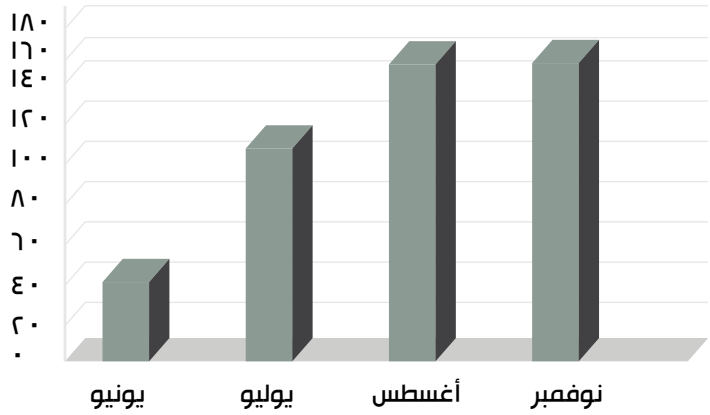
مثال آخر صارخ، وهو خسارة الممتلكات العقارية التي تم شراؤها بالتقسيط، من أراض، أو أبنية أو شقق، وخاصة في إمارة دبي، فنظراً لتجميد أرصدة المواطنين القطريين في تلك البلدان، فقدً توقفت عملية سحب الشيكات، وإذا استمرَّ الحال على ما هو عليه؛ فقد يتسبب ذلك في خسارة العقار بالكامل، بل قد يؤدي بصاحبه إلى أن يصبح ملاحقاً قانونياً؛ نظراً لعدم سداد ما عليه من أقساط شهرية وذلك دون أدنى ذنب منه.

إضافة إلى كل ما سبق فقد تمادت الدول الثلاث ووصل بها الحد إلى منع الحوالات المادية، والبريدية لأيٍّ من المواطنين أو المقيمين في دولة قطر، وذلك لإغلاق الباب أمام أية حالة من حالات تدارك الخسائر المادية، وكلُ هذا يُشير برأينا إلى أنَّ قرارات دول الحصار الثلاثة، لم تكن عفوية بل تعمَّدت انتهاك الحريات الأساسية، وهدفت إلى ذلك منذ اللحظات الأولى، ومما يعزز ذلك عدم اتخاذها أية إجراءات حتى الآن لإزالة الانعكاسات الخطيرة على مواطني الدول الثلاث ومواطني دولة قطر.

كما سجلت اللجنة الوطنية وجود عدد كبير من العمال الذين يحملون إقامة قطرية ويعملون في شركات يمتلكها مواطنون قطريون في تلك الدول، وبعد فرض إجراءات الحصار مُنع هؤلاء العمال من العودة إلى قطر، وقد توقفوا عن العمل، ولا يوجد من يُنفق عليهم. ونورد بعضا من النماذج ليتضح حجم الانتهاكات، فعلى سبيل المثال ومما ورد إلينا من الشكاوى:

- ذكرت السيدة (ن. ع) التي تحمل الجنسية القطرية مواليد عام ١٩٧١ للجنة الوطنية لحقوق الإنسان NHRC تفاصيل ما تعرضت له من انتهاك: "اشتريت فيلا في مشروع سكني في دبي وأنا الآن ممنوعة من دخول دبي والتمتع بالملكية الخاصة بي، مع العلم بأني دفعت الدفعة الأولى من المبلغ وأطالب برد المبلغ لي كاملاً".
- السيد (ع. ه) وهو قطري الجنسية، مواليد عام ١٩٦٠م ولديه أملاك في المملكة العربية السعودية ، حضر إلى مقرِّ اللجنة الوطنية لحقوق الإنسان NHRC، وأدلى بشهادته وذكر تفاصيل الانتهاك الذي تعرَّض له: "لدي إبل في السعودية وسيارات وأيضاً عمال انتهت إقامتهم وبسبب الحصار على دولة قطر لم أتمكن من الذهاب".
- زارَ السيد (ن.ع) من مواليد ١٩٥٢ قطري الجنسية، مقر اللجنة الوطنية لحقوق الإنسان NHRC وذكر تفاصيل انتهاك حق الملكية الذي تعرض له: "يوجد لدي مبلغ وقدره ف٢٠٠,٠٠٠ ألف ريال في بنك البحرين الإسلامي، ولم أستطع سحب المبلغ من البنك وذلك بسبب عدم السماح لنا بدخول مملكة البحرين بعد قرار الحصار على دولة قطر".

خاء: الحرمان من تأدية الشعائر الدينية:



رسم بياني يوضح نسب ارتفاع احصائية الانتهاكات في حق الملكية من شهر يونيو وحتى نوفمبر٢٠١٧

تقع في المملكة العربية السعودية مدينتا مكة والمدينة المنورة، وهما مدينتان مقدستان بالنسبة لعموم المسلمين، ويقصدونهما بشكل مستمر لأداء مناسك الحج والعمرة.

وقد تسبَّب قرار الحصار الذي شاركت فيه المملكة العربية السعودية في حرمان قرابة ١,٥ مليون مسلم مقيم في دولة قطر من حقهم في ممارسة شعائرهم الدينية، بما يمثل انتهاكاً جسيماً للحق في العبادة.

لم تقُم السلطات السعودية باستثناء من يرغب في ممارسة حقه في أداء مناسك الحج والعمرة من إجراءات الحصار الجائر، بل قامت بالزج بالشعائر الدينية في الخلافات السياسية والدبلوماسية و استعملتها كأداة للضغط السياسي في انتهاك صارخ للاتفاقيات الدولية لحقوق الإنسان.

وفي ظل استمرار الحصار والحظر الجوي وإغلاق الحدود البرية إلى جانب الإجراءات التعسفية التي تم اتخاذها من قبل السلطات السعودية بشأن الحق في حرية العبادة وممارسة الشعائر الدينية، **بداية من قيامها** :

- بمنع المعتمرين القطريين في شهر رمضان الماضي من دخول الأراضي السعودية لأداء مناسك العمرة.
- إجبار الموجودين منهم بالفعل داخل المملكة على سرعة مغادرة الأراضي السعودية دون إتمام تلك المناسك.
- وقف التعامل بالعملة القطرية وبطاقة السحب الآلي القطرية.
- سوء التعامل مع القطريين في منافذ الدخول والخروج البرية والجوية بالمملكة العربية السعودية.
- منع الطائرات التابعة للخطوط الجوية القطرية من النزول بمطارات المملكة العربية السعودية، ما أدى إلى صعوبة عودة المعتمرين القطريين إلى الدوحة عبر السعودية، واضطرارهم للعودة باستخدام خطوط بديلة عن طريق دولة الكويت و سلطنة عُمان دون مراعاة لأصحاب الحالات الإنسانية من المرضى و النساء والأطفال وكبار السن والأشخاص ذوي الإعاقة .

يلاحظ أن كل هذه الإجراءات التعسفية التي تمت خلال شهر رمضان الماضي أدت إلى تخوف المواطن والمقيم من تأدية شعائرهم الدينية إذا سُمح لهم بذلك خشية تكرار ما حدث.

- **مروراً بما قامت به تلك السلطات في موسم الحج للعام ٢٠١٧**

فمع قدوم موسم الحج للعام ٢٠١٧ وضعت السلطات السعودية المعوقات والعراقيل أمام الراغبين في أداء فريضة الحج "الركن الخامس من أركان الإسلام" من المواطنين القطريين والمقيمين على أرض دولة قطر بما ارتقى

إلى درجة المنع، حيث رفضت التعامل أو التنسيق مع وزارة الأوقاف والشئون الإسلامية بدولة قطر من أجل تمكين الراغبين في أداء تلك الفريضة .

إن تلك السلطات تتمادى إلى الآن في وضع المعوقات والعراقيل أمام المواطنين القطريين والمقيمين بدولة قطر لأداء المناسك والشعائر الدينية، هذا بالإضافة لما تقدم به أصحاب حملات الحج والعمرة في دولة قطر من شكاوى حول المضايقات والصعوبات التي تعتري أداء مناسك العمرة أمام المقيمين بالدولة من:-

- إغلاق المسار الإلكتروني الخاص بتسجيل الحج والعمرة وعدم السماح بالتسجيل فيه لكافة المعتمرين من دولة قطر.
- إلي جانب منع التحويلات المالية من قبل السلطات في المملكة العربية السعودية بين الحملات القطرية ووكلاء العمرة السعوديين المخولين بمنح تصاريح العمرة.
- استمرار السلطات السعودية في رفض التعامل أو التنسيق مع وزارة الأوقاف والشئون الإسلامية بدولة قطر.

كل هذا يؤكد بشكل قاطع على استمرار السلطات السعودية في سياسة تسييس الشعائر الدينية. وقد لحقت أضرار وخسائر مالية كبيرة بدولة قطر منذ بداية الحصار بسبب منع تأدية مناسك الحج والعمرة تمثلت في:

- خسائر خاصة بوزارة الأوقاف والشئون الإسلامية متعلقة بشئون مناسك الحج والعمرة بلغت ما يقارب ٤,٥٠٠,٠٠٠ ريال سعودي وخسائر أخرى نتجت بسبب فرض الحصار على دولة قطر.
- خسائر مالية جسيمة لحملات الحج والعمرة، **وقد تواصلنا مع تسعة حملات وحصلنا منهم على حصيلة خسائرهم لهذا العام**:

اسم الحملة	الخسائر المالية
حملة الفرقان	٧ مليون
حملة الركن الخامس	٤ مليون
حملة الحمادي	٢ مليون
حملة لبيك	٦ مليون
حملة الهدى	٢,٧٠٠ مليون
حملة التوبة	٢,٧٠٠ مليون
حملة قطر	٤٠٠ الف ريال
حملة حاتم	٢,٧٠٠ مليون
حملة القدس	٣ مليون
الإجمالي	**٣٠,٥٠٠,٠٠٠ مليون ريال قطري**

هذا فيما يتعلق بالخسائر والأضرار المادية، وهناك بالقطع أضرار نفسية ومعنوية جسيمة أصابت عموم المسلمين من المواطنين القطريين والمقيمين على أرض دولة قطر، جراء حرمانهم من حقهم في العبادة وممارسة شعائرهم الدينية، وتتحمل المملكة العربية السعودية المسؤولية الدينية والأخلاقية والحقوقية والقانونية كاملة جراء ذلك.

وقد رصدت اللجنة الوطنية لحقوق الإنسان NHRC منذ بداية الحصار إلى يومنا هذا ١٦٣ حالة انتهاك. وهنا بعض شهادات الضحايا الذين تعرضوا لهذا الانتهاك:-

- زارَ السيد (ع . ش) قطري الجنسية مواليد عام ١٩٧٨م مقرَّ اللجنة الوطنية لحقوق الإنسان NHRC وأدلى بشهادته وذكر تفاصيل الانتهاك الذي تعرَّض له: "حجزت في أحد الفنادق في مدينة مكة المكرمة- السعودية واشتريت تذاكر سفر بمبلغ ٢٧,٠٠٠ الف ريال من أجل أداء فريضة العمرة ولكن بسبب القرار منعت من أداء هذه الشعيرة الدينية ، كما رفض الفندق إرجاع مبلغ الحجز الخاص بي".
- وأعربت السيدة (ف. ع) فلسطينية الجنسية، مواليد عام ١٩٥٠م، عن أسفها لعدم قدرتها على اداء فريضة الحج لهذا العام ٢٠١٧ وادلت بشهادتها للجنة الوطنية لحقوق الإنسان NHRC : "بعد انتظاري خمس سنوات من أجل أداء فريضة الحج، حُرِمت أنا وأبنائي من تأدية هذه الفريضة في هذا العام حيث أنني امرأة أرملة ومسنة ومريضة ".
- ذكر السيد (ع. ع) الذي يحمل الجنسية القطرية، مواليد عام ١٩٨١م، للجنة الوطنية لحقوق الإنسان NHRC تفاصيل الانتهاك الذي تعرض له: "قمت بعمل حجوزات في فندق بمكة المكرمة – السعودية- ودفعت مبلغ وقدرة ١٠٤,٦٥٠ الف ريال خاص بالحجوزات الفندقية وحجزت تذاكر سفر للذهاب للعمرة إلا أنني حرمت من ذلك بسبب قرار الحصار على دولة قطر ومنع مواطنيها من السفر إلى دول الحصار".

دال: التحريض على العنف والكراهية:

رصدت اللجنة الوطنية لحقوق الإنسان مئات حالات خطاب الكراهية وصلت في بعضها حدَّ التحريض والدفع باتجاه القيام بأعمال إرهابية تفجيرية في دولة قطر، كما امتدَّت في بعض المسلسلات التلفزيونية إلى تلقين الأطفال وتحريضهم على دولة الجوار قطر، كما رصدنا خطاب تمييز عنصري ينزع نحو احتقار المواطن القطري وتعييره، وقد تصاعد هذا الخطاب بشكل عنيف نظراً لانخراط بعض المستشارين الرسميين، وبعض الإعلاميين المعروفين فيه بشكل سافر، بل بلغ الأمر اعتبار مجرد ارتداء قميص نادي برشلونة أو باريس سان جيرمان تعاطفاً، ويعاقب صاحبه لوجود اسم وشعاري الخطوط الجوية القطرية وبنك قطر الوطني على هذه القمصان.

ونستطيع اختصار حالات خطاب الكراهية والتحريض على العنف بالتالي:-

- استخدام خطاب الكراهية عبر الأغاني والمسلسلات والأفلام الوثائقية.
- استخدام مشاهير السوشيال ميديا للإساءة إلى دولة قطر شعباً ورموزاً.
- الإساءة إلى رموز عبر كاريكاتيرات في صحف دول الحصار.
- التحريض على القيام بأعمال تخريبية وإرهابية داخل دولة قطر، والتحريض على ضرب دولة قطر ووسائل إعلامها بالصواريخ.

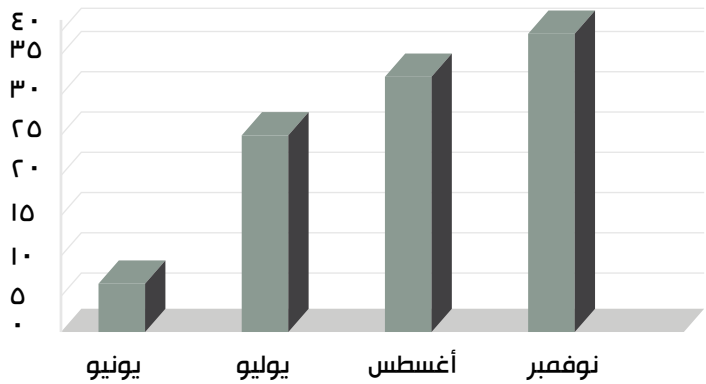
ولا يخفى أن كل هذا الكم من الضخ الإعلامي والفني للتحريض على الكراهية والعنف سيولد لدى شرائح مختلفة داخل المجتمع من مثقفين وأميِّين ردود فعل متطرفة قد تصل إلى ارتكاب أفعال إجرامية ليسَ فقط بحق المواطنين القطريين، بل قد تتولد ردود فعل من المجتمع القطري تجاه مجتمعات تلك الدول الثلاث و جمهورية مصر؛ وهذا ما يُهدد السلم والأمن والاستقرار في المنطقة بأكملها، ونحن في اللجنة الوطنية لحقوق الإنسان NHRC قد سجلنا أسماء وصفات كل من حرَّض على العنف والكراهية ممن تمكن باحثونا من متابعتهم، ونُحمِّلهم المسؤولية القانونية عن أية حادثة عنف عنصري إرهابي تُصيب أي مواطن قطري، أو أياً من مواطني الدول الثلاث و مصر.

يُجرِّم القانون الدولي بشكل واضح خطاب الكراهية والعنف كما ورد في المادة ٢٠ من العهد الدولي الخاص

بالحقوق المدنية والسياسية، وأيضاً المادة ٤ من الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري، حيث يحظر أية دعوة إلى الكراهية القومية أو العنصرية أو الدينية، ويعتبرها تحريضاً على العداوة والعنف.

وبسبب التحريض على خطاب العنف والكراهية من قبل دول الحصار تعرض قطريون من دول الحصار لتشويه سيارتهم وقذفهم بالحجارة، وليس ذلك فقط بل نتجت عن ذلك الضغينة والعداوة والتمييز للمواطن القطري من قبل بعض أفراد دول الحصار.

ذال: انتهاك الحق في الصحة، خاصة النساء والأطفال وذوي الإعاقة:



رسم بياني يوضح نسب ارتفاع احصائية الانتهاكات في الحق في الصحة من شهر يونيو وحتى نوفمبر٢٠١٧

تضرَّر مئات الأشخاص المرضى من دول الحصار الثلاث ممَّن كانوا يتعالجون داخل المشافي في دولة قطر، بل ومن القطريين الذين كانوا يتلقَون العلاج داخل مشافي تلك الدول، حيث طلبت مغادرة المواطنين دون أي استثناء أو تمييز لحالات مرضية أو فئة كالنساء الحوامل، أو الأطفال وخصوصاً الرضع، أو ذوي الإعاقة، وذلك يُظهر دون أدنى شك مدى الاستهتار الصارخ لدول الحصار الثلاث بحقِّ مواطنيها المرضى، واستخفافها العميق بأبسط أساسيات حقوق الإنسان، فأبرز أساسيات حق الصحة هو عدم التمييز، فلا ينبغي لدول الحصار الثلاث أن تطرد المرضى القطريين، بناء على خلاف سياسي، فالحق في الصحة منصوص عليه في عدة مواثيق ومعاهدات دولية، كالإعلان العالمي لحقوق الإنسان المادة ٢٥، والعهد الدولي الخاص بالحقوق الاقتصادية والاجتماعية والثقافية المادة ١٢.

- وادلت السيدة (ن . ع) وهي إمارتية الجنسية وأم لابن واحد ويحمل الجنسية القطرية: "لا أستطيع الذهاب إلى الإمارات بسبب الحصار على دولة قطر، والجواز الخاص بي سينتهي بعد شهرين، ولا استطيع السفر خوفاً من عدم تمكني من العودة إلى قطر حيث أنني أعاني من المرض وأحتاج للعلاج بالخارج وبسبب انتهاء صلاحية جوازي لم استطع الذهاب للعلاج، لأنني أتلقى العلاج في الوقت الحالي في دولة قطر".
- وذكر الشاب (ر .م) الذي يحمل الجنسية القطرية، مواليد عام ١٩٩٤م للجنة الوطنية لحقوق الإنسان NHRC: "عملت عملية في قرنية العين اليمنى في مملكة البحرين في شهر يناير من هذه السنة والآن أعاني من الآلام في العين إثر انفتاح في خياطة العين في مكان القرنية، وعند مراجعة إحدى المستشفيات في قطر،

اخبروني بضرورة مراجعة الدكتور الذي قام بالعملية في مملكة البحرين، وبسبب قرار الحصار على دولة قطر لم أتمكن من ذلك وأنا بحاجة لذلك في أسرع وقت لمضاعفة الالام والالتهابات".

- أعربت السيدة (ر. ط) من مواليد ١٩٨٦م قطرية الجنسية للجنة الوطنية لحقوق الإنسان NHRC عن خوفها لعدم استكمالها للعلاج في مملكة البحرين: "أجريت عملية مسبقة في يناير في مملكة البحرين وأنا بحاجة إلى استكمال الجزء المتبقي في العملية في نفس السنة، لكنني لم استطع السفر بسبب قطع العلاقات مع دولة قطر".

راء: الحق في التقاضي:

لا شك أن التقاضي والحق في الوصول إلى القضاء هو الوسيلة الشرعية والقانونية لحماية حقوق الإنسان والوقاية من الإنتهاكات وعدم تكرارها ، إلى جانب إنصاف الضحايا وفقاً لمبدأ جبر الضرر المنصوص عليه في اتفاقيات حقوق الإنسان وذلك من خلال حق اللجوء إلى التقاضي، وتوفير كافة السبل والإجراءات لذلك. ونظراً لتبعات الحصار على دولة قطر لم يستطع المواطنون والمقيمون في دولة قطر اللجوء إلى محاكم دول الحصار.

إن ما حدث جراء الحصار الواقع على دولة قطر سبب الكثير من الانتهاكات و المخالفات التي تستوجب اللجوء إلى القضاء المحلي لتلك الدول لمعالجتها و نذكر منها:-

١. انتهاك الحق في الملكية: هؤلاء لديهم الحق في التقاضي لأن لهم أملاكا وأعمالا تجارية بسبب أعمالهم السابقة أو الميراث، ومنعوا من إتمام إجراءات التقاضي، أو استكمال مجريات القضايا السابقة التي كانت مرفوعة.

٢. الحق في التعليم: هؤلاء كانوا يدرسون في دول الحصار فمنهم من دفع رسوم الدراسة ورسوم البقاء في هذه الدول ولم تسترد حقوقه .

٣. حجوزات الفنادق والطيران التي تمت سابقاً ولم يتمكن الضحايا من استرداد حقوقهم.

وقد رصدت اللجنة الوطنية لحقوق الإنسان NHRC انتهاكات جسمية للحق في التقاضي، ومن أبرز أوجه هذا الانتهاك:-

- إعاقة المواطنين القطريين والمقيمين في دولة قطر من ممارسة حقهم في التقاضي أمام محاكم دول الحصار وتحديداً بدولتي الإمارات والسعودية.
- عدم السماح للمواطنين القطريين والمقيمين من الحضور أمام المحاكم نتيجة منعهم من دخول دول الحصار بما يمثل انتهاكاً لحقهم في التقاضي وما يرتبط به من حقوق كالحق في الدفاع.
- إعاقة وكلائهم القانونيين ووضع الصعوبات أمامهم لمباشرة الدعاوى نيابة عنهم.
- رفض مكاتب المحاماة في دول الحصار في توكيل المتقاضيين القطريين والمقيمين لهم، و تقاعسها عن متابعة القضايا الموكلة بها بالفعل.
- عدم تنفيذ الأحكام الصادرة لصالح المواطنين القطريين.
- إلغاء الأحكام الصادرة لصالح المواطنين القطريين والمقيمين نتيجة عدم تمكنهم من مباشرة دعاويهم وممارسة حقهم في التقاضي وفي الدفاع.
- ذكر السيد (إ. ع) الذي يحمل الجنسية القطرية، مواليد عام ١٩٦٤ للجنة الوطنية لحقوق الإنسان NHRC: " لدي أملاك من أراض وعقارات وسيارات خاصة بي في دولة الإمارات، ويترتب علي ضرورة متابعة هذه الأملاك والحصول على عوائد مالية ومتابعة اللجان والتنظيمات الإدارية الخاصة بالعقارات، ولكن

بسبب الحصار ومنع مواطني دولة قطر من دخول دول الحصار سبب لي الأضرار التالية: غرامات وتأخر الانتفاع بالمرافق، تجميد العقارات مما يسبب أضرار مالية كبيرة، خسارة شهرية بما يقارب ٤٠ الف ريال، خسارة تجارية وتفوق ١٦ مليون درهم إماراتي".

- السيد (ب . ث . أ.م) قطريي الجنسية، تقدموا بشكواهم للجنة الوطنية لحقوق الإنسان NHRC، "ورثنا من والدنا المتوفى عدة عقارات في دولة الإمارات العربية المتحدة (الشارقة) ومازالت العقارات باسم والدنا المتوفى ولم تنتقل الملكية إلى الآن، وتوجد دعوى تنفيذية، كما توجد أيضاً مبالغ قرابة ١٣٣ مليون درهم، علماً بأن العقارات في منطقة الصناعية وبعضها مؤجرة".

خامساً: الاستنتاجات والتوصيف القانوني:

انتهكت حكومات دول الحصار – ولاتزال – عبر قراراتها التعسفية وإجراءاتها غير القانونية عدة قواعد وقوانين ومبادئ رئيسية في القانون الدولي لحقوق الإنسان، ، حيث انتهكت على نحو واضح عدة مواد في الإعلان العالمي لحقوق الإنسان، ومواد أخرى في كل من العهد الدولي الخاص بالحقوق الاقتصادية والاجتماعية والثقافية، والعهد الدولي الخاص بالحقوق المدنية والسياسية، إضافة إلى مواد في صكوك أخرى أبرزها :

الميثاق العربي لحقوق الإنسان، وإعلان حقوق الإنسان لمجلس التعاون لدول الخليج العربية، والاتفاقية الاقتصادية بين دول مجلس التعاون الخليجي.

كما انتهكت دول الحصار اتفاقية شيكاغو بحظر حركة الطيران المدني القطري فوق اقاليمها دون أي مسوغ أو ضرورة حربية أو أسباب تتعلق بالأمن العام.

المواد التي قامت الدول الخليجية الثلاث بانتهاكها:

أولاً: الإعلان العالمي لحقوق الإنسان:

(المادة ٢، المادة ٥، المادة ٧، المادة ٨، المادة ٩، المادة ١٠، المادة ١٢، المادة ١٣، المادة ١٩، المادة ٢٣، المادة ٢٥، المادة ٢٦).

ثانياً: العهد الدولي الخاص بالحقوق المدنية والسياسية:

الجزء الثاني (المادة ٢)، الجزء الثالث (المادة ٩، المادة ١٢، المادة ١٣، المادة ١٤، المادة ٢٠، المادة ٢٣، المادة ٢٤)

ثالثاً: العهد الدولي الخاص بالحقوق الاقتصادية والاجتماعية:

الجزء الثالث (المادة ٦، المادة ١٠، المادة ١٢، المادة ١٣).

رابعاً: الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري:

(المادة ٤)

خامساً: الميثاق العربي لحقوق الإنسان:

المادة (٣)

١. تتعهد كل دولة طرف في هذا الميثاق بأن تكفل لكل شخص خاضع لولايتها حقَّ التمتع بالحقوق والحريات المنصوص عليها في هذا الميثاق من دون تمييز بسبب العرق أو اللون أو الجنس أو اللغة أو المعتقد الديني أو الرأي أو الفكر أو الأصل الوطني أو الاجتماعي أو الثروة أو الميلاد أو الإعاقة البدنية أو العقلية.

المادة (٨)

١. يحظر تعذيب أي شخص بدنياً أو نفسياً أو معاملته معاملة قاسية أو مُهينة أو حاطة بالكرامة أو غير إنسانية.

المادة (١١)

جميع الأشخاص متساوون أمام القانون ولهم الحق في التمتع بحمايته دون تمييز

المادة (١٢)

جميع الأشخاص متساوون أمام القضاء. وتضمن الدول الأطراف استقلال القضاء وحماية القضاة من أي تدخل أو ضغوط أو تهديدات. كما تضمن حق التقاضي بدرجاته لكل شخص خاضع لولايتها.

المادة (١٣)

١. لكل شخص الحق في محاكمة عادلة تتوفر فيها ضمانات كافية وتجريها محكمة مختصة ومستقلة ونزيهة ومنشاة سابقاً بحكم القانون، وذلك في مواجهة أية تهمة جزائية توجه إلية أو للبت في حقوقه أو التزاماته، وتكفل كل دولة طرف لغير القادرين مالياً الإعانة العدلية للدفاع عن حقوقهم.

٢. تكون المحاكمة علنية إلا في حالات استثنائية تقتضيها مصلحة العدالة في مجتمع يحترم الحريات وحقوق الإنسان.

المادة (٢٦)

١. لكل شخص يوجد بشكل قانوني على إقليم دولة طرف حرية التنقل واختيار مكان الإقامة في أية جهة من هذا الإقليم في حدود التشريعات النافذة.

المادة (٣٢)

١. يضمن هذا الميثاق الحق في الإعلام وحرية الرأي والتعبير وكذلك الحق في استقاء الأنباء والأفكار وتلقيها ونقلها إلى الآخرين بأي وسيلة ودونما اعتبار للحدود الجغرافية.

٢. تُمارَس هذه الحقوق والحريات في إطار المقومات الأساسية للمجتمع ولا تخضع إلا للقيود التي يفرضها احترام حقوق الآخرين أو سمعتهم أو حماية الأمن الوطني أو النظام العام أو الصحة العامة أو الآداب العامة.

المادة (٣٣)

١. الأسرة هي الوحدة الطبيعية والأساسية للمجتمع. والزواج بين الرجل والمرأة أساس تكوينها وللرجل والمرأة ابتداء من بلوغ سن الزواج حق التزوج وتأسيس أسرة وفق شروط وأركان الزواج، ولا ينعقد الزواج إلا برضا الطرفين رضاً كاملاً لا إكراه فيه وينظم التشريع النافذ حقوق وواجبات الرجل والمرأة عند انعقاد الزواج وخلال قيامه ولدى انحلاله.

٢. تكفل الدولة والمجتمع حماية الأسرة وتقوية أواصرها وحماية الأفراد داخلها وحظر مختلف أشكال العنف وإساءة المعاملة بين أعضائها وخصوصاً ضد المرأة والطفل. كما تكفل للأمومة والطفولة والشيخوخة وذوي الاحتياجات الخاصة الحماية والرعاية اللازمتين وتكفل أيضاً للناشئين والشباب أكبر فرص التنمية البدنية والعقلية.

٣. تتخذ الدول الأطراف كل التدابير التشريعية والإدارية والقضائية لضمان حماية الطفل وبقائه ونمائه ورفاهيته في جو من الحرية والكرامة واعتبار مصلحته الفُضلى المعيار الأساسي لكل التدابير المتخذة بشأنه في جميع الأحوال وسواء كان معرضاً للانحراف أو جانحاً.

سادساً: إعلان حقوق الإنسان لمجلس التعاون لدول الخليج العربية:

المادة (٦)

حُرية المعتقد وممارسة الشعائر الدينية حق لكل إنسان وفقاً للنظام(القانون) بما لا يخل بالنظام العام والآداب العامة.

المادة (٩)

حرية الرأي والتعبير عنه حق لكل إنسان وممارستها مكفولة بما يتوافق مع الشريعة الإسلامية والنظام العام والأنظمة (القوانين) المنظمة لهذا الشأن.

المادة (١٤)

الأسرة هي الوحدة الطبيعية والأساسية في المجتمع قوامها الرجل والمرأة ويحكمها الدين والأخلاق وحب الوطن، ويحفظ الدين كيانها، ويقوي أواصرها ويحمي الأمومة والطفولة وأفراد الأسرة من جميع أشكال الإساءة والعنف الأسري وتكفلُ الدولة والمجتمع حمايتها.

المادة (٢٤)

العمل حق لكل إنسان قادر عليه، وله حرية اختيار نوعه، وفق مقتضيات الكرامة والمصلحة العامة، مع ضمان عدالة شروط العمل وحقوق العمال وأصحاب العمل.

المادة (٢٧)

الملكية الخاصة مصونة، فلا يُمنع أحد من التصرف في مُلكه إلاّ في حدود النظام (القانون)، ولا يُنزع من أحد مُلكه إلا بسبب المنفعة العامة مقابل تعويض عادل.

المادة (٣٢)

الناس سواسية أمام القضاء وحق التقاضي مكفول لكل إنسان في ظل استقلالية كاملة للقضاء.

سادساً: توصيات اللجنة الوطنية لحقوق الإنسان:

حُرية المعتقد وممارسة الشعائر الدينية حق لكل إنسان وفقاً للنظام(القانون) بما لا يخل بالنظام العام والآداب

إلى المجتمع الدولي:

التحرُّك العاجل لرفع الحصار، وبذل كل الجهود الممكنة لتخفيف تداعياته على سكان دولة قطر، و مواطني دول الحصار.

إلى الأمم المتحدة والمفوضية السامية لحقوق الإنسان:

لقد قامت المفوضية السامية لحقوق الإنسان بالأمم المتحدة بإنشاء و إرسال بعثة فنية الى الدوحة خلال الفترة من ١٨ الى ٢٣ نوفمبر ٢٠١٧م للوقوف عن قرب على تداعيات الحصار على أوضاع حقوق الإنسان للمواطنين و المقيمين في دولة قطر و بعض مواطني مجلس التعاون الخليجي و عليه نطالب:

أولا: مخاطبة دول الحصار للكف ومعالجة الانتهاكات التي سببتها القرارات و الإجراءات التعسفية الأحادية الجانب التي إتخذوها وانصاف الضحايا وتعويضهم عن الأضرار المادية والنفسية التي لحقت بهم .

ثانيا: عرض تقارير وبيانات توثِّق مختلف أنواع الانتهاكات التي طالت أعداداً هائلة، وبشكل خاص فيما يتعلق بتشرُّد العائلات، بما في ذلك تداعياتها المرعبة على النساء والأطفال إثر تفكك الأُسر، ومطالبة الدول باحترام الحريات الأساسية للقائمين على أراضيها.

ثالثا: رفع تقرير مفصل عن انتهاكات حقوق الإنسان إلى مجلس حقوق الإنسان والمقررين الخواص الدول والآليات التعاقدية لمعالجة الانتهاكات وضمان عدم تكرارها.

إلى مجلس حقوق الإنسان:

- إستصدار قرار و اتخاذ جميع الإجراءات الممكنة في سبيل رفع الحصار، وما نجم عنه من انتهاكات، والمطالبة بتعويض كافة الأضرار التي لحقت بجميع الأفراد.
- المطالبة بإنشاء لجنة لتقصي الحقائق، ومقابلة الضحايا بشكل مباشر.

إلى المقررين الخواص في مجلس حقوق الإنسان:

أولا: التجاوب السريع مع تقارير اللجنة الوطنية لحقوق الإنسان NHRC وخطابات الضحايا، واستصدار نداءات عاجلة و نداءات مشتركة في هذا الشأن.

ثانيا: مخاطبة حكومات دول الحصار لرفع الإنتهاكات و إنصاف الضحايا

ثالثا: القيام بزيارات ميدانية لدولة قطر و دول الحصار للوقوف على إنتهاكات حقوق الإنسان من جراء الحصار

رابعا: تدوين إنتهاكات دول الحصار في التقارير الدورية التي ترفع لمجلس حقوق الإنسان

إلى الأمانة العامة لمجلس التعاون لدول الخليج العربية :

دعوة قطاع الشؤون القانونية في الأمانة العامة لمجلس التعاون لدول الخليج العربية و بخاصة مكتب حقوق الإنسان بالقطاع، مخاطبة دول الحصار لرفع الإنتهاكات و إنصاف الضحايا و الكف عن إية إجراءات تعسفية جديدة.

إلى دول الحصار:

أولاً: الإلتزام بإحترام التعهدات الواردة في إتفاقيات حقوق الإنسان التي صادقت و إنضمت إليها

ثانيا: الكف عن تلك الانتهاكات ووقفها ومعالجتها وإنصاف الضحايا .

ثالثا: التجاوب مع تقارير اللجنة الوطنية لحقوق الإنسان NHRC والتقارير الدولية.

رابعا: السماح للمنظمات الدولية والبعثات الدولية بزيارات ميدانية للاطلاع على الحالات الإنسانية عن قرب وتحديد المسئوليات وإنصاف الضحايا.

خامسا: تحييد الملف السياسي عن التأثير على الأوضاع الإنسانية والاجتماعية، وعدم استعماله كورقة ضغط وذلك لمخالفته القانون الدولي، والقانون الدولي لحقوق الإنسان.

إلى الحكومة القطرية:

أولاً: اتخاذ جميع الخطوات الممكنة على المستوى الدولي، وعلى صعيد مجلس الأمن، والمحاكم الدولية ولجان التحكيم، لرفع الحصار عن المواطنين والمقيمين في دولة قطر و إنصاف الضحايا.

ثانياً: دعوة لجنة المطالبة بالتعويضات في تسريع إجراءات التقاضي لإنصاف الضحايا.

ثالثاً: تسهيل إجراءات إدماج الطلبة في الجامعات و المنظومة التعليمية القطرية ومعالجة الحالات الإنسانية لبعض المتضررين.

اللجنة الوطنية لحقوق الإنسان
National Human Rights Committee
الدوحة - قطر

GEOTEXT Translations

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STATE OF NEW YORK)
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CERTIFICATION

This is to certify that the attached translation is, to the best of my knowledge and belief, a true and accurate translation from Arabic into English of the attached Fourth General Report on the Violations of Human Rights Arising from the Blockade of the State of Qatar, dated December 5, 2017.

Kristin Santizo, Senior Project Manager
Geotext Translations, Inc.

Sworn to and subscribed before me
this 7th day of June, 2018.

LYNDA GREEN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GR6205401
Qualified In New York County
My Commission Expires 05-11-2021

Annex 137

Human Rights Watch, *World Report 2018 Country Summary: United Arab Emirates* (January 2018), *available at* https://www.hrw.org/world-report/2018/country-chapters/united-arab-emirates

HUMAN RIGHTS WATCH

JANUARY 2018 COUNTRY SUMMARY

United Arab Emirates

The United Arab Emirates' intolerance of criticism continued in 2017 with the detention of prominent Emirati rights defender Ahmed Mansoor for exercising his right to free expression. The government arbitrarily detains and forcibly disappears individuals who criticize authorities.

The UAE continued to play a leading role in the Saudi-led coalition, which has conducted scores of unlawful attacks in Yemen. The UAE was implicated in detainee abuse at home and abroad.

Labor abuses persist. Migrant construction workers face serious exploitation. The UAE introduced a domestic workers law providing them labor rights for the first time, but some provisions are weaker than those accorded to other workers under the labor law.

The UAE continued to ban representatives of international human rights organizations from visiting.

Freedom of Expression

UAE authorities have launched a sustained assault on freedom of expression and association since 2011. UAE residents who have spoken about human rights issues are at serious risk of arbitrary detention, imprisonment, and torture. Many are serving long prison terms or have left the country under pressure.

The UAE's 2014 counterterrorism law provides for the death penalty for people whose activities "undermine national unity or social peace," neither of which the law defines.

In March, the UAE detained Ahmed Mansoor, an award-winning human rights defender, who is facing speech-related charges that include using social media websites to "publish

false information that harms national unity." Before his arrest, Mansoor had called for the release of Osama al-Najjar, who remains in prison despite having completed a three-year prison sentence on charges related to his peaceful activities on Twitter.

In March, the UAE imposed a 10-year prison sentence on prominent academic Nasser bin-Ghaith, whom authorities forcibly disappeared in August 2015, for charges that included peaceful criticism of the UAE and Egyptian authorities.

Authorities imposed a three-year prison sentence on UAE-based Jordanian journalist Tayseer al-Najjar related to his online criticism of Israeli and Egyptian military actions in and near the Gaza Strip.

Yemen Airstrikes and Detainee Abuse

The UAE is a leading member of the Saudi-led coalition operating in Yemen. Human Rights Watch has documented 87 apparently unlawful coalition attacks, some likely war crimes, that have killed nearly 1,000 civilians since March 2015.

Coalition members have provided insufficient information about the role their forces are playing in the campaign to determine which are responsible for unlawful attacks. In March 2015, the Emirati State news agency reported that the UAE had deployed 30 aircraft to take part in coalition operations. In March 2017, after a helicopter attacked a boat carrying Somali migrants and refugees off Yemen's coast, killing and wounding dozens, a member of the UAE armed forces said UAE forces were operating in the area but denied carrying out the attack.

The UAE leads counterterror efforts, including by supporting Yemeni forces carrying out security campaigns, in southern Yemen. Human Rights Watch has documented abuses by these forces, including excessive force during arrests, detaining family members of wanted suspects to pressure them to "voluntarily" turn themselves in, arbitrarily detaining men and boys, detaining children with adults, and forcibly disappearing dozens.

The UAE runs at least two informal detention facilities in Yemen and its officials appear to have ordered the continued detention of people despite release orders, forcibly

disappeared people, and reportedly moved high-profile detainees outside the country. Former detainees and family members reported abuse or torture inside facilities run by the UAE and UAE-backed forces. Yemeni activists who have criticized these abuses have been threatened, harassed, detained, and disappeared.

Arbitrary Detention, Torture, and Mistreatment of Detainees

The UAE arbitrarily detains and forcibly disappears individuals who criticize authorities within the UAE's borders. In February, a group of United Nations human rights experts criticized the UAE's treatment of five Libyan nationals who had been arbitrarily detained since 2014. The special rapporteur on torture said he received credible information that authorities subjected the men to torture. In May 2016, the Federal Supreme Court acquitted the men of having links to armed groups in Libya.

Migrant Workers

Foreign nationals account for more than 88.5 percent of the UAE's population, according to 2011 government statistics. Many low-paid migrant workers remain acutely vulnerable to forced labor, despite some reforms.

The *kafala* (visa-sponsorship) system continues to tie migrant workers to their employers. Those who leave their employers can face punishment for "absconding," including fines, prison, and deportation.

The UAE's labor law excludes domestic workers, who face a range of abuses, from unpaid wages, confinement to the house, workdays up to 21 hours with no breaks, to physical or sexual assault by employers, from its protections. Domestic workers face legal and practical obstacles to redress.

The UAE has made some reforms to increase domestic worker protection. In September, the president signed a bill on domestic workers that guarantees domestic workers labor rights for the first time including a weekly rest day, 30 days of paid annual leave, sick leave, and 12 hours of rest a day. In some cases, the law allows for inspections of recruitment agency offices, workplaces, and residences, and sets out penalties for

violations. But, the 2017 law does not prohibit employers from charging reimbursement for recruitment expenses and requires that workers who terminate employment without a breach of contract compensate their employers with one month's salary and pay for their own tickets home.

Women's Rights

Discrimination on the basis of sex and gender is not included in the definition of discrimination in the UAE's 2015 anti-discrimination law.

Federal Law No. 28 of 2005 regulates personal status matters. Some of its provisions discriminate against women. For a woman to marry, her male guardian must conclude her marriage contract; men have the right to unilaterally divorce their wives, whereas a woman must apply for a court order to obtain a divorce; a woman can lose her right to maintenance if, for example, she refuses to have sexual relations with her husband without a lawful excuse; and women are required to "obey" their husbands. A woman may be considered disobedient, with few exceptions, if she decides to work without her husband's consent.

UAE law permits domestic violence. Article 53 of the penal code allows the imposition of "chastisement by a husband to his wife and the chastisement of minor children" so long as the assault does not exceed the limits of Islamic law. Marital rape is not a crime. In 2010, the Federal Supreme Court issued a ruling, citing the penal code, that sanctions husbands' beating and infliction of other forms of punishment or coercion on their wives, provided they do not leave physical marks.

Sexual Orientation and Gender Identity

Article 356 of the penal code criminalizes (but does not define) "indecency" and provides for a minimum sentence of one year in prison. UAE courts use this article to convict and sentence people for *zina* offenses, which include same-sex relations as well as consensual heterosexual relations outside marriage.

Different emirates within the UAE's federal system have laws that criminalize same-sex sexual relations, including Abu Dhabi, where "unnatural sex with another person" can be punished with up to 14 years in prison.

In August, the UAE sentenced two Singaporean nationals who had been arrested in an Abu Dhabi shopping mall to one year in prison "for attempting to resemble women." An appeals court converted their sentence to a fine and deportation.

Annex 138

Human Rights Watch, *UAE Award-Winning Activist Jailed for 10 Years* (1 June 2018), *available at* https://www.hrw.org/news/2018/06/01/uae-award-winning-activist-jailed-10-years

JUNE 1, 2018 12:00AM EDT

UAE: Award-Winning Activist Jailed For 10 Years

Ahmed Mansoor Sentenced for Social Media Posts

(Beirut) – The UAE should immediately release Ahmed Mansoor, an award-winning human rights activist, and vacate the 10-year prison sentence issued against him for crimes that appear to violate his right to free expression.

Authorities arrested Mansoor, who won the prestigious Martin Ennals Award in 2015 and is a member of Human Rights Watch's Middle East advisory committee, on March 20, 2017. He was held in an unknown location for more than a year with no access to a lawyer and only very limited family visits and was sentenced on May 29, 2018.

Ahmed Mansoor speaks to Reuters in Dubai, United Arab Emirates, November 30, 2011.

© 2011 Reuters

"The UAE has exposed itself as a brutally repressive place more interested in sending rights defenders to rot in jail than in any real reform," Sarah Leah Whitson, Middle East director at Human Rights Watch said. "So long as Mansoor remains in prison, no amount of money nor army of public relations firms will be able to wash away this stain on the UAE's reputation."

Until his arrest in 2017, Mansoor had been one of the last remaining public human rights defenders in the UAE able to criticize the authorities publicly. United Nations human rights experts have echoed the calls

to free Mansoor, describing his arrest as "a direct attack on the legitimate work of human rights defenders in the UAE."

On May 30, the UAE-based newspaper *The National* reported that a court had sentenced Ahmed Mansoor to 10 years in prison, a fine of 1,000,000 UAE Dirhams (US$272,000), three years of probation after completion of his sentence, and confiscation of his electronic devices. The court convicted Mansoor for insulting the "status and prestige of the UAE and its symbols," including its leaders, and seeking to damage the UAE's relationship with its neighbors by publishing false reports and information on social media, the paper reported.

The reporting echoed that of the UAE's official news agency, WAM, on March 20, after Mansoor's arrest. WAM reported that authorities had arrested Mansoor on the orders of the Public Prosecution for Cybercrimes for using social media websites to "publish false information and rumors," "promote [a] sectarian and hate-incited agenda," and "publish false and misleading information that harm national unity and social harmony and damage the country's reputation." That report classified these as "cybercrimes," indicating that the charges may be based on alleged violations of the UAE's repressive 2012 cybercrime law, which authorities have used to imprison numerous activists. It provides for long prison sentences and severe financial penalties.

In February 2018, a group of international human rights groups commissioned two lawyers from Ireland to travel to the UAE capital, Abu Dhabi, to seek access to Mansoor during his pretrial detention. UAE authorities gave the lawyers conflicting information about Mansoor's whereabouts and denied them access to him. According to the *Gulf News*, Mansoor told the court during his first hearing that he had been unable to retain a lawyer, so the court appointed one for him.

People in the UAE who speak out about human rights abuses are at serious risk of arbitrary detention, imprisonment, and torture, and many are serving long prison terms or have felt compelled to leave the country.

In the weeks leading up to his most recent arrest, Mansoor had criticized the UAE's prosecutions for speech-related offenses. Mansoor had also used his Twitter account to draw attention to human rights violations across the region, including in Egypt and Yemen. He also signed a joint letter with other activists in the region calling on leaders at the Arab League summit in Jordan in March 2017 to release political prisoners in their countries.

In April 2011, UAE authorities detained Mansoor over his peaceful calls for reform and in November, the Federal Supreme Court in Abu Dhabi sentenced him to three years in prison for insulting the country's top officials after a trial deemed unfair. Although the UAE president, Sheikh Khalifa bin Zayed Al Nahyan, pardoned Mansoor, authorities never returned his passport, subjecting him to a de facto travel ban. He has also faced physical assaults, death threats, government surveillance, and a sophisticated spyware attack.

In August 2016, the Toronto-based research group Citizen Lab reported that Mansoor received suspicious text messages on his iPhone promising information about detainees tortured in UAE jails and urging him to click on a link. Citizen Lab discovered that clicking on the link would have installed sophisticated spyware on his iPhone that allows an outside operator to control the targeted iPhone's telephone and camera, monitor chat applications, and track the user's movements. Similar methods for breaking into iPhones have been valued at US$1 million, leading Citizen Lab to call Mansoor "the million-dollar dissident."

While Mansoor can appeal his recent conviction, trials in the UAE, including Mansoor's own in 2018 and in 2011, are often marred by legal and procedural flaws.

Article 32 of the Arab Charter on Human Rights, to which the UAE is a party, guarantees the right to freedom of opinion and expression and to impart news to others by any means. Restrictions are only allowed on the practice of this right to "respect for the rights of others, their reputation, or the protection of national security, public order, public health, or public morals." Article 13(2) of the charter also requires that judicial hearings be "public other than in exceptional cases where the interests of justice so require in a democratic society which respects freedom and human rights."

"Mansoor's sentence is a cruel reminder of the UAE's relentless determination to quash any semblance of criticism or any conversation about rights," Whitson said. "The UAE's supposed allies – including in Washington and London – should stand up for Mansoor and demand that he is freed."

○

$250

○

$500

○

$1,000

○

Other

Donate Now

Region / Country

- Middle East/North Africa
- United Arab Emirates

Topic

- Free Speech

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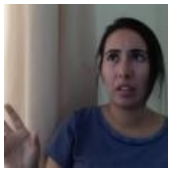
- 

  May 5, 2018 News Release

  ### UAE: Reveal Status of Dubai Ruler's Daughter

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  April 19, 2018 Dispatches

Can A Jailed UAE Activist Become a Mascot for Manchester?

Source URL: https://www.hrw.org/news/2018/06/01/uae-award-winning-activist-jailed-10-years

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[1] http://www.hrw.org/middle-eastn-africa/united-arab-emirates

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Annex 139

Human Rights Watch, *UAE Continues to Flout International Law* (29 June 2018), *available at* https://www.hrw.org/news/2018/06/29/uae-continues-flout-international-law

JUNE 29, 2018 6:24AM EDT

UAE Continues To Flout International Law

Item 6 UPR Adoption

State after state called upon the UAE to better protect the right to free expression and to ensure that torture stopped during this year's UPR review, yet the UAE continued its sustained assault on expression, speech and association, and directed proxy forces that have arbitrarily detained, disappeared and tortured men and boys in Yemen.

The UAE's treatment of Ahmed Mansoor is a stark reminder that the UAE remains more committed to repression than reform. Just a month ago, Mansoor, an award-winning Emirati rights defender, was sentenced to 10 years in prison for charges related to his activism. United Nations Special Procedures described, Mansoor's arrest as "a direct attack on the legitimate work of human rights defenders in the UAE."

Others in the UAE who speak out about human rights abuses remain at serious risk of arbitrary detention, imprisonment, and torture, and many are serving long prison terms or have felt compelled to leave the country. The UAE's repressive cybercrime law remains on the books, despite numerous UPR recommendations calling for its amendment.

During the UPR review, the UAE emphasized efforts made to provide "humanitarian assistance" and "protect civilians." Yet, since 2015, the UAE has played a leading role in the Saudi-led coalition that has indiscriminately bombed schools, homes and markets in Yemen, blocked aid, and used widely banned weapons like cluster munitions. The UAE funds, trains and directs proxy forces which have arbitrarily detained, disappeared and brutally mistreated men and boys in Yemen. They run prisons where many have been disappeared and reported horrific abuse. Now, as this Council meets, the UAE is pushing forward the coalition's offensive on Hodeida, Yemen's key port, with reports of civilians killed just this

week in additional coalition airstrikes. Activists in Yemen who have criticized the UAE's actions in their country have been subject to slander campaigns, threatened, harassed and detained.

The UAE has not only failed to implement states' recommendations, but continues to brazenly flout international rules, and to detain, threaten, harass and condemn those activists—at home and abroad—who call for real reform and rights protection.

Region / Country

- Middle East/North Africa
- United Arab Emirates

Topic

- United Nations
- Human Rights Council

More Reading

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April 5, 2019 News Release

Egypt: Make Public New Draft NGO Law

- 

April 6, 2019 News Release

Libya: Threat of Tripoli Fighting Raises Atrocity Concerns

Source URL: https://www.hrw.org/news/2018/06/29/uae-continues-flout-international-law

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[2] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21449&LangID=E

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law&title=UAE Continues To Flout International Law

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Annex 140

National Human Rights Committee, *Fifth General Report, Continuation of human rights violations: A year of the blockade imposed on Qatar* (June 2018)


NHRC
اللجنة الوطنية لحقوق الإنسان
National Human Rights Committee
Fifth General Report
Continuation of human rights violations
A year of the blockade imposed on Qatar
Doha - Qatar, June 2018

Annex 140

Fifth General Report
Continuation of human rights violations

A year of the blockade imposed on Qatar

Doha - Qatar 2018

Index

First: The NHRC, An Overview

The National Human Rights Committee (NHRC) in Qatar is one of National Human Rights Institutions (NHRIs) established in accordance with the Paris Principles adopted by the UN General Assembly. These institutions become members of the Global Alliance of National Human Rights Institutions (GANHRI) after being accredited by the Sub-Committee on Accreditation (SCA) of the GANHRI, under the supervision of the National Institutions, Regional Mechanisms and Civil Society Division (NRCS) of the Office of the High Commissioner for Human Rights (OHCHR). The NHRC was established in 2002 and was mandated to protect and promote human rights as defined by the Paris Principles. The Committee has held status (A) accreditation since 2010, which is the top rating accredited to a national institution, demonstrating a high level of credibility, independence and compliance with the Paris Principles.

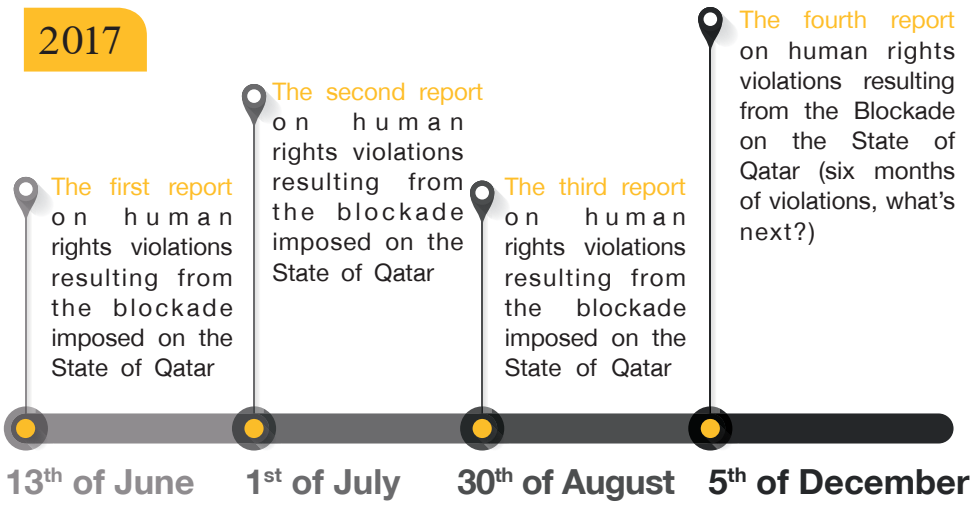
Second: Introduction

On June 5th, 2017, three Gulf countries - Kingdom of Saudi Arabia, the United Arab Emirates, and the Kingdom of Bahrain - in addition to the Arab Republic of Egypt cut diplomatic relations with the State of Qatar. Their joint action occurred without any legal or factual justifications, and without producing evidence of proof of their allegations against the State of Qatar. Their decisions however, did not suffice at the political and diplomatic level, but rather continued to adopt a series of arbitrary measures by the three Gulf States (hereafter referred to as blockading countries). Their decisions included the closure of sea, land and air routes to trade and residents of Qatar. Moreover, they demanded Qatari citizens and residents leave their territories within fourteen days, and for their citizens to leave Qatar within the same deadline. That decision was undertaken with complete disregard of all the repercussions and legal, human rights and humanitarian consequences, constituting a series of grave violations to human rights. In its turn, the Government of Qatar has not taken any reciprocal measures against citizens of KSA, UAE, Bahrain and Egypt working in Qatar. These violations have continued for the entirety of the year, and have advanced into arbitrary detention and forced disappearances of some Qataris.

This report includes cases of violations received by the NHRC, and those documented by the Committee, bringing the total number of documented violations to the tens of thousands, and increasing. To date, complaints are still being received by the NHRC and the Compensation Claims Committee (CCC).

This marks the fifth report issued by the NHRC to document these violations on the occasion of the passage of a full year of the blockade. As per its mandate, the NHRC prepared routine reports on violations to human rights in Qatar as a result of the blockade, which are as follows:

After a year of the blockade, the NHRC reported **4105** violations


2017
The first report on human rights violations resulting from the blockade imposed on the State of Qatar
13th of June
The second report on human rights violations resulting from the blockade imposed on the State of Qatar
1st of July
The third report on human rights violations resulting from the blockade imposed on the State of Qatar
30th of August
The fourth report on human rights violations resulting from the Blockade on the State of Qatar (six months of violations, what's next?)
5th of December


24th of August, 2017
Report on violation of the right to perform religious
30th of August, 2017
Report on violation of the right to private property
Other special reports
3rd of September, 2017
Report on violation of the right to have access to food and medicine
5th of September, 2017
Report on violation of the right to education

The Committee has worked since the beginning of the blockade to counter the violations to the rights of individuals, reduce their negative impact on human rights, and seek redress and compensation for victims of these violations. We have both hosted and been received by several international organizations and human rights bodies such as Amnesty International, Human Rights Watch, and UN missions, as well as parliamentary delegations - including the Greek, British, Italian, Canadian, German and European parliament, and the Tom Lantos Committee in the U.S. Congress.

The report addresses testimonies made by victims whose basic rights have been violated by the authorities of the three Blockading countries, and includes outlines and details of the violations to which they are exposed to. We also refer to urgent appeals from six United Nations Special Rapporteurs to the KSA, the UAE and Bahrain regarding the human rights violations towards Qatari nationals in the blockading countries as well as the citizens of these States residing in Qatar, that have resulted from the severing of diplomatic ties with Qatar - in particular, the right to family reunification, education, employment, movement and residence, private property, freedom of expression and health care. This is in addition to the urgent appeal by the Special Rapporteur on freedom of religion or belief directed at the KSA to ensure Qatari citizens and residents are able exercise their right to religious practice without discrimination [1].

The NHRC will continue to update this basic report as long as the blockade continues, and the flow of complaints from victims continue to be submitted.

(1) Mr. Felipe González Morales. The Special Rapporteur on the human rights of migrants, Mr. David Kay - the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Dainius P ras. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. M. Mutuma Ruteree, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Ms. Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights while countering terrorism, Mme Koumbou Boly Barry, Special Rapporteur on the right to education. Mr. Ahmed Shahid, Special Rapporteur on freedom of religion or belief.

Third: Executive Summary

This report is issued on the occasion of the first anniversary of the blockade on the State of Qatar. It documents the human rights violations that have been committed following the decision of the three Gulf States of Saudi Arabia, the Bahrain and the United Arab Emirates, as well as Egypt, to sever diplomatic ties with the State of Qatar on the 5th of June 2017. The report describes the relevant legal aspects, conclusions and recommendations to all parties concerned.

Thousands of families have been exposed to dispersal due to the closure of crossings and borders and banning direct flights and preventing Qataris from entering these countries and their citizens from entering Qatar. Part IV of the present report includes violations relating to dispersion of families, especially women, children and persons with disabilities. This is in addition to violations of the right to education, work, health and property, movement, and litigation and the right to perform religious rites, and incitement to violence, hatred and violation of freedom of opinion and expression.

These arbitrary decisions soon resulted in the denial of students from completing their education from universities in the blockading countries, preventing individuals from completing and receiving their treatment in hospitals there, in addition to material losses incurred by owners of property, which resulted from their inability to access and dispose of their property. This is in addition to the use of religious and media discourse to disseminate a culture of hatred and violence, which led to that Qatari citizens being assaulted. They have been subjected to cruel and degrading treatment by authorities in the blockading countries, and recently these violations have escalated into arbitrary detention and enforced disappearances since Saudi authorities arrested Qataris in violation of all international covenants and norms of international human rights instruments.

This report documents information referred to in testimonies of victims and those affected by the blockade. It further points to recognition by the blockading countries of the occurrence of these violations through the formation of committees to address the humanitarian cases of mixed families and other statements - however according to international organisations and reports despite the formation of these alleged committees and the allocation of telephone numbers to receive communications, this procedure has been deemed highly ineffective.

The report of the technical mission of the OHCHR on the impact of the current Gulf crisis on human rights concludes that the unilateral measures, consisting of severe restrictions of movement, termination and disruption of trade, financial and investment flows, as well as suspension of social and cultural exchanges imposed on the State of Qatar, immediately translated into actions applying to nationals and residents of Qatar, including citizens of KSA, UAE and Bahrain. Their report also examines the considerable economic impact of the crisis deeming it equitable to that of economic warfare with the erosion of investor confidence and significant financial losses for the State, companies and individuals.

Several reports by Amnesty International and Human Rights Watch have highlighted the negative effects on families, the right to education, the right to health care, the right to freedom of worship and exercising of religious rites, and the impact of the blockade on non-Gulf migrant workers, particularly those coming from South Asia. Amnesty International describes the conditions imposed on people as in total disregard for human dignity.

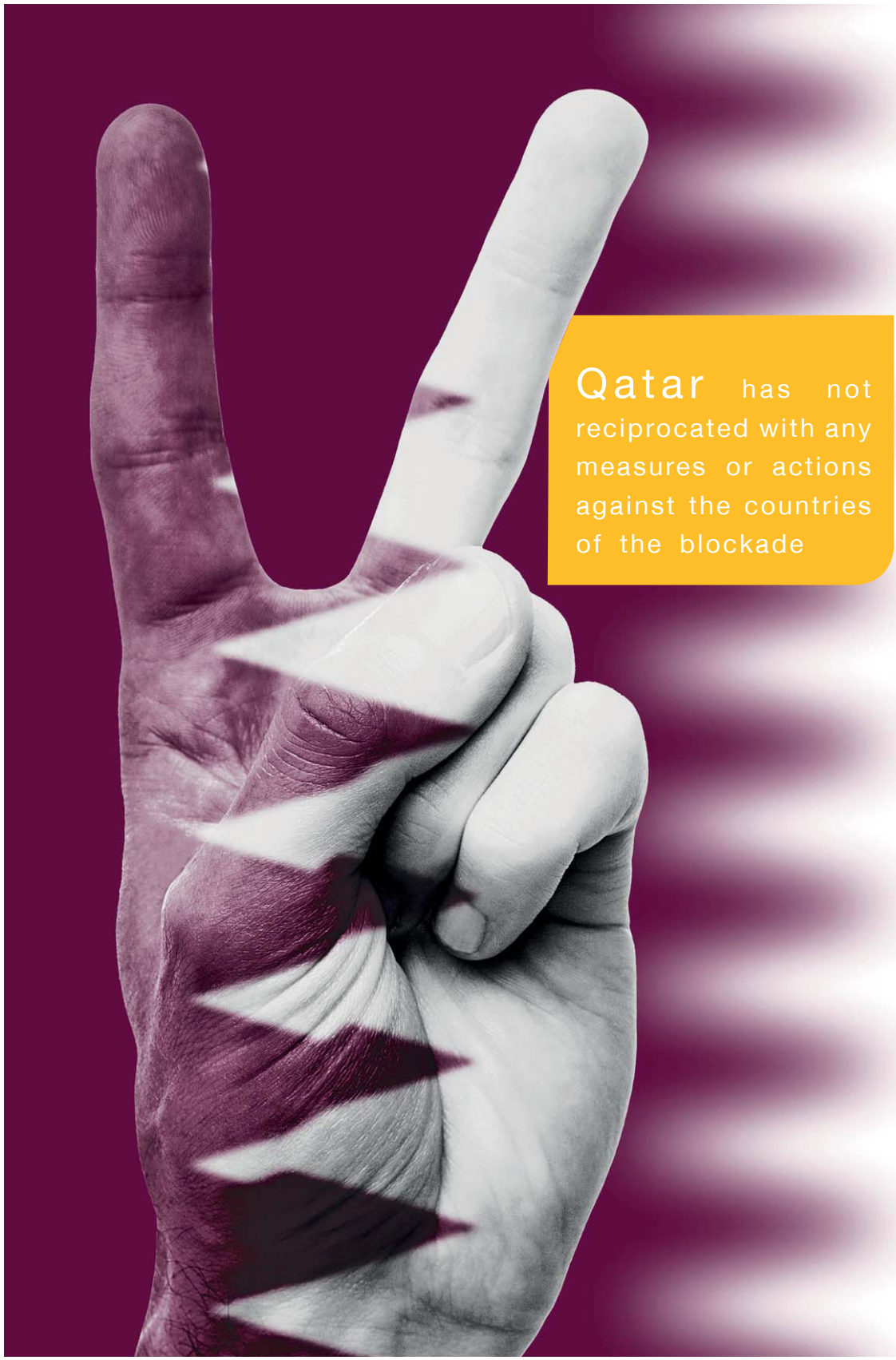
Part V of the present report constitutes the legal description of the violations committed in accordance to the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the Arab Charter on Human Rights Human rights, the Declaration on the Human Rights of the Gulf Cooperation Council, the economic agreement amongst GCC countries and other international human rights conventions. This is in addition to the violation of the Chicago Convention of Qatari civil aviation without any military necessity or reasons related to public security.

Part VI refers to the findings of the report, the most prominent of which is the continued suffering of individuals, that the measures taken constitute as discriminatory collective punishment against individuals, and describes the failure of the blockading countries to stop violations and damages suffered by those affected.

The technical mission report of the OHCHR reveals the volume of violations of human rights caused by the blockade, as well as the necessity of the responsiveness of international mechanisms and organizations and their engagement to protect and promote human rights. This is while noting the disappointing failure of all regional mechanisms meant to protect human rights, including the League of Arab States, the Organization of Islamic Cooperation, and the Cooperation Council for the Arab States of the Gulf and the Arab Parliament from carrying out their role in lifting violations.

The report concludes in Part VII with recommendations to all parties concerned, primarily to the International Community, demanding urgent action to lift the blockade and exert all possible efforts to mitigate its repercussions on the people of Qatar, citizens of the blockading countries and all those impacted. It demands that the Kuwaiti mediation works to alleviate the suffering of the victims and resolve the human rights situation, and from the civil society organizations in the Gulf Cooperation Council countries to intensify efforts and joint cooperation to resolve the repercussions of the crisis on the humanitarian situation. Eight recommendations are presented to the United Nations to take serious steps that would obligate the blockading countries to reverse their arbitrary decisions. Furthermore, four recommendations are outlined for the Human Rights Council, including the establishment of a fact-finding commission, direct interviews with victims and mechanism for compensation. In the same context, the report presents recommendations to the Gulf Cooperation Council (GCC) and the blockading countries urging that they stop leveraging the humanitarian and social situation to advance their political objectives, in violation of international human rights law. This is in addition to allowing access to the technical mission of the OHCHR and visits by special rapporteurs and international human rights organizations, to examine the effects of the measures taken on the citizens of those States and on the citizens and residents Qatar.

The last recommendations in this report are made to the Qatari government, including continuing to call for recourse to the International Court of Justice, arbitration committees and national and international specialized courts, and the need to bring to justice some of the perpetrators of incitement, hate speech and calls for violence and racial discrimination. In addition to inviting the Compensation Claims Committee to continue litigation and international arbitration procedures in order to redress, compensate and indemnify victims.


Qatar has not reciprocated with any measures or actions against the countries of the blockade

Fourth: The most serious violations

The following table shows the violations reported by the National Human Rights Committee, amounting to (4105) cases, distributed according to violating country and type of violation. The table includes violations against the citizens of the blockading countries in addition to the Qatari citizens and residents:

Violating State / Total	Education	Property	Family reunion	Movement	Health Care	The practice of religious rites	Work	Residence	Degrading / Derogatory treatment	arbitrary arrest, detention	The extraction of official documents	Enforced disappearance	Total
	66	697	346	770	19	165	67	57	1	1	4	1	2194
	148	458	82	348	4	-	6	4	-	2	-	-	1052
	28	55	218	129	14	-	37	32	-	-	1	-	514
	271	24	-	41	-	-	-	-	-	-	-	-	337
diverse	-	-	-	9	-	-	-	-	-	-	-	-	9
Total	513	1234	646	1297	37	165	110	93	1	3	5	1	4105

Table (1) All Violations

Violations reported by the National Human Rights Committee, amounting to (4105) cases

Table number (1) shows the latest statistics for violations made against the State of Qatar since the beginning of the blockade, on the 5th of June 2017 until 23 May 2018. The violations include 513 cases of violation of the right to education, 1234 cases violation of the right to property, 646 cases violation of the right to family reunification, 1297 violation of the right to movement. This is in addition to 37 violations of the right to health care, 165 violations of the right to practice religious rites, 110 violations of the right to work, 93 violations of the right to residence, 1 case of degrading treatment, 3 violations of arbitrary detention, 5 violations of the right to obtain official documents, 1 violation of Enforced Disappearances, which totals to (4105) violations.

A: Violation of the right to family reunification

Table (2) shows the number of violations of the right to family reunification since the beginning of the blockade, 5th of June 2017 until 23rd of May 2018, stands at 646 violations (346 from the KSA, 82 from the UAE, 218 from Bahrain).

Measures taken by the blockading countries have not been confined to diplomatic, legal and economic levels, but rather gone beyond that to the severing of relations by preventing the movement of mixed families through placing obstacles to the citizens and residents of the State of Qatar. The demand by the blockading countries that Qatari citizens leave their territories, as well as their citizens leave Qatar created inhumane conditions in flagrant violation of international human rights conventions. This occurred through the forced deportation of families and their dispersion, not stopping at separating children from their parents. The violation of this right has upset the lives of thousands of family members, especially women, children, persons with disabilities, the elderly, and the denial of mothers and fathers to stay with their children.

This violation is one of the most atrocious because it affects and threatens the family unit, disperses it, and threatens the most vulnerable groups in society (women, children, persons with disabilities and the elderly) in a alarming manner, causing serious psychological and social implications on broad segments of society.

The formation of committees to handle the humanitarian situations of the mixed families, is in itself a recognition by the authorities of the blocking countries that there are violations that have already affected these families. Despite the formation of these alleged committees and allocation of phone numbers to receive communications, according to the many complaints of the victims and of the statement of the OHCHR on 14 June 2017, this procedure has not been effective enough to deal with all cases.

Statistics Date	Violation	State				Total
						
May 23, 2018	The right to family reunification	346	82	218	---	646

Table (2) Violation of the Right to Family Reunification

The high commissioner, prince Zeid Ra'ad Zeid Al-Hussein, commenting on the impact of the current Gulf crisis on Human Rights on the 14th of June 2017 assured that, «The majority of the measures were broad and non-targeted, making no distinction between the Government of Qatar and its population," and that the directives issued to address the humanitarian needs of families with joint nationalities, appear "not sufficiently effective to address all cases." Pursuantly the OHCHR technical mission on the Gulf Crisis' report on January 8th 2018, noted that according to information received by the team, individuals from Qatar working in KSA, UAE and Bahrain, and / or with business interests in these countries, were forced to return to Qatar, reportedly with no access to their companies and other sources of activity and income since the outbreak of the crisis [2].

On June 9, 2017, Amnesty International condemned the violations resulting from the Blockade imposed on the State of Qatar, and stated that The organization's researchers have interviewed dozens of people whose human rights have been affected by a series of sweeping measures imposed in an arbitrary manner by the three Gulf countries in their dispute with Qatar", and that "For potentially thousands of people across the Gulf, the effect of the steps imposed in the wake of this political dispute is suffering, heartbreak and fear," Stressing that the conditions imposed on people across the Gulf reveal an absolute contempt for human dignity. The Organization described these states as manipulating the lives of thousands of residents in the Gulf, dispersing families, destroying the livelihood of the people and their educational future. Moreover, the effects of the steps which are imposed in the wake of the outbreak of the political conflict have reached heart-rending and shocking limits [3].

In June 12, 2017, Amnesty International confirmed that the measures taken by the three countries (Saudi Arabia, the UAE and Bahrain) were vague, inadequate, lacked mechanisms and did not address the human rights situation.

Moreover, Amnesty International confirmed on June 19, 2017 that "Amnesty International has spoken to a number of people who tried to call these hot lines. Their experiences raise serious questions about whether these hot lines are providing effective advice or information. Several people said they had tried in vain for hours or days to get through to the hot lines. Those who got through said officials asked them for minimal details about their cases and told them they would receive a call back, but there had been no follow-up. Amnesty International has rung the hot lines and asked how cases registered were being dealt with,

(2) http://www.ohchr.org/AR/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=A
(3) https://www.amnesty.org/ar/latest/news/2017/06/families-ripped-apart-freedom-of-expression-under-attack-amid-political-dispute-in-gulf

but officials were not able to provide any information. Some affected families have told Amnesty International that they are too scared to call hot lines and register their presence, or their family's presence, in a "rival" country for fear of reprisal [4].

In July 13, 2017, Human Rights Watch reported that "in response to reports of family separations, the countries of the blockade, including Bahrain announced that they would grant exceptions for "humanitarian cases of mixed families" for travel back and forth from Qatar and each country established hotlines. Yet, of the 12 Gulf nationals who said they tried to contact these hotlines, only two managed to get permission to go back and forth. Others said that they did not call because they worried that the three countries would use the hotlines to discover the identities of citizens who remained in Qatar [5].

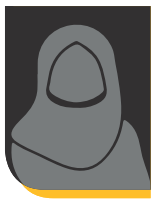
Saudi authorities have opened the border crossing between the State of Qatar at the beginning of the crisis in a narrow and limited manner to humanitarian situations, and without clear criteria. Saudi authorities, however, have later closed the crossing completely as of 19/12/2017 until now, and have not allowed any entry or exit of humanitarian cases. It should be noted that road travel is of priority for low-income families and the elderly who constitute the most affected categories by the closure of the crossing.

(4) https://www.amnesty.org/ar/latest/news/2017/06/gulf-qatar-dispute-human-dignity-trampled-and-families-facing-uncertainty-as-sinister-deadline-passes
(5) https://www.hrw.org/ar/news/2017/07/13/306595

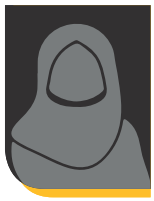
In the same context, the report of the technical mission of the OHCHR in Qatar (17-24 November 2017) on the impact of the current Gulf crisis on human rights issued on 8/1/2018 confirms the gross violations towards mixed families and that most of the cases affected by the current situation remain unresolved. it is likely that the impact of the current crisis will continue for those victims, in particular those who suffer from the family separation and division.

The AFD International Organization has considered that the blockade violates international law and regional and international conventions, charters and the Charter of the United Nations. The report issued on July 25 by the organization pointed out that the step of the blockade is not devoid of humanitarian consequences in the region that is characterized by historical, geographical, cultural, familial ties and links, which have reflected negatively on the citizens. The organization emphasized its concern about those practices in reports condemning what citizens and residents of Qatar have been exposed to whether physically or psychologically, which have affected all the citizens of the countries of the Blockade.

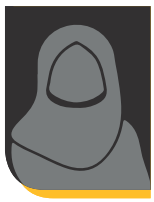
The NHRC has documented complaints of violations of the right to family reunification, and the prohibition of their reunification. These include:



Ms. (T. A.), a Qatari:
Divorced from a citizen of Saudi nationality and have children of Saudi nationality in her custody. He is a resident of the State of Qatar, and since the beginning of the blockade and the closure of the land border by Saudi authorities, the father visits have been cut off to his sons living with their mother. This is in addition to the psychological effects of depriving the children from their father.



Ms. (R. K.), a Qatari:
Married to a citizen of the UAE nationality (R. M.) and have an Emirati daughter born in the State of Qatar. She resides permanently in Qatar while her husband works in the UAE. Since the beginning of the blockade, the father has been prevented from visiting his family. She added that she has not been able to send her daughter to see her father in the UAE because she cannot guarantee her return to the State of Qatar.



Ms. (D. S.), a Qatari:
Is married to a Bahraini citizen (S. A,) and has 3 children. Since the start of the blockade on the state of Qatar, the father's visits to his sons have ceased as well as all ways of communicating with him. She added that she has found it difficult to renew her children's travel documents after the closure of the Bahraini Embassy in the State of Qatar. Furthermore, she has been banned from entering the Kingdom of Bahrain by the Bahraini authorities which hinders her children from continuing their education as well as exposed them to psychological effects due to depriving them of their father.

B: Violation of the right to education

Table (3) shows the number of violations of the right to education since the beginning of the blockade on the 5th of June 2017 until 23rd of May 2018. 513 violations have occurred (66 by the KSA, 148 by the UAE, 28 by the Kingdom of Bahrain, 271 by the Arab Republic of Egypt). The NHRC received complaints from Qatari students studying in the blockading countries. Following the imposition of the Blockade on the state of Qatar, authorities in these states forced the students to leave their territories and they found themselves suddenly deprived of their studies. They have been prevented from attending their final exams, although some of them have only one month remaining until graduation. Moreover, the blockading countries forced their students who are studying in Qatar University to return to their country within 14 days from the date of the announcement of the severing of relations. They also prevented these students from the completion of their studies. Universities in the blockading countries also refused to cooperate with expelled Qatari students according to testimonies documented by the NHRC. There have been no response to any requirement that would facilitate for Qatari students to complete their studies or to even be reimbursed the fees they have paid or to recover their academic documents and transcripts.

Qatari students studying in the Arab republic of Egypt faced difficulties at the beginning of the school year 2017/2018 in obtaining the necessary security clearance to obtain the necessary visa to complete their studies. This resulted in their failure to attend regularly and as such those constraints caused these students to miss the term's examination during the months of September and October 2017. Building on the efforts of the NHRC, through its communication with the head of the Egyptian National Council for Human Rights in this regard, it has urged the Egyptian authorities to lift the procedures that hindered the regularity of students attending their classes. The Egyptian authorities have issued new instructions to grant Qatari students a visa and cancel the previously requested security clearance.

Statistics Date	Violation	State				Total
						
May 23, 2018	The right to education	66	148	28	271	513

Table (3) Violation of the Right to Education

The report of the Technical Mission of the OHCHR issued on 8/1/2018 states that the expulsion of Qatari students studying in the UAE, KSA, Bahrain and Egypt have a negative effect on their right to education as Qatari students who are prevented from continuing their studies or passing their examinations.
Amnesty International confirmed in its previous reports that it has met with several Qatari students who are concerned that they will not be able to complete their education in the blockading countries. In the same context, Human Rights Watch's report mentions the violations to the right to education as a result of the blockade imposed on the State of Qatar by the countries of the Blockade.

Orders have been issued to Qatari students in the blockading countries to return immediately to the State of Qatar. The report of the technical mission of the OHCHR states that in most cases these orders have been issued by the university administration. The report of the technical mission reviewed the efforts of Qatar University and the Ministry of Education and Higher Education in seeking quick and proper solutions by providing alternatives to the affected students in order to ensure their future.

The NHRC has documented complaints of violations of the right to education by the countries of the Blockade, including:

Ms. (B. M.), a Qatari:
Receives her education at King Faisal University in Al Ahsa in the KSA. She has successfully passed 85 out of 132 credit hours earned according to the study plan approved by the University according to specialization. She has also paid the outstanding tuition fees. Only 47 credit hours are remaining for graduation, After the Saudi authorities have cut ties with the State of Qatar and closed the land port, she has been unable to complete her education.

Mr. (G. H), a Qatari:
Expressed his disappointment to the NHRC for the violation to which he was subjected: «I receive education at my own expenses at the University of Al-Jazira in the UAE in law. I have passed 99 credit hours of study, equivalent to three university years. At the beginning of the blockade, I have been able to return to Qatar and only one year is left for me to complete my studies. I have not been able to accredit the list of subjects that have been received from the university due to the prohibition of dealing with Qataris because of the Blockade and preventing them from entering the UAE. I have also sent an e-mail on 9/8/2017 to the university about the possibility of completing my studies and requesting solutions so that I can continue to receive my education but without a response, which caused me psychological and material damage».

Mr. (H. P.), a Qatari:
Is an M.A. student at the University of Applied Sciences in the Kingdom of Bahrain and has only two subjects left to graduate and submit a research message. Following the Bahraini authorities' decision to sever relations with the State of Qatar, he was unable to complete the exams and attend lectures scheduled for the remaining subjects, which badly affected his educational process.

C: Violation of the right to work

Table (4) shows the number of violations of the right to education since the beginning of the blockade on the 5th of June 2017 until 23rd of May 2018. 110 violations have been reported (67 by KSA, 6 by the UAE and 37 by Bahrain).

The violations committed by the countries of the Blockade have further extended to deprivation of the right to work, which is one of the most important and fundamental economic and social rights. The business sector has been badly affected by the intertwining of commercial interests and employment. Arbitrary decisions made by the blockading countries resulted in hundreds of unemployed people losing their jobs and businesses. The damage to their livelihoods and their families has been alarming, and the repercussions on the sector continue to fall. There has been serious disruption to the lives of those living off the transport profession between the Gulf States, since none of the blockading countries attempted to compensate or find alternatives for them.

Additionally, a significant number of citizens employed in public, private or government companies in the blockading countries were cut off their source of income, rendering many unemployed without any compensation. Furthermore, a large number of citizens of the blockading countries, the owners of companies in Qatar as well as Qatari investors in the Blockading countries has been forced to close their companies and return to their homeland due to the fear of arbitrary punitive measures imposed by the authorities of the blockading countries against everyone. This caused these investors, traders and businessmen immense losses and physical and psychological damage, and the displacement of labor that has been working in their companies and cutting off of their livelihoods.

The report of the Technical Mission of the OHCHR in the State of Qatar (17-24 November 2017) on the impact of the current Gulf crisis on human rights issued on 8/1/2018 indicates that the measures and restrictions imposed by the authorities of the blockading countries constitutes collective punishment against Qatari nationals and residents of the State of Qatar or the countries of the blockade and have permanent effects and consequences of denial of the right to work and to those who have business interests.

Statistics Date	Violation	State				Total
						
May 23, 2018	Right to Work	67	6	37	---	110

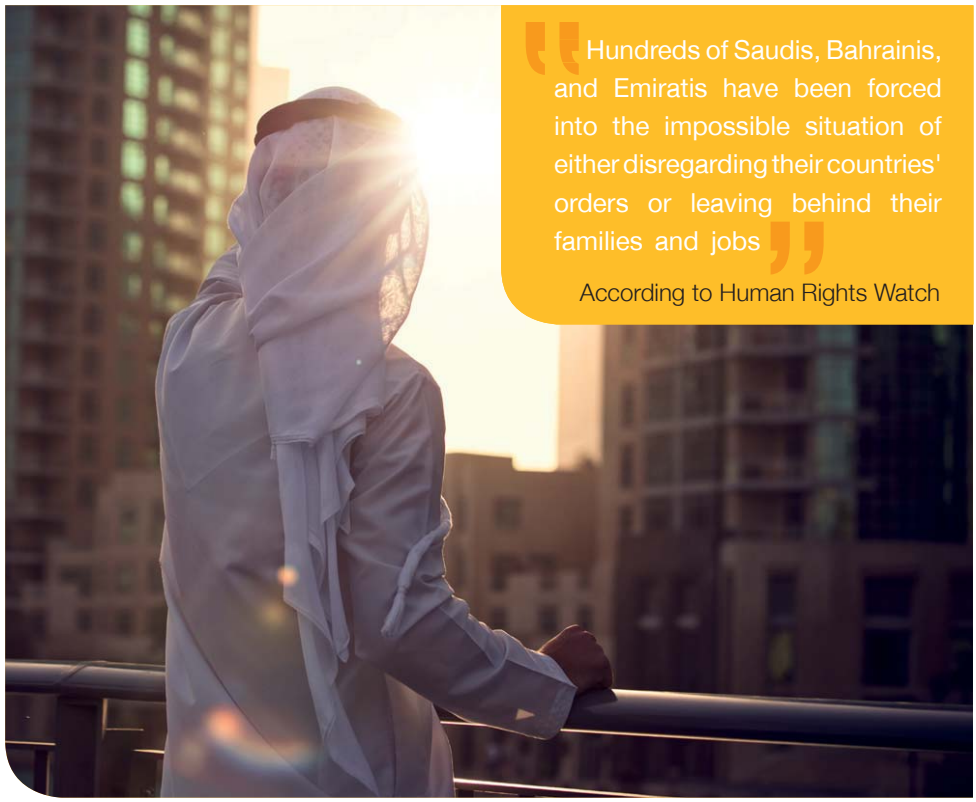
Table (4) Violation of the Right to Work

The report also confirms that most of the cases affected by the current situation remain unresolved. The impact of the current crisis is likely to continue for these victims, in particular those who have suffered loss of their jobs, family separation or those who cannot have access to their assets and property.

Since the beginning of the Gulf crisis, authorities of the blockading countries have issued explicit instructions to their nationals, residents in the State of Qatar to leave their jobs and return to their countries, or be subjected to arbitrary punitive measures, which led many of them to submit to the NHRC of Qatar petitions requesting assistance.

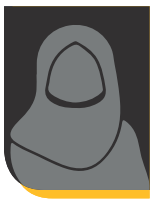
Human Rights Watch pointed out in its previous report that «Hundreds of Saudis, Bahrainis, and Emiratis have been forced into the impossible situation of either disregarding their countries' orders or leaving behind their families and jobs.»

In the same context, the report of Amnesty International on its second visit to the State of Qatar on 28 November 2017, stresses that the sudden restrictions imposed by the countries of the Blockade on the State of Qatar since 5 June 2017 led to serious negative effects on human rights, including the threat directed to maintaining jobs.



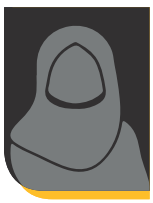
> "Hundreds of Saudis, Bahrainis, and Emiratis have been forced into the impossible situation of either disregarding their countries' orders or leaving behind their families and jobs"
>
> According to Human Rights Watch

The NHRC documented complaints of violations of the right to work committed by the countries of the Blockade. These include:



Ms. (F. A.), a Saudi:
Residing and working in the State of Qatar since 2007 as an assistant football coach of Qatari Womens Sport Committee. She received instructions from the Saudi authorities to leave her job and return to the KSA or otherwise be exposed to punitive procedures.

Mr. (Y. A.), a Bahraini:
Residing in the State of Qatar for 10 years with his family and his wife, who works in the Ministry of Health in Qatar. He has a daughter who was born in Qatar and he is unable to get a traffic ticket due to the fact that the Bahraini embassy is closed in Doha and he cannot return to Bahrain because of the Gulf crisis and decisions issued from his country leaving his family, wife and job.



Ms. (H. A.) an Emirati:
Resident of the State of Qatar and her mother and father are of Qatari and Emirati nationalities respectively. She is studying in Qatar and due to the Gulf crisis a decision was taken to instruct all UAE citizens to return to their country. She however, have not done so which would cause her and her mother much harm.

D: the violation of the right to property

Table (5) shows the number of violations of the right to property since the beginning of the blockade on the 5th of June 2017 until 23rd of May 2018. There have been 1234 violations (697 violations by KSA, 458 by UAE, 55 by Bahrain and 24 by Egypt).

It is well known that there is a great deal of overlapping and intertwining between the Gulf States because of tribal and familial ties between, and the many reciprocal concessions granted to the citizens of these States in the field of private property and commercial and economic activities within the framework of the Gulf Cooperation Council. Thousands of citizens of Gulf States have homes, factories, commercial companies and other properties in each other's countries. The extent of the damage inflicted on Qataris and other citizens of the Gulf countries is a result of arbitrary measures and decisions that violated all human rights norms and charters.

The sudden blockade resulted in heavy losses of property for thousands of people. Their livelihoods were cut off, destroyed, and their money/property lost because they were unable to travel to them. All those who have been prevented from traveling have been unable to use or dispose of their property.

For example, according to the NHRC complaints:

Hundreds of Qataris have been prevented from traveling to the KSA to retrieve their camels and livestock, many of which have been lost or passed away.

Another example, especially from the UAE, is the loss of real-estate property purchased by instalments in the form of land, buildings or apartments, because Qataris have been prevented from traveling to the territory of the blockading countries or from transferring money. This is in addition to freezing their assets which have led to the cessation of the process of withdrawal of cheques. If this continues, it may cause the loss of the property in full, and the loss of money paid, and may lead to legal proceeding being brought against the owner for failure to pay the monthly instalments.

Statistics Date	Violation	State				Total
May 23, 2018	Right to Property	697	458	55	24	1234

Table (5) Violation of the Right to Property

In addition to the above, the financial and postal remittances of any citizen or residents of Qatar have been blocked, closing the door on cases of recovery of material losses.

Moreover, forcing the citizens of the blockading countries to leave the State of Qatar - or else they would be subjected to harsh punitive measures from their countries – caused many to close their companies and leave their private property in the State of Qatar, exposing them and their workers and clients to financial losses.

All these violations indicate that the blockading countries deliberately violated fundamental rights and freedoms, including the right to private property, and intended to do so since the very first moment. This is further reinforced by the fact that no action has been taken to alleviate those grave consequences to which its citizens, and the citizens and residents of the State of Qatar are exposed.

Furthermore, the right to litigation has also been violated through denying Qataris access to legal ramifications for the denial of accessing and tending to their property. All those who own property and businesses because of their previous businesses or inheritance have been prevented from completing litigation proceedings or completing the proceedings of previous cases that were raised.

In a comment made by the high commissioner on the impact of the blockade on human rights on 14 June 2017, he confirmed that the measures taken by the quartet against Qatar are too broad in its scale. He also noted that the OHCHR received reports that individuals have already received brief instructions to leave the country in which they reside or their governments have directed orders to them to return to their homeland. Among those affected are persons who have businesses or companies based in countries different from those they come from [6].

(6) http://www.ohchr.org/AR/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=A

The report of the Technical Mission of the OHCHR in the State of Qatar 17-24 November 2017 on the impact of the current Gulf crisis on human rights issued on 8/1/2018 confirms that the blockade imposed on the State of Qatar by the Saudi and other authorities has a negative impact on economic rights and the right to property. It also mentions that Qataris who have commercial interests in the blockading countries have been forced to return to Qatar and have reportedly not been able to have access to their companies and activities since the start of the current Gulf crisis. Furthermore, the suspension of remittances between the State of Qatar and the countries of the Blockade has prevented the transfer of salaries, rents and the amounts resulting from outstanding invoices. This is as well as the absence of any formal mechanism available to move forward to claim their entitlements or their money and managing their assets. As a logical consequence of what has happened all means of legal cooperation has been suspended such as, for example, concluding and executing official agencies.The report stressed that the team conducted interviews with some of the claimants, mostly Qatari nationals who have property in the countries of the blockade, particularly commercial entities. They confirmed that financial transactions between Qatar and the countries of the blockade, had been suspended. They also highlighted the absence of any formal and available litigation mechanism to claim and/or manage their assets. Indeed, legal cooperation has been suspended, including power of attorney.

The report also concluded that the team found that the unilateral measures, consisting of severe restrictions of movement, termination and disruption of trade, financial and investment flows, as well as suspension of social and cultural exchanges imposed on the State of Qatar, had immediately translated into actions applying to nationals and residents of Qatar, including citizens of the countries of the blockade. Many of these measures have a potentially durable effect on the enjoyment of the human rights and fundamental freedoms of those affected. As there is no evidence of any legal decisions motivating these various measures and due to the lack of any legal recourse for most individuals concerned, these measures can be considered as arbitrary, and stating that the economic impact of the current crisis is similar to that of economic wars.

> "The considerable economic impact of the crisis takes over the dimension of an economic warfare"
>
> Report of the substantive mission of the United Nations High Commissioner for Human Rights

The NHRC has documented complaints of violations of the right to property by the countries of the Blockade, including:

Mr. (F. S), a Qatari:
Has a license from the KSA to import 16 horses exported from Doha from the Qatari Equestrian Club. He accompanied these horses to the stable set in the area of Al Ahsa. He was, blindsided by the blockade and closure or transport via all venues - land, air and sea. This led to the loss of his horses amounting to the value of approximately 28,000,000 (Twenty eight million Qatari riyals) due to his failure to secure their needs.

Ms. (F. Z), a Qatari:
Has purchased 2 apartments in Dubai in the UAE, in instalments for each apartment. Due to the Gulf crisis and the blockade on the State of Qatar however, the companies have demanded from her to waiver the amounts paid to retrieve the apartments in order to be able to sell them again.

Mr. (S. M.) a Qatari:
Has 3 commercial companies with their branches in the Kingdom of Bahrain. Due to the Gulf crisis and the political situation between both States he was prevented from entering the Kingdom of Bahrain in order to dispose of his property due to his Qatari Nationality which he retrieved since the 2013. This caused him significant financial losses due to not tending to his property in Bahrain, and he is still suffering from those losses because of the arbitrariness of the Bahraini government towards him.

C: Violation of the right to perform religious rituals

Table (6) shows the number of violations of the right to practice religious rituals since the beginning of the blockade, from 5 June 2017 to 23 May 2018. They amount to 165 violations (all by Saudi Arabia).

Indeed, the arbitrary decisions and measures taken by the Saudi authorities, resulted in the deprivation of the right to worship by some 1.5 million Muslims residing in the State of Qatar, in gross violation of the right to worship. The Saudi authorities have not exempted those who wish to practice their right to perform the rituals of Hajj and Umrah from the measures of the unjust blockade on the State of Qatar. Instead, they have involved religious rituals in political and diplomatic differences and manipulated these rituals as a tool for political pressure in flagrant violation of international conventions on human rights. This is done through:

1. Preventing Qatari pilgrims in Ramadan last month from entering Saudi territory to perform Umrah.
2. Forcing those in the Kingdom to leave Saudi Arabia without completing the rituals, and expelling some of them from the hotels where they have been staying from the moment the blockade was imposed.
3. Suspension of dealing in Qatari currency and debit cards.
4. Degrading and humiliating treatment to Qataris at land and air entry and exit points.
5. Preventing Qatar Airways from landing at Saudi airports, making it impossible for Qatari pilgrims to return to Doha directly. They have been forced instead to return using alternative routes through the State of Kuwait and the Sultanate of Oman without regard to humanitarian cases of patients, women, children, the elderly and persons with disabilities.

Statistics Date	Violation	State				Total
						
May 23, 2018	Right to Engage in Religious Rituals	165	---	---	---	165

Table (6) Violation of Right to Engage in Religious Rituals

With the beginning of the pilgrimage season in 2017, the Saudi authorities put obstacles and impediments to those who wish to perform the «fifth pillar of Islam» from Qatari citizens and residents, up to the point of prevention. The authorities refused to deal or coordinate with the Ministry of Awqaf and Islamic Affairs in Qatar in order to enable those wishing to perform this duty. While Saudi authorities that they would open the land port and the direct air route to the pilgrims of Qatar it soon became clear that that was simply a deflection mechanism and just a manoeuvre.

In light of the continued blockade, air embargo and closure of land borders, as well as the arbitrary measures taken by the Saudi authorities on the right to freedom of worship and religious practice, the Saudi authorities continue to put more obstacles and impediments to the organizers and service providers of Hajj and Umrah campaigns. With the arrival of the Umrah season for the month of Ramadan 2018 and the Hajj season of 2018, and complaints have been submitted by Hajj and Umrah campaigners in the State of Qatar about the harassment and difficulties in performing Umrah rituals faced by residents of the state of Qatar. These include:

- Closure of the electronic registration for Hajj and Umrah to all pilgrims from the State of Qatar.
- Prevention of financial transfers by Saudi authorities between Qatari campaigns and Umrah agents authorized to grant Saudi Umrah permits.
- Saudi authorities continued refusal to deal or coordinate with the Ministry of Awqaf and Islamic Affairs in Qatar.

All this confirms unequivocally the continuation of the Saudi authorities in the policy of politicizing religious rites. A delegation from the Ministry of Awqaf and Islamic Affairs in Qatar visited the KSA to attend the annual meeting to discuss arrangements for the 2018 Hajj season on Thursday 22 March 2018. The delegation discussed during the meetings obstacles and impediments imposed on Qatari pilgrims and those who are residents in Qatar, including the problem of obtaining the visa required for the performance of Umrah and pilgrimage through the electronic portal which is currently blocked for the State of Qatar. This is in addition to ignorance of the vulnerable groups, especially the elderly and persons with disabilities who wish to perform Hajj and Umrah. However, the Qatar delegation did not find any solutions to these obstacles and impediments with the concerned Saudi authorities. They merely responded to the Qatari delegation by saying that the Ministry of Awqaf and Islamic Affairs in Qatar should send official communications through the Sultanate of Oman's embassy to the higher authorities in the KSA to decide whether or not to respond.

Therefore, the NHRC remains deeply concerned at the continued obstacles and impediments, considering that the Saudi authorities have not taken positive steps to enable Qataris and residents of the State of Qatar to exercise their right to perform their religious rituals by continuously banning direct flights from Qatar to Saudi Arabia. This is in addition to the continued closure of the land border crossing point between the two countries and the non-admission of pilgrims and the closure of the electronic portal for registration. This is as well as the prevention of remittances by the Saudi authorities between the campaigns and agents of Hajj and Umrah and the prohibition of circulation of the Qatari currency. This is besides the failure of the Saudi authorities to take account of the damage and financial losses suffered by the Qatari Hajj and Umrah campaigns as a result of the aforementioned arbitrary measures in 2017.

The NHRC considers the concerns related to Umrah and Hajj as procrastination and an attempt by the Saudi authorities to stop any actions that can be taken by the OHCHR or the UN Special Procedures mechanism.

The report of the Technical Mission of the OHCHR in Qatar (17-24 November 2017) on the impact of the current Gulf crisis on human rights issued on 8/1/2018 states that measures and restrictions taken by Saudi authorities led to the infringement of the freedom of exercise of religious practice.

The Amnesty International report on its second visit to the State of Qatar on 28 November 2017 also points to the violation of the right to freedom of worship and practice of religious rituals by the Saudi authorities. They call on the Saudi authorities to ensure transparent and operational mechanisms to enable Qataris and residents in the State of Qatar to have access to the holy sites in Saudi Arabia [7].

(7) https://www.amnesty.org/ar/documents/document/?indexNumber=mde22%2f7604%2f2017&language=en

The NHRC documented complaints of violations of the right to freedom of worship and practice of religious rites, including:

Mr. (J.P), a Qatari:
Went, accompanied by his colleagues on 27/12/2017, to the KSA to perform Umrah via air through the State of Kuwait. However, on their arrival to Jeddah airport, they were harassed by security personnel working in the passports department there for being Qataris. They were seized at the airport's lounge and not allowed to enter Saudi territories for a full day until the night of 12/28/2017. They were then forced to go back from the Jeddah airport to the Kuwait international airport despite the fact that all the requirements claimed by the authorities in Saudi Arabia have been met. Two days after their return, they were contacted by telephone and informed of the possibility of entering the Kingdom of Saudi Arabia, which resulted in physical and psychological losses due to flight bookings and non-refundable residence as well as the violation of their right to worship and practice their religious rituals.

Mr. (A. H.), a Qatari:
Accompanied by his wife, made reservation at The Fairmont Hotel in the city of Mecca in Saudi Arabia and booked Umrah travelling tickets. Yet following the decision taken by the Saudi authorities to cut ties with the State of Qatar and the closure of the land crossing point, they were not able to go to Mecca for Umrah. He has not been able to refund the ticket despite his repeated communication with the hotel.

Mr. (M. M.), a Qatari:
Made reservation at Hilton Sweet Mecca in the city of Mecca in Saudi Arabia to perform Umrah. However, following the decision taken by the Saudi authorities to cut ties with the State of Qatar and the closure of the land crossing point he was not able to go to Mecca for Umrah nor recover the value of the ticket nor the accommodation fees, which were paid. An apology was directed to him and he was informed that in case of cancellation of the reservation the amount he paid will be confiscated.

Mr. (F. P.), a Qatari:
Was in Mecca in Saudi Arabia to perform Umrah when the Saudi authorities issued a decision obliging Qataris to leave the country due to the Blockade on the State of Qatar. He was expelled arbitrarily from the hotel in which he was staying, on the instructions he had received.

H: Violation of freedom of opinion and expression

Citizens of the countries of the Blockade have been exposed to violations of laws and punitive measures on the background of severing of the political relations and imposing blockade on the State of Qatar. This has reached unprecedented limits even for merely showing sympathy towards Qatar through the social media. It has gone beyond blocking and banning Qatari media, including sports channels which certainly do not broadcast news bulletins or programs of political nature. This is an indicator of the extent of deterioration of the freedom of opinion and expression.

Saudi authorities have imposed a penalty of imprisonment of up to five years, the fine of up to three million Saudi riyals, while the UAE have imposed a penalty of three to five years, and a fine of up to 500 thousand dirhams simply for showing sympathy towards the State of Qatar.

The NHRC has reported in the field of media alone that nearly 103 media persons from the citizens of the countries of the Blockade, who were working in a number of visual media in the State of Qatar, have all been subjected to different types of violations, including putting pressure on them to resign. Many eventually did thus losing their source of livelihood.

Moreover, pressures are still exercised on all who have not yet submitted their resignations. Such an act is a flagrant violation of the freedom of press, work, residence and opinion.

Amnesty International in its report published on June 9, 2017 stated that “The statements from governments of the countries of the blockade with a record of repressing peaceful expression are a flagrant attempt to silence criticism of these arbitrary policies. Prosecuting anyone on this basis would be a clear violation of the right to freedom of expression. No one should be punished for peacefully expressing their views or criticizing a government decision.”

Furthermore, Amnesty International in its report published on June 19, 2017, stated that “It is unthinkable that states can so blatantly infringe on the right to freedom of expression. Citizens have the right to express views and concerns about their governments, as well as feelings of sympathy towards others.”

A report prepared by the Doha Center for Media Freedom entitled «Media of the Gulf Crisis - Violation of Freedom of Opinion and Expression and International Covenants covering the period from 23rd to 25th August 2017 « on the indicators of the media discourse of the Gulf crisis States (media offensive practices towards freedom of opinion and expression), outline the following cases have been documented as non-exclusive samples:

First case: The criminalization of showing sympathy towards the State of Qatar

(As for the Saudi Arabia) non-exclusive samples

Amnesty International - as indicated in its previous report on 9 June, 2017-has denounced the acts done and measures taken by the Blockading countries , including the KSA, that seriously violate the freedom of opinion and expression emphasizing the fact that these declarations issued by governments repressing the peaceful expression are not more than a flagrant attempt to silence critical voices on these arbitrary policies. If anyone is prosecuted on this basis, it would constitute a clear violation of the right to freedom of expression; as no one should be sanctioned for peacefully expressing his points of view or for criticizing a government decision. It also mentions in its report issued on 19 June, 2017 that it is not possible to believe that these States could reach such a level of flagrant violation of the right to freedom of expression.

Furthermore, the Saudi authorities have already applied the punitive measures following their arrest of a group of Saudi citizens, among them: the famous Islamic preacher “Salman Al-Ouda” upon posting a Tweet on «Twitter».

(As for the United Arab Emirates) as non-exclusive samples:

In the UAE, on 7 June 2017, the UAE Attorney General banned the expression of sympathy towards Qatar, according to the declaration of Counselor/ Hamad Saif Al-Shamsi, in which he warns that any contravention of the laws in force shall be met with the imposition of prison sentences and pecuniary fines.

The declaration also includes a warning by the Attorney General «of any participation in speech or in writing on social media or any other form of sympathy with the State of Qatar or an objection to the stance of the UAE and other countries that took firm stances against the Government of Qatar». Violators of these warnings «may be subjected to imprisonment for a period of 3 to 15 years and a fine of not less than 500 thousand dirhams, equivalent to 137 thousand dollars”.

In addition to that, the mentioned report issued by Human Rights Watch on July 13, 2017, also highlights that the United Arab Emirates has threatened to impose sanctions on their citizens in case they «have sympathy» towards Qatar on the Internet.

In implementation of these threats, UAE authorities has arrested Mr./ Ghanem Abdullah Matar, a UAE citizen, upon publishing a series of videos on social media in the month of June, 2017 expressing his sympathy towards Qatar.
Therefore, Amnesty International has asked for the immediate release of the citizen as a prisoner of opinion.

The UAE authorities has also dismissed Mr. Youssef Al-Sarkal, Chairman of the UAE General Authority for Sports, by reason of shaking hands with the President of the Qatar Football Association, Sheikh Hamad bin Khalifa bin Ahmed Al-Thani, on the sidelines of the Asian Football Confederation's (AFC) meetings in Bangkok, Thailand.
The UAE and the countries of the Blockade 's media have launched a major offensive on this famous figure in the Gulf sport world, which led to that he has been relieved of his duties being the head of the authority after about a month of his appointment.
Furthermore, it was expressed in the UAE newspapers that Al-Sarkal «suffered from his warm embrace with the Qatari official» in their first meeting since the eruption of the Gulf crisis on 5 June, 2017. It also described what Al-Sarkal had done as a «sin» according to the website of Al-Bayan newspaper [8].

(8) https://www.albayan.ae/across-the-uae/news-and-reports/2017-11-30-1.3115850

[Translation]

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(8) https://www.albayan.ae/across-the-uae/news-and-reports/2017-11-30-1.3115850

[…]

(As for Kingdom of Bahrain) non-exclusive Samples:

On June 11 2017, the Bahraini international lawyer, Issa Faraj Arhamah Al-Burshid, filed a lawsuit against the government of Bahrain and demanded lifting the blockade on Qatar. This case is the first of its kind as he was arrested due to showing sympathy towards the state of Qatar. The case was mentioned in Amnesty International's report of 19 June 2017. The decision by the Bahraini authorities to block Qatari newspaper websites followed the fabricated statements published on the website of Qatar News Agency and attributed to the Emir of the State of Qatar, Sheikh Tamim bin Hamad Al-Thani, as an unjustified step and a flagrant violation of freedom of opinion and expression.

Human Rights Watch in its report published on July 13, 2017 also confirmed that Bahrain had threatened to punish their citizens if they show «sympathy» with Qatar on the Internet.

On June 9, 2017, the Tourism and Exhibition Authority of the Kingdom of Bahrain issued a formal circular warning all the tourist facilities and hotels in the Kingdom about the operation of Al Jazeera Media Channel. The Authority stressed the necessity of deleting all the channels related to Al Jazeera Network to avoid penalties for imprisonment and fines, as well as the cancellation of tourist licenses.

The Bahraini authorities have explicitly demanded the closure of Al-Jazeera, and this demand contradicts Article 1 and Article 3 of the Journalism Code of Ethics of the Bahrain Journalists Association, as well the Code of Principles of the International Federation of journalists in its first clause . (Confiscation, idling or revocation of the license shall be allowed only by a ruling of the court. Free and responsible journalism is the very essence of sound and democratic society and an integral and indivisible part of basic human rights and freedoms. It targets illumination of the public opinion, realization of the interests of the nation, defense of the nation's unity, security and stability and avoidance of secular division or prejudice to the established Islamic Shariah dictates. The right to get the correct and true information, including statements, images and documents through legitimate means in order to unearth the truth without infringement or violation of intellectual property rights. Respect for truth and for the right of the public to truth is the first duty of the journalist).

There is also a stark violation of the text of article III of the Charter of the Bahraini Journalists' Association, which provides for «the right to obtain information from the data, photographs and documents by legitimate means to reach the truth and without infringement of intellectual property».

Second Case: Warning of the General Commission for Tourism and National Heritage in Saudi Arabia and kingdom of Bahrain against watching Al-Jazeera channel in hotels and resorts

In an official circular issued on the 9th of June 2017, the General Commission for Tourism and National Heritage in Saudi Arabia warned against broadcasting Al-Jazeera channels in hotels and resorts. It further banned watching Al-Jazeera network channels in tourist facilities. The Commission also accentuated on deleting all channels of Al-Jazeera network from the list of satellite broadcasts in rooms and all tourist accommodation facilities, in order to avoid a fine that may amount to 100 thousand Saudi riyals (about 27 thousand dollars), in addition to the cancellation of the license. This has been stated in an official circular by the Tourism Authority to owners and operators of tourist facilities. This circular emphasized as well «the obligation to comply with choosing the appropriate channels along with the official Saudi channels". Furthermore, the Commission demanded «not to place receivers inside rooms and residential units and that receivers should be centralized and supervised by the management of the facility».

As a result of this ban, it is clear that the circulars - issued by Saudi Arabia are classified as practices that restrict the freedom of opinion and expression and are contrary to the general principles of freedoms set forth in various international covenants, which constitutes a blatant violation of the citizens' right to know and access information.

It is also worth mentioning that the issuance of a circular prohibiting watching Al-Jazeera channel and setting all receivers for the deletion of satellite channels of Al-Jazeera network is groundless and contrary to the provisions of the international covenants on rights to freedom of expression and information, which is considered as a restriction on the freedoms.

The circulars issued by the General Commission for Tourism does not provide any legal basis to support its request for the ban. On the other hand, they have not reinforced their circulars with judicial requests or court orders which essentially examine the fulfilment of the said request.

In accordance with Article 19 of the International Covenant on Civil and Political Rights, the above-mentioned circulars are contrary to the most fundamental principles of individual freedoms and the right to access information.

The Bahrain Tourism and Exhibitions Authority

The circular stated that: «The Bahrain Tourism and Exhibitions Authority mandates that all television receivers available in tourism facilities must be reprogrammed to remove all channels related to Al Jazeera Network. Facilities include hotels, restaurants or other tourist establishments. The violation of this circular is punishable by law either by imprisonment, fine or both. Facilities who fail to comply with the circular will face closure and their tourism license will be revoked immediately.

According to article 19 of the International Covenant on Civil and Political Rights, as well as Article 3 of the Journalism Code of Ethics of the Bahrain Journalists Association, the aforementioned prohibitions are contrary to the most basic principles of individual freedoms, and access to information. The decision to block Qatari websites contradicts Article 2 of the Journalism Code of Ethics of the Bahrain Journalists Association. (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."The right to get the correct and true information, including statements, images and documents through legitimate means in order to unearth the truth without infringement or violation of intellectual property rights".

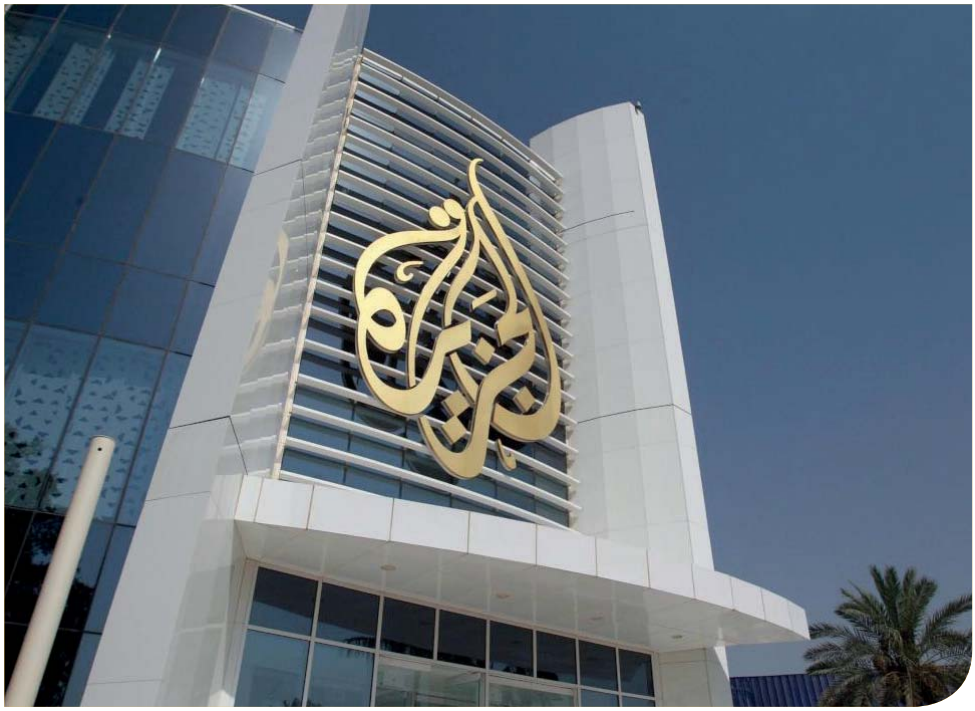
Third concern: blocking Qatari newspaper websites by the countries of the blockade:

The UAE, KSA and Bahrain, announced on 24 May 2017, blocking the site of «Al-Jazeera» and a number of Qatari newspapers. It was confirmed by the «Al-Jazeera» through its official website that those states banned entry to the website of Al-Jazeera TV.

Saudi, UAE and Bahrain authorities' decision to block Qatari web sites and newspapers following the fabricated statements attributed to the Emir of the State of Qatar, which was published on the website of the Qatar News Agency (QNA), has raised wide reactions among analysts and media workers of Arab and Gulf states. These considered this unjustified step as a flagrant violation of freedom of opinion and expression deliberately withholding truth the expression of others of their opinions.

Fourth concern: Demand of the countries of the blockade to close of Al-Jazeera

In the framework of clear violation of freedom of speech and the confiscation of opinions, the countries of the Blockade has requested from Qatar the closure of Aljazeera Channel. The requirement of the closure of Al-Jazeera satellite Channel and other media constitutes a violation of the sovereignty of the State. It further constitutes a serious violation of the fundamental right to freedom of expression and freedom of opinion provided for in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which is a total disregard of article 19 of the Universal Declaration of Human Rights.



This requirement has been met with strong denunciation by international bodies and organizations. The countries of the Blockade 's demand to close Al-Jazeera Channel had wide repercussions and was received with criticism from human rights organizations and the competent United Nations offices. Mr. David Kay, the United Nations special rapporteur on freedom of opinion and expression, has described demands for the closure of Al-Jazeera channel as «a strong blow to the pluralism of the media and that this request represents a serious threat to the freedom of the media.» The Special Rapporteur on freedom of opinion and expression mentioned that reports that a number of governments submitted demands to Qatar to close Al-Jazeera media network in exchange for the lifting of the sanctions would be a major blow against the pluralism of the media in a region that suffers severe constraints in the preparation of reports and media of all kinds. Mr. Kay added «This demand constitutes a serious threat to the freedom of media if the States, under the pretext of a diplomatic crisis, take measures to compel Qatar to close Al-Jazeera.»

Mr. Kay said «Every person is now seriously threatened in relation to his right to have access to information when the guarantee of safety and freedom of the media has been compromised.» He added that «I call upon the international community to urge those Governments not to insist on their demand against Qatar and resist taking steps to control the media in their territory and in the region and encourage support for independent media in the Middle East» [9].

In the same context, the OHCHR has expressed its deep concern about the demand made to close Al Jazeera Network, and other media. The Organization emphasized that the demand is an unacceptable attack on the right to freedom of expression and opinion, and if such a demand were put into effect, it would open the way for individual States or groups of powerful states to seriously undermine the right to freedom of opinion and expression within its borders and in other countries [10].

Furthermore, Human Rights Watch confirmed that Governments have no right to close media outlets and criminalization of expression in order to extinguish the criticisms that it considers troubling» and called to protect the media from political interference. The Organization affirmed that, «The offending Governments have to show respect to and understanding of the role of the media, even if it disagrees with them».

The International Federation of Journalists (IFJ) stated that "journalist is being used as a pawn in a dangerous political game in the crisis in Qatar, where hundreds of media workers face expulsion, and television channels, newspapers and websites are at risk of closure".

The National Union of Journalists has called for an end to the attack on Al Jazeera, hundreds of jobs are at risk. Furthermore, the National Union of Journalists and the International Federation of Journalists called on the countries of the blockade to withdraw its demand to the Qatari authorities to close the channel.

Representatives of international, regional and national organizations for journalists and human rights and freedom of expression who attended the international conference on "Freedom of Expression: Facing Up to the Threat", in its final communique condemned unequivocally the threats by the governments of the Kingdom of Saudi Arabia, the United Arab Emirates, the Arab Republic of Egypt, the Kingdom of Bahrain and the Republic of Yemen demanding the closing down of Al Jazeera and other media outlets and expressed our total solidarity with journalists and other media and ancillary workers at Al Jazeera and other targeted media.

It is worth mentioning that this demand is contrary to international norms and charters, yet the KSA and other States of the Blockade still insist on demanding it to date.

(9) http://ohchr.org/ar/NewsEvents/Pages/DisplayNews.aspx?NewsID=21808&LangID=A
(10) http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21818&LangID=E

Fifth: Banning «beIN Sports» channels and imposed a penalty of imprisonment for anyone wearing Barcelona shirt

The fifth case is the banning of beIN Sports Channels and the criminalization of wearing Barcelona football shirt having Qatar Airways' logo is one of the strangest and most controversial matters in the current crisis. The current Gulf crisis has cast a political shadow over sport after the three Blockading countries (KSA, UAE and Bahrain) prohibited wearing Barcelona`s shirt on its territory, due to the contract that was concluded between the aforementioned club and Qatar Airways.

Sixth: withdraw the license of «Al Jazeera» and to close its offices constitutes an arbitrary political decision, rather than proper judiciary procedures.

Since the beginning of the crisis, on 5 June 2017, the Blockading countries hastened to close the offices of «Al Jazeera» Channel as a part of its steps to sever diplomatic relations with Qatar. These resolutions indicate that the Blockading countries do not discriminate between the political issues and the press work guaranteed by the basic principles of human rights and the rules that guarantee freedom of information dissemination and reception within the framework of the law. The decision to withdraw the license of «Al Jazeera» and to close its offices constitutes an arbitrary violation of an arbitrary political decision, while the judiciary is the competent authority in such cases.

In addition, the NHRC has documented hundreds of hate and racism speeches through the media and social networking sites, some of which amounted to incitement to terrorist acts in the State of Qatar, such as bombing the media facilities and using songs, serials and documentaries in this incitement. The committee also noted a speech of racial discrimination aimed at disrespecting and insulting the Qatari citizen, insulting the Qatari people and circumventing the symbols of the State of Qatar.

These speeches escalated violently because of the involvement of some officials from the Blockading countries and some celebrities of the media and famous social media persons are known openly.

G: Incitement of violence and hatred

In a report prepared by the Doha Center for Media Freedom entitled «Gulf Crisis Media - Hate Speech», the report highlighted the issues that were repeated in the media during the first months of the crisis in six key issues:

1. Indictment of treason and treachery: Where most of the media of the Blockading countries, whether print, electronic or audiovisual, have devoted a considerable space to place the indictment of treason and treachery to Qatar since the beginning of the crisis.

2. Instigating the overthrow of the regime in Qatar: This incitement against the regime in Qatar is a violation of the ethics of press work and international conventions, especially Article 20 of the International Covenant on Civil and Political Rights, and it is contrary to Article 10 of the Charter of Honor of Arab Media and Article 8 of the same Charter.

3. The demonization of the State of Qatar locally and regionally: The accusations which the media of the blockading countries have not found any evidence for it and which seek to demonize Qatar and portray it as a rogue and aggressive state, are in conformity with article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the provisions of Article 10 of the Charter of Honor of Arab Media.

4. Incitement to Gulf fabric differentiation: The ongoing Gulf crisis has affected the demographic fabric of this region, in which the social relations between the different tribes living in the Arabian Peninsula are intertwined and overlap in a striking way that makes it difficult to separate or discriminate.

The crisis has shown the desire of some Gulf governments to disrupt this fabric, and to create a division among the members of one tribe, which extends in more than one country, through the use of populist rhetoric and hate speech, and to break up a centuries-long relations.

Several websites, either by writing or analyzing, dealt with the campaign launched by the Gulf crisis countries on Qatar, which concluded that there is a rising trend towards the demonization of the State of Qatar, and abuse in various forms and ways.

5. The indictment of terrorism: The decision to criminalize sympathy with Qatar was included in other measures taken by Gulf states, preceded by indictment of terrorism, along with making a terrorism list that includes Qatari personalities and charitable and media organizations.

There is no doubt that such a media discourse would inculcate the hate speech among broad segments of the public, away from the distances that would end the crisis and achieve reconciliation.

Since the first day of the crisis, the media machine has worked with the blockading countries in order to paint a distorted image of the State of Qatar and its role in the international arena. The media of the countries of the Gulf crisis have also united their discourse on Qatar's accusation of harboring terrorist individuals and entities. This was rejected by Doha and rejected by international and international organizations With those charities classified by the Gulf states as «terrorist».

A number of media channels in the blockading countries have broadcasted programs and coverings in news bulletins exposed to well-known figures in the Arab and Islamic arena, exceeding the limits of linguistic and moral decency, and labeling them with descriptions that the law criminalizes.

6. Using religious discourse to spread hate speech.

The religious discourse of the Blockading countries was used during the Gulf crisis as a platform to justify some of the political decisions of the blockading countries. A number of fatwas were issued by major bodies and scholars in order to justify the blockade of Qatar and to reverse the facts and repercussions of the crisis.

The media, as well as the social media, have been instrumental in promoting these fatwas and expanding their circulation in order to give the decisions of the political actor acceptable to the public opinion.

Moreover, the press did not stand neutral in this crisis through the transfer of different views, but it used all its efforts to promote these fatwas in a manner contrary to the values of the profession of journalism.

It is no secret that all this media and technical pumping to incite hatred and violence will be reflected in the various segments of the society of intellectuals and illiterate extremist reactions may reach the commission of criminal acts against the Qataris.

Qatari citizens have already been exposed to the destruction of their cars, and they were treated harshly and humiliatingly by some of the authorities of the Blockading countries. It does not suffice there, but developed into hatred, hostility and discrimination against the Qatari citizens from some citizens of the blockading countries. We fear that such reactions would threaten peace, security and stability in the entire region.

The report of the technical mission of the United Nations High Commissioner for Human Rights dated 08 January 2018 confirmed the numerous violations of the right to freedom of opinion and expression as well as the various forms of media defamation and hate campaigns against the State of Qatar and its leaders and people. Further, it calls for an overthrow of a regime and the removal of symbols of leadership in Qatar, in addition to incitement to attack or kill the Qataris.

The report confirmed that media from the blockading countries launched a campaign of hatred and widespread distortion, including through social networking sites and the decision of the blockading countries' governments to impose sanctions on anyone who sympathizes with Qatar.

The report of the technical mission of the United Nations High Commissioner for Human Rights indicated that between June and October 2017, media workers and the NHRC in Qatar documented more than 1,120 articles and nearly 600 caricature of the State of Qatar in KSA, the UAE and Bahrain. The media included explicit accusations of Qatar's involvement in supporting terrorism, calls for an overthrow of a regime and the removal of leading figures in Qatar, as well as incitement to attack or kill Qataris.

For example, the Saudi singer followed by a million and a half followers on Twitter has made a post that includes fatwa to kill the Emir of Qatar, while another Saudi tweet warned of the possibility of sending a million Yemeni suicide bombers to Qatar.

Entertainment programmes have also been used to air anti- Qatar messages. For example, Rotana media company produced songs by popular artists stigmatizing Qatar ("Qulo la Qatar"-"Tell Qatar", and "Sanoalem Qatar"-"We will teach Qatar") and well-known television series on MBC and Rotana channels ("Selfie" and "Garabeb Sood") conveyed negative messages on Qatar, which have been regularly and widely broadcast.

The report of the technical mission of the United Nations High Commissioner for Human Rights (OHCHR) also noted that the KSA, UAE and Bahraini governments have sought to stop broadcasting all Qatari media or the other media related to Qatar. Since satellite broadcasting cannot be controlled, these countries have prevented businesses entities (such as hotels) from displaying the Qatari media (especially the Al Jazeera, beIN-Sports and other channels).

The report also points out that all these campaigns cast a shadow to the extent of incitement and contributed to creating a general feeling of concern among people in KSA, UAE and Bahrain of those who have family, fraternal or commercial ties with Qatari citizens. Most of the journalists interviewed with the mission noted that their friends and associates in KSA, UAE and Bahrain were deeply fearful. Many have also noted that they cannot communicate with their families and friends in the blockading countries except through numbers other than the numbers of the Blockading countries as they fear to be tracked.

The report issued by the US Department of State on Human Rights in 2017 indicated that the governments of the blockading countries have blocked Qatari websites such as Al-Jazeera because of a dispute between them and Qatar, and that Al-Jazeera remained closed.

In addition to what the NHRC has documented from a full file containing all aspects and manifestations of violations of the right to freedom of opinion and expression as well as the discourse of hatred, discrimination and racism, the Doha Center for Media Freedom documented several reports of violations by the Blockading countries through incitement, racism, incitement and hate speech.

> "Entertainment programmes have also been used to air anti-Qatar messages. For example, Rotana media company produced songs by popular artists stigmatizing Qatar ("Qulo la Qatar"-"Tell Qatar", and "Sanoalem Qatar"-"We will teach Qatar") and well-known television series on MBC and Rotana channels ("Selfie" and "Garabeb Sood") conveyed negative messages on Qatar, which have been regularly and widely broadcast."
>
> Report of the substantive mission of the United Nations High Commissioner for Human Rights

H: Violation of the right to movement and residence

Table (7) shows the number of violations of the right to movement and thus residence since the beginning of the blockade, corresponding to June 5, 2017 and until May 23, 2018. There were 1297 violations (770 violations from KSA, 348 violations from UAE, 129 violations from Kingdom of Bahrain, 41 violations from the Arab Republic of Egypt and 9 different violations from other states).

Statistics Date	Violation	State					Total
						Other	
May 23, 2018	The right of movement and thus residence	770	348	129	41	9	1297

Table (7) Violation of the right to movement and residence

All citizens and residents of the State of Qatar and the Blockading countries have been affected by the violation of this right since the beginning of the blockade crisis on the State of Qatar, as the blockading countries have adopted arbitrary measures and decisions in contravention of all international and regional instruments, the Arab Charter on Human Rights and the Declaration on the Human Rights of the Gulf Cooperation Council concerning the right to freedom of movement and residence; these measures were represented in the fact that the authorities of the blockading countries prevented Qatari people from entering their territories and deporting those who are there. Moreover, residents of Qatar were forced to leave Qatar within 14 days or they were going to be subjected to arbitrary punishment. All those forced to return to their homes were affected in various ways.

The blockading countries also closed all the airlines offices of the State of Qatar, as soon as the blockade was announced, and without warning to those working in these offices, without enabling any of them to take private property in their offices.

Salwa land port located on the Saudi-Qatari border was closed, and sea and air ports were closed to Qatari shipping and goods from Qatar. Although the Saudi authorities have opened Salwa border crossing in part and individually at intervals, they have returned and closed it completely even in the face of humanitarian cases, including patients, mixed families, persons with disabilities and the elderly. The crossing remains closed until the date of this report.

The Bahraini Minister of the Interior issued a ministerial decree No. (88) for the year 2017 in which Article 1 states that: a visa to the Kingdom of Bahrain shall be imposed on citizens of Qatar and its residents.

And in article 2 that: The Undersecretary of the Ministry of the Interior for Nationality, Passports and Residency Affairs shall implement this decision and shall come into force on 10 November 2017.

Amnesty International's report on its second visit to the State of Qatar during the period from 28 November 2017 confirmed that the sudden restrictions imposed on the State of Qatar since 5 June 2017 have affected thousands of families and individuals (especially vulnerable groups) in the region who constitute a cohesive social fabric across national borders, dividing families, halting student education, threatening jobs and raising basic food prices in Qatar, making the region's population face an uncertain future. Amnesty International urged the Kingdom of Bahrain, Saudi Arabia and the United Arab Emirates to lift all arbitrary travel restrictions that impede the free movement of Gulf residents and residents [11].

(11) https://www.amnesty.org/ar/documents/document/?indexNumber=mde22%2f7604%2f2017&language=en

The report of the Technical Mission of the United Nations High Commissioner for Human Rights in the State of Qatar (17-24 November 2017) which was issued on 08/01/2018 confirmed that the closure of borders (air, sea and land) causes clear implications and effects on the freedom of movement to and from the State of Qatar. On June 5, the authorities of the blockading countries issued instructions to their ports and shipping authorities to refrain from receiving Qatari ships or any other vessels owned by any Qatari companies or individuals. The Saudi General Authority for Civil Aviation also banned the landing of any Qatari aircraft at airports in Saudi Arabia.

The report added that restrictions on the movement of passengers and goods had consequences that directly affected various human rights, but the effects of those consequences have not all come at the same pace, some of which have had limited impact, while others have had a continuing impact to date. Such measures and restrictions initially constituted a direct violation of the right to freedom of movement, especially since they were not officially announced and there were no legal motives behind them.

The absence of freedom of movement between Qatar and other countries is a punishment for Qatari citizens and residents, as well as for residents of the blockading countries. The effects of the restrictions on the right to freedom of movement have varied effects between what is temporary and what is permanent. The temporary effect is the violation of the freedom to practice religious rituals as they were imposed during Ramadan and the Hajj season, as well as family separation, which we should pay due attention to because of the ties between the population in the countries concerned, and the effect on students who had to cut off their studies for inability to take the exams that were scheduled for them. Persistent effects and consequences have been the denial of the right to work and the right of access to property and personal assets of those residents or employees in Qatar or those with commercial interests in Qatar.

The suspension of passenger and cargo traffic between Qatar and the three Gulf States in the Quartet Group has had a major impact on the Qatari economy, which hindered trade movements and financial flows as well as significantly increased the costs of transport and commodity as the government and individuals have had to resort to alternative options.


Nawaf Talal al-Rasheed

The report of the Technical Mission emphasizes that such measures are targeting individuals depending on their Qatar nationality, connection or relationship with Qatar, shall be considered as «unequal and discriminatory measures».

The reports of Amnesty International and Human Rights Watch "previously mentioned", have also highlighted the violations, which was committed against this right by the blockading countries. In addition to the negative effects on families, the right to education, the right to health and the right to freedom of worship and the practice of religious rites, the negative impact of the blockade on foreign migrant workers - especially from South Asia.

And in continuation of the series of violations against human rights of the blockading countries towards the State of Qatar, which the authorities of the blockading countries have persisted on harming and harassing them, amounting to cases of arbitrary detention in violation of international conventions and instruments and norms of human rights.

Saudi Arabia has arrested Mr. Muhsen Saleh Sa'adoun Al-Karbi, a Qatari citizen, on his way to visit his family and relatives in the Republic of Yemen. He was arrested in the Republic of Yemen by Allied Coalition Forces that was led by Saudi Arabia in " Shahan Border Port", which is located between the Republic of Yemen and Sultanate of Oman, on 2018, without any known legal charges. Moreover, they prevented him from contacting his family or his lawyer since 21 April and until the publishing of this report. In addition to the inability of his family and his relatives to determine the place of his imprisonment, or what he is accused of. He remains at risk of torture and other ill-treatment in violation of international human rights conventions.

The NHRC also received a complaint from the family of Qatar national "Nawaf Talal Al-Rasheed" about the arbitrary arrest of the Qatari citizen by the Saudi authorities, which is considered an enforced disappearance under article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, it is also a crime against humanity under article 7 (i) of the Rome Statute of the International Criminal Court adopted in Rome on 17 July 1998, which is also a flagrant violation of human rights and international law, without any formal charges or legal justification for his arrest. His family also expressed to the NHRC the deep concern and shock it feels over the lack of knowledge of his place of detention, his enforced disappearance and his denial of contact with him or his lawyer, according to the complaint. Furthermore, the OHCHR called on the Saudi Authorities in May 29, 2018 to provide information about Nawaf Talal Al Rasheed. The Working Group on Enforced or Involuntary Disappearance called for clarifying the fate and whereabouts of him.


Mohsen Saleh Saadoun al-Karbi

The National Human Rights Commission has documented complaints of violations of the right to freedom of movement and residence by the countries of the blockade, including:

Mr. (H. G) Saudi national:
Has a license from the KSA to import 16 horses exported from Doha from the his father, who lives in the State of Qatar, died. When he asked the Saudi authorities at the Saudi land port "Salwa" to go to the State of Qatar to receive his father's body, his request was denied and prevented from leaving, the matter that forced him to communicate with the NHRC.

Mr. (H. Y) Qatari national:
He booked three tickets for his family from Doha to America. Their trip was on Emirates Airlines, where they traveled through Dubai. However, when the Gulf crisis broke out, he was unable to return on the same flight. Upon returning, he was notified by Emirates Airlines after he had contacted them, to return through the State of Oman noting that he have three month old child and a sick wife, so he was forced to buy new tickets to return him and his family and suffered greater financial losses Three months old and his wife sick, So he had to buy new tickets to return with his family, resulting in greater financial losses.

Mrs. (H. S) Bahraini national:
Resident of the State of Qatar and married to a Bahraini citizen residing and working in the State of Qatar and has a family residing in the Kingdom of Bahrain; she demands the right to travel and stay between the State of Qatar and the Kingdom of Bahrain. But after severing relations between the two countries, she cannot go to Bahrain to meet with her family and requests the Bahraini authorities to apply for a permit Although she is a Bahraini citizen and is resident in the State of Qatar.

I: Violation of the right to health

Table (8) shows the number of violations of the right to health since the beginning of the blockade of 5 June 2017 until 23 May 2018. There were 37 violations (19 violations by the KSA, 4 by the UAE, 14 by Bahrain).

In its report issued in June 19, 2017, Amnesty International confirmed that those receiving medical treatment were given the option of continuing to treat them or to comply with the extensive and harsh measures declared by the Blockading countries [12].

In addition, the impact on the right to health has had more than one effect in terms of affecting the access of the State of Qatar to medicines (including life-saving items) and medical supplies as a result of the cessation of trade. Qatar relies on 50% to 60% of the Pharmaceutical stocks are from 20 GCC-based suppliers; also the repercussions and consequences of the blockade were also reflected in the delay in the opening of new hospitals in Qatar, as confirmed by the report of the technical mission of the United Nations High Commissioner for Human Rights in the State of Qatar (17-24 November 2017) on the impact of the current Gulf crisis on human rights issued on 08/01/2018.

Human Rights Watch also stated in its report issued on 13 July 2017 that the blockade imposed on the State of Qatar caused serious human rights violations, including the suspension of medical care. The organization noted that its researchers documented the cases of Qatari, Gulf and expatriate citizens living in Qatar, whose rights were violated due to restrictive policies imposed on the State of Qatar since 5 June 2017 [13].

Statistics Date	Violation	State				Total
						
May 23, 2018	The right to health	14	4	19	---	37

Table (8) Violation of the right to health

(12) https://www.amnesty.org/ar/latest/news/2017/06/gulf-qatar-dispute-human-dignity-trampled-and-families-facing-uncertainty-as-sinister-deadline-passes/
(13) https://www.hrw.org/ar/news/2017/07/13/306595

The NHRC has documented complaints of violations of the right to health by the countries of the blockade, including:

The disabled child (G. S) Qatari national:
Was subjected to the violation of his right to complete treatment at Dallah Hospital in Riyadh, Saudi Arabia, which began since 2016 through the implantation of metal plate to correct his spine, and had to enter the Kingdom of Saudi Arabia with the beginning of the Gulf crisis to the hospital to prolong these plates, but could not entered Saudi Arabia because of the decision to prevent the entry of Qataris. The delay in the operation led to the disintegration of the metal platelets and the re-operation of the operation in another hospital in the Republic of Turkey. Resulting in health complications and severe moral and material damage. The victim sent a communication to the Committee on the Rights of Persons with Disabilities in full details.

Mrs. (N. A) UAE national:
She is married to Mr. (A. A) Qatari national, resident in the State of Qatar, suffers from health problems and wishes to travel abroad for medical treatment. However, her UAE travel document expired on 06/01/2018 and cannot be renewed due to arbitrary procedures taken by the UAE authorities, the matter that forced her to take treatment at Hamad General Hospital in Qatar.

Mr. (K. K) Bahraini national:
In his visit to the NHRC, saying: «I suffer from chronic diabetes, which led to amputation of my left foot at Hamad General Hospital in Qatar, where I am currently receiving treatment in the same hospital regularly, and after imposing the blockade on the State of Qatar, the authorities in the Kingdom of Bahrain have asked me to leave the State of Qatar and return to the Kingdom of Bahrain. I am a resident of Doha and I am married to a Qatari woman. I have children born in the State of Qatar and are educated there, which makes it difficult for me to return to my country and leave my treatment and education of my children.

J: Violation of the right to litigation

Due to the consequences of the blockade on the State of Qatar, citizens and residents of the State of Qatar have not been able to resort to the courts of the Blockading countries and exercise the right to litigation and their right to defense, through the following:

1. Not being allowed to appear before the courts as a result of preventing them from entering blockading countries in violation of their right to litigation and the associated rights such as the right to defense.
2. Hindering the work of their attorneys and creating difficulties for them to initiate proceedings on their behalf.
3. The law-firms in the blockade countries refused to delegate Qatari and resident litigants to the courts and failed to follow up the cases already entrusted to them.
4. Non-implementation of court orders issued in favor of Qataris.
5. Cancellation of judgments issued in favor of Qataris and residents as a result of their inability to initiate their cases and exercise their right to litigation and defense.

The NHRC documented complaints of violation of the right to litigation by the countries of the blockade, including:

Complaint submitted by: Mr. (G. A) Qatari National:

The complainant submitted a complaint to the committee about the damage he suffered due to the Gulf crisis and the blockade on the State of Qatar, as he had a lawsuit in the Kingdom of Saudi Arabia about renting a truck to a Saudi national, and was unable to obtain any financial benefits for the leases entered into with the lessee from the date of conclusion of the contract and until now could not because of the events to follow up his case, which number (364031068) did not find any solutions; the trucks were stolen and hidden by the lessee and could not return the trucks again. The value of each truck is estimated at QR100,000 to be the total loss and damage caused by more than QR2,000,000.

Complaint submitted by: Mr. (A. A) Qatari National:
He bought a house in the Emirate of Dubai in the United Arab Emirates, a villa of AED 1,700,000 and a payment of AED 1,200,000 was made by sending payments; to date and after the blockade, they are communicating with him in order to complete the financial payments and replace the property with another property owned by the company in the State of Qatar with a commitment to pay the difference between the value of the two properties QR 1,000,000 million, causing him significant financial losses and does not wish to do so.

Complaint submitted by: Mr. (A. M) Qatari National:
Where he claims that he concluded a contract for the purchase of 2 apartments for him and his wife and is committed to pay the monthly installments to the owner; he tried to find a solution to be able to exercise his right to his property, but he finds it very difficult in light of the lack of tolerance of the Bahraini authorities, which expose him to falling in fines imposed on him due to delay in payment Premiums.

Fifth: Legal description

The governments of Saudi Arabia, the United Arab Emirates and the Kingdom of Bahrain have violated several resolutions they are a party to and rules and laws of international human rights law. They are in clear violation of many articles in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities The International Convention for the Protection of All Persons from Enforced disappearance; as well as articles in the Arab Charter for Human Rights, the Declaration on the Human Rights of the Gulf Cooperation Council and the Economic Agreement between the Gulf Cooperation Council States. Consequently, these countries have the responsibility to protect and preserve the rights and interests of individuals residing in their territories.

The countries of the blockade also blatantly violated the Chicago Convention and have banned the movement of Qatari civil aviation over its territory without any military or public security reasons.

Articles violated by in the 3 states of blockade:

Firstly: Universal Declaration of Human Rights

Article 2

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind" it means that the Universal Declaration of Human Rights has guaranteed all rights stated therein to everyone, especially right to litigation.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

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

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

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 23

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

Article 25

1. 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.

2. 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

1. 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.
2. 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.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Secondly: International Covenant on Civil and Political Rights

Article 2

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.

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.

Thirdly: International Covenant on Economic, Social and Cultural Rights

Article 6

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.

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 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

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.

Fourthly: International Convention on the Elimination of All Forms of Racial Discrimination

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 en sure 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 barriers 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 en tail as a con sequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 4

The 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 color 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 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.

Fifthly: International Convention for the Protection of All Persons from Enforced Disappearance

Article 2

For the purposes of this Convention, «enforced disappearance» is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

Sixth: Arab Charter on Human rights

Article 3

1. Each State Party to the present Charter undertakes to ensure to all individuals within its territory and subject to its jurisdiction the right to enjoy all the rights and freedoms recognized herein, without any distinction on grounds of race, color, sex, language, religion, opinion, thought, national or social origin, property, birth or physical or mental disability

Article 8

1. No one shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment or punishment.

Article 26

1. Every person lawfully within the territory of a State Party shall, within that territory, have the right to liberty of movement and freedom to choose his residence in accordance with applicable regulations.

Article 32

1. The present Charter shall ensure the right to information, freedom of opinion and freedom of expression, freedom to seek, receive and impart information by all means, regardless of frontiers.

2. Such rights and freedoms are exercised in the framework of society's fundamental principles and shall only be subjected to restrictions necessary for the respect of the rights or reputation of others and for the protection of national security or of public order, health or morals.

Article 33

1. The family is the natural and fundamental unit of society, founded by the marriage of a man and a woman. The right of men and women of marriageable age to marry and to found a family shall be recognized. No marriage shall be entered without the full consent of the intending spouses. The law in force shall regulate the rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

2. The State and society provide for the protection of the family and its members, for the strengthening of its bonds. All forms of violence and abusive treatment in the relations between family members, especially towards women and children, shall be prohibited. The State and society undertake to provide outstanding care and special protection for mothers, children and the elderly. Young persons have the right to be ensured maximum opportunities for physical and mental development.

3. The State Parties shall take all appropriate legislative, administrative and judicial provisions to ensure the protection, survival and well-being of children in an atmosphere of freedom and dignity. The best interest of the child, in all circumstances, serves as the basis for all measures taken, whether the child is a juvenile delinquent or a child "at risk".

Seventh: GCC Human Rights Declaration

Article 6

The Freedom of belief and the practice of religious rites is a right of every person according to the regulation (law) without disruption of the public order and public morals.

Article 9

Everyone has the right to freedom of opinion and expression, and exercising such freedom is guaranteed insofar as it accords with Islamic Sharia law, public order and the regulations (laws) regulating this area.

Article 14

The family is the natural and fundamental group unit of society, originally composed of a man and a woman, governed by religion, morals and patriotism; its entity and bonds are maintained and reinforced by religion. Motherhood, childhood and members of the family are protected by religion as well as the State and society against all forms of abuse and domestic violence.

Article 24

Every person, who has the capacity of doing so, has the right to work and has the right to free choice of employment according to the requirements of dignity and public interest, while just and favorable employment conditions, as well as employees' and employers' rights, are ensured.

Article 27

Private property is inviolable and no one shall be prevented from the disposition of his property except by the regulation (law), and it may not be expropriated unless for public interest with fair compensation.

The countries of the blockade have violated various International conventions, including:

- International Covenant on Civil and Political Rights;
- International Covenant on economic and social and cultural Rights;
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- The international Convention on the Rights of the Child;
- The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)

Sixth: Conclusions

NHRC confirms its previous conclusions, as well as the conclusions stated in international reports and the United Nations Technical Mission on the consequences of the blockade in Qatar. Further NHRC stresses on the following:

★ Unilateral arbitrary measures and procedures taken by the blockading countries have resulted in a number of violations of civil, political, economic, social and cultural rights.

★ The measures taken by states of blockade to punish citizens and residents of Qatar and citizens of the Gulf Cooperation Council countries were used as a tool for political pressure and a mean of managing political disputes. The said measures escalated to collective punishments affecting individuals and property.

★ The discriminatory measures taken by the countries of the blockade amount to racial discrimination, and incitement and hatred attitude towards Qatari people aims to offend and contempt the Qatari citizen, as well as insulting symbols of the State of Qatar.

★ The purpose of the measures taken by the countries of the blockade in the economic, commercial and investment fields is to target and strike the infrastructure of the national economy of the State of Qatar, in addition to damaging the economic rights of individuals and communities, is a dangerous precedent which may amount to the crime of aggression.

★ The countries of the blockade did not take into account the minimum conditions and terms of trade, economic and investment transactions, which confirms the absence of a safe investment environment in those states.

★ The countries of the blockade did not take into account the rights of the most vulnerable groups (women, children, persons with disabilities and the elderly). Further, these arbitrary measures have resulted in deprivation of education, denial of employment and violation of the right to health, especially for those groups.

★ Prolongation of the crisis and tragedy of the victims while neither redressing the victims nor restoration their rights, threatens international security and peace and undermines mediation efforts.

★ The ongoing tragedy of separated families may lead to destroying social fabric and exacerbating the suffering of women and children in a flagrant violation of the international convention of the rights of the child and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

★ The victims have not been granted access to justice in the countries of the blockade. Moreover, they have been deprived their rights to exercise litigation and the associated rights, such as the right to defense, which constitute an impediment to redress, compensation and restitution of victims.

★ There is no response by the countries of the blockade to remove the violations and lift the harm from those affected, and the measures taken by them were merely a maneuver to improve their image or to delay the current situation. The mysterious mechanisms that lack of credibility in which the countries of the Blockade claim that they have developed in order to address the situation of the victims, failed to remedy the victims' jurist and humanitarian situation and failed to communicate with NHRC the Committee's relentless efforts to do so.

★ Since the commencement of the blockade and up till now, NHRC did not receive any reply to any of its correspondences sent to national institutions and some relevant civil society organizations in the countries of the blockade, and the said organizations did not provide any cooperation whatsoever.

★ Qatari authorities have not taken reciprocal arbitrary measures to those taken by the countries of the blockade. The Qatari government has also strived to contain the crisis and its negative impact on citizens and residents, including residents of the countries of the Blockade.

★ There has been a response by international mechanisms for the protection of human rights, led by the OHCHR and the United Nations Office of Special Procedures, as well as the Subcommittee for Human Rights in the European Parliament. There has also been remarkable engagement by international human rights organizations such as Amnesty International, Human Rights Watch and others, which conducted field visits and prepared reports. These reports clearly reflect the magnitude of human suffering resulting from the blockade.

★ The report of the OHCHR Technical Mission revealed the extent of human rights violations caused by the blockade which not only affected the Qataris, but extended to residents and migrant workers in addition to citizens of the Gulf Cooperation Council countries.

★ Despite the official correspondences by NHRC on this regard, none of the regional mechanisms for the protection of human rights in the League of Arab States, the Organization of Islamic Cooperation, the Cooperation Council for the Arab States of the Gulf or the Arab Parliament have played an effective role in lifting the violations and remedy of victims. Therefore, these mechanisms are still unable to do their part.

★ The Saudi, UAE and Bahraini authorities have not allowed international organizations to investigate the facts of the negative repercussions of the blockade on human rights, including the rights of their citizens.

★ No action has been taken by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights despite the fact that the NHRC has repeatedly called upon him to intervene quickly to counter the negative effects of arbitrary measures taken by the countries of the blockade and to mitigate their consequences on human rights, in contrast to the many UN Special Rapporteurs who issued urgent appeals and official questions to the countries of the blockade on the size and type of violations and how to compensate the victims.

★ Despite the statements of the NHRC, the assertions of international reports and organizations, and the urgent appeal of the Special Rapporteur on freedom of religion or belief to Saudi Arabia, the Saudi authorities continue to politicize religious feelings, put obstacles and hindrances in the way of Qatari people and citizens, and prevent them from exercising their right to worship. The NHRC will work to prosecute KSA locally, regionally and internationally as a result of the psychological damage to the Qatari pilgrims and material losses to the offices of Hajj and Umrah campaigns. Moreover, continue to address the issue of politicizing religious rites in all international human rights forums, and to begin with regional and international partners in organizing awareness campaigns about the seriousness of Saudi Arabia's actions in relation politicizing religious rites.

★ The presence of Saudi Arabia and the United Arab Emirates as members of the Human Rights Council raises questions and doubts about the credibility of the Human Rights Council in light of the grave violations committed by these two countries.

★ Recently, the Saudi authorities have been targeting Qatari citizens while traveling outside the State of Qatar by kidnapping or making illegal arrest warrants and then arbitrarily detaining them and forcibly disappearing.

★ Most of the cases of victims and parties affected by the blockade, especially the mixed families, remain unresolved and the impact of the current crisis and its negative effects will remain for a long period of time.

Seventh: Recommendations to the Competent Authorities

Recommendations to Civil Society

Take urgent actions to lift the blockade, and make every possible effort to mitigate its repercussions on the people of Qatar, and citizens of the countries of the Blockade, in isolation from the efforts of political mediation to resolve the crisis.

Recommendations to the Kuwaiti Mediaton

Calling on the Kuwaiti mediation - in the light of the welcome efforts of the Kuwaiti mediation to resolve the humanitarian repercussions resulting from the crisis - to work to alleviate the suffering of the victims and resolve the humanitarian situation for them, especially for the mixed families even if the political solution is long.

Recommendations to Civil Society Organizations based in GCC Countries

Intensify efforts and joint cooperation to resolve the repercussions of the crisis on the humanitarian situation and carry out awareness campaigns to alleviate the suffering of the victims, in addition to fighting hatred and violence speech, as well as holding coordination meetings with NHRC for this purpose.

Recommendations to OHCHR and UN

1. Take further steps to force the countries of the blockade to reverse from the unilateral arbitrary decisions they have taken.
2. Continue to urge the countries of the blockade to stop the violations caused by the inhumane blockade measures, address these violations, redress the victims and compensate them for the physical and psychological damage caused to them by the blockade.
3. The OHCHR should present reports and data documenting the various types of violations that have affected a large number of individuals, in particular with regard to the displacement of families, including their dire consequences on women and children following the break-up of families, in addition to demanding the states to respect the fundamental freedoms of those in their territories.
4. Submit a detailed report on human rights violations to the Human Rights Council, special rapporteurs and contractual mechanisms to address violations and ensure that they are not repeated, and that a dangerous precedence is not set.
5. Call on the OHCHR for further action at all levels of international human rights mechanisms and to raise the issue of the repercussions of the blockade in the report of the OHCHR at the next session of the UN Human Rights Council.
6. Call on the OHCHR to contact specialized international agencies such as the International Labor Organization, UNESCO, WTO and ICAO to share information and support complaints against the countries of the Blockade.

7. Call on the United Nations Special Rapporteurs to act swiftly to address the issues of victims of the blockade violations and to visit the countries of the blockade, as well as to include the repercussions of the blockade in their reports to the Human Rights Council.
8. Call on the Special Rapporteur on the unilateral coercive measures to intervene immediately, approach the countries of the blockade, as well as visiting the State of Qatar and the countries of the blockade.
9. Call on the special rapporteur on independence of judges and lawyers to move swiftly to enable victims to obtain their right to litigation, and urge the countries of the blockade to allow them to access the national courts to address their legal status.
10. Invite the Technical Mission of the OHCHR to visit the countries of the blockade and to recognize the negative impact on the countries of the blockade citizen's and citizen's of Qatar, and include its implications in a report of the Secretary-General of the United Nations.
11. Call on the General Assembly of UN to issue a global declaration against the blockade of the peoples and neutralize civilians from any political strife.

Recommendations to Human Rights Council

1. Take all possible measures to lift the blockade and the resulting violations, as well as demand compensation for all damages to all individuals.
2. Demanding the establishment of a fact-finding committee and conduct direct interviews with victims.
3. Call on the countries of the blockade to allow field visits by special rapporteurs and international human rights organizations, allow victims to resort to national justice, and pursue proceedings for the restoration of their rights. Additionally, immediately stop defamatory campaigns, hate speech and incitement, and hold those responsible accountable.
4. Demands the countries of the blockade abolish all unilateral arbitrary measures, to respect their obligations under international human rights law, to immediately lift violations and to redress victims.

Recommendation to General Secretary of GCC

1. Exert all efforts through The Settlement of Disputes Committee of the Supreme Council for to persuade the governments of countries to begin to resolve the situation of families, citizens, social, economic, civil and cultural.
2. Work to lift the blockade on the State of Qatar and neutralize civilians from any political strife.

Recommendations to the blockading countries

1. Immediately lifting the blockade on the State of Qatar.
2. Consider positively and immediately the foundations of the report of the OHCHR Technical Mission.
3. Cancel all unilateral arbitrary measures, respect their obligations under international human rights law, and immediately lift violations and redress victims.
4. Neutralizing the political file from influencing the humanitarian and social situation and not using it as a pretext for violating international law and international human rights law.
5. Establish effective mechanisms to address cases of violations and redress victims.
6. Allow the visits of the OHCHR Technical Mission and special rapporteurs and international human rights organizations to examine the effects of the actions taken on the citizens of these countries and the citizens and residents of the State of Qatar. For close humanitarian situations and for determining responsibilities and redress for victims.
7. Allow victims to resort to national justice and litigation procedures to restore their rights.
8. The immediate cessation of defamation campaigns, hate speech, inflammatory propaganda and accountability of those responsible.
9. Stop fabricating arguments and lies to arrest and detain Qataris or residents of the State of Qatar arbitrarily and to limit the racist measures against Qatari citizens.

Recommendation to the Qatari Government

1. Continue to take all possible steps at the international level by the General Assembly of the United Nations, the Security Council, the Human Rights Council and the international tribunals to lift the unjust blockade on the population of Qatar and defend their rights in the face of violations against them, as well as holding the perpetrators accountable.
2. Seeking resort to the International Court of Justice, arbitration committees and specialized national and international courts, as well as holding the perpetrators of incitement campaigns, hate speech and calls for violence and racial discrimination from the countries of the Blockade accountable.
3. Taking urgent action at the level of the Human Rights Council to present a draft resolution on the repercussions of the blockade on the citizens and residents of the State of Qatar. Furthermore, the repercussions of the blockade to be discussed before the General Assembly of the United Nations and the Security Council.
4. Referring to international reports, led by the Technical Mission report in supporting complaints submitted before the World Trade Organization, the International Civil Aviation Organization and UNESCO.
5. Inviting the Compensation Claims Committee to continue litigation and international arbitration procedures, relying on the rationales contained in the national and international reports on the blockade, in order to redress and compensate the victims.
6. Taking due actions to bring the perpetrators of incitement campaigns, hate speech, calls for violence and racial discrimination from the countries of the Blockade to justice.

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CERTIFICATION

This is to certify that the attached translation is, to the best of my knowledge and belief, a true and accurate translation from Arabic into English of the attached excerpt.

Kristen Duffy, Senior Managing Editor
Geotext Translations, Inc.

Sworn to and subscribed before me

this 6 day of JUNE, 2018.

JEFFREY AARON CURETON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CU6169789
Qualified In New York County
My Commission Expires September 23, 2019

Annex 141

Reporters Without Borders, *Unacceptable Call for Al Jazeera's Closure in Gulf Crisis* (28 June 2017), *available at* https://rsf.org/en/news/unacceptable-call-al-jazeeras-closure-gulf-crisis

REPORTERS WITHOUT BORDERS
FOR FREEDOM OF INFORMATION

NEWS

June 28, 2017

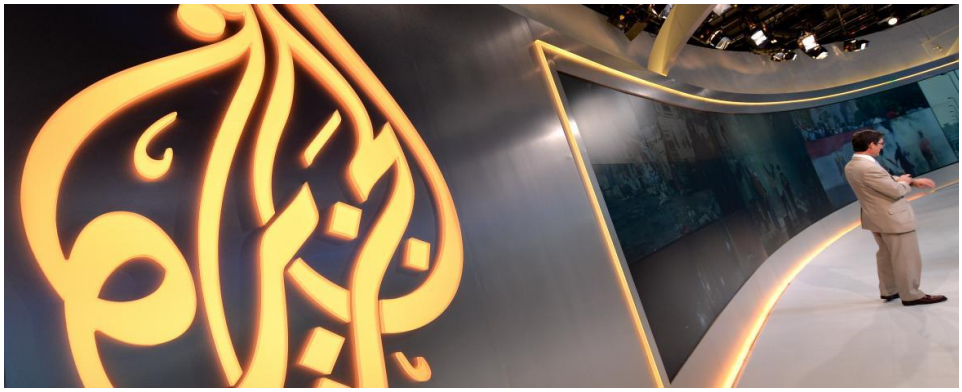
Unacceptable call for Al Jazeera's closure in Gulf crisis

QATAR SAUDI ARABIA BAHRAIN UNITED ARAB EMIRATES EGYPT

MIDDLE EAST - NORTH AFRICA

CONDEMNING ABUSES FREEDOM OF EXPRESSION INTERNET

Stan Honda/AFP



Reporters Without Borders (RSF) is very disturbed by the demand made by several Arab countries for the closure of Al Jazeera, Qatar's leading TV broadcaster, and other media outlets funded by the emirate. RSF regards this as an unacceptable act of blackmail.

Nearly three weeks after Saudi Arabia, Bahrain, United Arab Emirates and Egypt broke off diplomatic relations with Qatar, journalists at *Al Jazeera* were stunned to learn from a news agency dispatch and tweets on 23 June that the 13 demands for ending this unprecedented regional crisis included the closure of *Al Jazeera* and other outlets directly or indirectly supported by Qatar, such as *Al-Araby Al-Jadeed* and *Middle East Eye*.

"This is without precedent in the history of humankind," *Al Jazeera Arabic* director-general Yasser Abu Hilalah told RSF, adding that backing the call for the Doha-based broadcaster's closure was like issuing a "licence for killing off journalism in this region" and ending media freedom.

At times criticized for its coverage of the Arab revolutions and **accused of bias and of acting as Qatar's mouthpiece (https://rsf.org/en/news/al-jazeera-collateral-victim-diplomatic-offensive-against-qatar)**, *Al Jazeera* has nonetheless revolutionized the Arab media world since its creation in 1996 by providing a forum to all of the region's political tendencies.

The same diversity can also be found on the *Middle East Eye* website, whose editor, David Hearst told RSF that it was precisely its "pro-democracy and pro-Arab Spring" coverage, and its independence of any government that had put it on the list of media for closure. Contrasting ***Middle East Eye (http://www.middleeasteye.net/)***'s "effective" journalism with the "traditional" kind practiced in Saudi Arabia and UAE, he described the demand as an attempt to "extinguish any free voice which dares to question what they are doing."

"This use of pressure and blackmail betrays a clear desire by certain Gulf states to censor the Qatari media and constitutes a grave attack on press freedom and pluralism, and the right of access to information in the region," said Alexandra El Khazen, the head of RSF's Middle East desk.

"The targeted media outlets must be able to exist freely, without being forced to fall in with the policies of neighbouring countries, which cannot by any stretch of the imagination be regarded as models of media freedom, as models to be followed."

Saudi Arabia, Bahrain, Egypt and UAE – the countries that are demanding the closure of Al *Jazeera*, *Middle East Eye* and other media outlets regarded as pro-Qatari – are **ranked (https://rsf.org/fr/ranking)** 168th, 164th, 161st and 119th respectively in RSF's 2017 World Press Freedom Index, while Qatar is ranked 123rd.

Targeting free speech and freedom to inform

Even before Qatar was given ten days to respond to the 13 demands, the emirate's enemies began taking retaliatory measures against the Qatari media and **any form of expression potentially favourable to Qatar (http://www.albayan.ae/across-the-uae/news-and-reports/2017-06-07-1.2969979)**.

The Saudi and Jordanian governments announced the closure of *Al Jazeera*'s bureaux in their respective capitals at the start of June, just a few days after diplomatic relations were severed.
At the same time, the UAE's attorney-general announced that any expression of support for Qatar or opposition to UAE policy – whether spoken, written or on social networks – would henceforth be a crime punishable by three to 15 years in prison and a fine of 500,000 dirhams (120,000 euros).
In Saudi Arabia, expressing support for Qatar is regarded as a **public order offence (https://twitter.com/SaudiNews50/status/8722092539389952**
It is also punishable under article 7 of the cyber-crime law by **up to five years in prison (http://www.youm7.com/story/2017/6/7/%D8%B9%D9%83%D**
%D8%A7%D9%84%D8%B3%D8%B9%D9%88%D8%AF%D9%8A
%D8%B9%D9%82%D9%88%D8%A8%D8%A7%D8%AA-
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%D9%84%D9%84%D8%AD%D8%A8%D8%B3-%D8%AA%D9%86%D8%AA%D8%B8%D8%B1-%D8%A7%D9%84%D9%85%D8%AA%D8%B9%D8%A7%D8%B7%D9%85%D8%B9-%D9%82%D8%B7%D8%B1-%D8%B9%D8%A8%D8%B1/3272882) and a fine of 3 million riyals (710,000 euros). In Bahrain, the information ministry has warned the media that publishing any information liable to harm the state's interests could lead to **a fine and up to five years in prison (https://www.washingtonpost.com/world/national-security/bahrain-and-uae-criminalize-sympathy-for-qatar/2017/06/08/ce74a666-4c70-11e7-9669-250d0b15f83b_story.html?utm_term=.57e59e1cc506)**.

A few weeks prior to these measures, access to the websites of *Al Jazeera* and other Qatari media were **blocked in Saudi Arabia, UAE (http://english.alarabiya.net/en/media/digital/2017/05/24/We of-Al-Jazeera-Qatari-newspapers-blocked-in-Saudi-Arabia.html)** and **Egypt (https://www.theguardian.com/world/2017/may/25/egypt-blocks-access-news-websites-al-jazeera-mada-masr-press-freedom)**. RSF is concerned about all these different violations of the freedom to inform and free speech and notes that this is not the first crisis that *Al Jazeera* has had to face.

Al Jazeera was forced to close its bureaux in **Kuwait (https://rsf.org/en/news/government-shuts-down-al-jazeera-office)** and **Jordan (https://rsf.org/en/news/al-jazeera-office-amman-shut-down)** in 2002. Iran demanded the closure of its **Tehran bureau in 2005 (https://rsf.org/fr/actualites/reporters-sans-frontieres-proteste-contre-la-fermeture-du-bureau-dal-jazira-teheran)** for "inciting unrest" in its coverage of incidents. It was forced to terminate its activities in **Bahrain in 2010, (https://rsf.org/fr/actualites/le-ministere-de-la-culture-et-de-linformation-suspend-temporairement-les-activites-du-bureau-al)** in **Egypt in 2013 (https://rsf.org/fr/actualites/la-**

branche-egyptienne-dal-jazeera-censuree-ses-locaux-attaques) and in **Baghdad in 2014 (https://rsf.org/fr/actualites/rsf-demande-la-reouverture-du-bureau-dal-jazeera-bagdad)**.

Broadcasting worldwide in various languages, *Al Jazeera* is the Arab world's most important and influential media outlet. As well as political hostility, it has also survived physical attacks, as when its premises came under fire during the **Gaza war in 2014 (https://rsf.org/en/news/journalists-lives-line-gaza-conflict)** and it suffered US bombardment **in Afghanistan in 2001 (https://www.ifex.org/afghanistan/2001/11/15/rsf_seeks_clari** and **Iraq in 2003. (https://rsf.org/fr/actualites/reporters-sans-frontieres-indignee-par-le-bombardement-dal-jazira-bagdad)**

"*Al Jazeera*'s staff have been threatened, locked up, and tragically killed as a consequence of carrying out their duties as journalists," the broadcaster's press office said. One of its journalists is **currently detained in Egypt. (https://rsf.org/en/news/another-al-jazeera-journalist-arrested-egypt)**

It may be because *Al Jazeera* has survived all these trials that its bureau chief in Paris, Ayache Derradji, is still optimistic. He said: "*Al Jazeera* means 'The Island' and, like an island, it cannot be surrounded, besieged or even occupied because it is bigger than the imagination of press freedom's enemies and it will remain free (...) Its life is longer than all the lives of the totalitarian regimes put together."

Annex 142

Amnesty International, *Report 2017/18: The State of the World's Human Rights* (2018), *available at* https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF

AMNESTY INTERNATIONAL REPORT 2017/18

THE STATE OF THE WORLD'S HUMAN RIGHTS

AMNESTY INTERNATIONAL

AMNESTY INTERNATIONAL

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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This report documents Amnesty International's work and concerns through 2017.

The absence of an entry in this report on a particular country or territory does not imply that no human rights violations of concern to Amnesty International have taken place there during the year. Nor is the length of a country entry any basis for a comparison of the extent and depth of Amnesty International's concerns in a country.

AMNESTY INTERNATIONAL REPORT 2017/18

THE STATE OF THE WORLD'S HUMAN RIGHTS

CONTENTS
ANNUAL REPORT 2017/18

CRIMEA

The clampdown on the rights to freedom of expression, association and assembly continued in Crimea. The authorities continued to predominantly target ethnic Crimean Tatars. The arbitrary ban on the Mejlis of the Crimean Tatar People, a self-governing body representing the ethnic Crimean Tatars, continued. The Russian Security Services raided dozens of Crimean Tatar homes, purportedly looking for illegal weapons, drugs or "extremist" literature, as part of their campaign to intimidate critics of the peninsula's occupation. The few lawyers willing to take up cases in defence of critical voices in Crimea faced harassment by the Russian authorities.

On 26 January, lawyer Emil Kurbedinov was arrested and sentenced by a de facto court in the Crimean capital, Simferopol, to 10 days of administrative detention. He was accused of violating Russian anti-extremist legislation with a social media post predating the Russian occupation of Crimea. In the post, he had shared a video about a protest held by the Muslim organization Hizb ut-Tahrir, which is banned in Russia but not in Ukraine. On 8 August, police in Simferopol used excessive force and arrested Server Karametov for holding a placard outside the Crimean Supreme Court to protest at reprisals against Crimean Tatars. He was sentenced to 10 days in prison. On 22 September, Ukrainian journalist Mykola Semena was convicted for "threatening [the] territorial integrity of the Russian Federation" in his publications and given a two-and-a-half-year conditional sentence and a three-year ban on participating in "public activities". In September, Crimean Tatar leaders Akhtem Chiygoz and Ilmi Umerov were given jail terms for their peaceful activism. On 25 October, both were flown to Turkey and released, without an official explanation. Akhtem Chiygoz had spent 34 months in detention, and Ilmi Umerov had been forcibly held in a psychiatric institution since August or September 2016. Both were prisoners of conscience.

ARMS TRADE

On 28 September, the Secretary of the National Security and Defence Council, Oleksandr Turchinov, announced that Ukrainian state companies had decided to freeze arms transfers to South Sudan. The announcement came days after Amnesty International published a report which included contract documents and end-user certificates listing the Ukrainian state-owned arms exporter Ukrinmash as the prospective supplier of USD169 million worth of small arms and light weapons to the South Sudanese Ministry of Defence.[2] In response to the report, the State Service of Export Control issued a statement saying that the contract in question had not been executed, and that no weapons had been shipped from Ukraine to South Sudan. In previous years, Ukraine had consistently reported exports of small arms, light weapons and major weapons to the government of South Sudan.

Ukraine had not yet ratified the Arms Trade Treaty, which it signed in September 2014.

1. Put an end to impunity for detention-related abuses in the context of the armed conflict in Ukraine (EUR 50/5558/2017)
2. From London to Juba, a UK-registered company's role in one of the largest arms deals to South Sudan (ACT 30/7115/2017)

UNITED ARAB EMIRATES

United Arab Emirates
Head of state: **Sheikh Khalifa bin Zayed Al Nahyan**
Head of government: **Sheikh Mohammed bin Rashed Al Maktoum**

The authorities continued to arbitrarily restrict freedoms of expression and association, using criminal defamation and anti-terrorism laws to detain, prosecute, convict and imprison government critics and a prominent human rights defender. Scores of people, including prisoners of conscience, who were sentenced following unfair trials remained in prison. Authorities held detainees in conditions that could

amount to torture and failed to investigate allegations of torture made in previous years. Women continued to face discrimination in law and in practice. Migrant workers remained vulnerable to exploitation and abuse. Courts continued to hand down death sentences; there was one execution.

BACKGROUND

The United Arab Emirates (UAE) remained part of the Saudi Arabia-led international coalition engaged in armed conflict in Yemen. Along with Saudi Arabia, the UAE trained, funded and supported forces in Yemen, some of which were under its direct report. These forces engaged in arbitrary and illegal detention practices, including in Aden where they perpetrated a campaign of arbitrary detention and enforced disappearances (see Yemen entry). The UAE joined Saudi Arabia, Bahrain and Egypt in severing ties with Qatar (see Qatar entry).

In September, the UN CERD Committee reiterated its call on the UAE to establish a national human rights institution, in line with the Paris Principles. The authorities rejected or took no action on statements and recommendations from UN human rights bodies, including those issued jointly by special procedures, the High Commissioner for Human Rights and the Working Group on Arbitrary Detention.

In June, a Belgian court convicted in their absence eight women from Abu Dhabi's ruling Al Nahyan family of trafficking in persons and of the degrading treatment of up to 23 women domestic workers.

FREEDOMS OF EXPRESSION AND ASSOCIATION

Authorities continued to arbitrarily restrict freedoms of expression and association, using the Penal Code and anti-terrorism and cybercrime laws that criminalized peaceful criticism of state policies or officials. At least 13 people were arrested or tried on such grounds. In Dubai, two men were arrested for "dressing in a feminine way", in violation of their right to freedom of expression.

In March, the government announced the creation of the Federal Public Prosecution for Information Technology Crimes, whose mandate to investigate and prosecute crimes included peaceful expression. In August, authorities in Dubai imposed a one-month suspension of the news website Arabian Business for publication of "false information" regarding unsuccessful real estate projects.

Also in March, leading human rights defender Ahmed Mansoor was arrested. He had had no access to a lawyer by the end of the year. He was held in solitary confinement and, except for two family visits, in incommunicado detention, in violation of the prohibition of torture and other ill-treatment.

Also in March, the Federal Appeal Court in the capital, Abu Dhabi, upheld the 10-year prison sentence of Dr Nasser Bin Ghaith, a prisoner of conscience. He was arbitrarily detained in 2015 and stated during his trial that he had been tortured. In April, he went on hunger strike to protest against not being permitted to see the verdict of the appeal court or meet with his lawyer.

In June, UAE's Attorney General announced that anyone expressing sympathy with Qatar could face up to 15 years' imprisonment and fines. In July, Ghanim Abdallah Matar was detained for a video he posted online in which he expressed sympathy towards the people of Qatar.

The Federal Supreme Court upheld the three years' imprisonment, a fine of Dh500,000 (USD136,135) and deportation sentence against Jordanian journalist and prisoner of conscience Tayseer al-Najjar. He had been detained since December 2015 for Facebook posts deemed "damaging [to] the reputation and prestige of the Emirati state".

Human rights defender and prisoner of conscience Dr Mohammad al-Roken remained in prison, serving a 10-year sentence imposed after an unfair mass trial in 2013 (known as the "UAE 94" trial). In May, he was awarded the Ludovic Trarieux International Human Rights Prize.

TORTURE AND OTHER ILL-TREATMENT

Reports of torture and other ill-treatment, including denial of medical care to detainees, remained common. No independent investigations were carried out into detainees' allegations of torture.

In May, detainees in al-Razeen Prison in Abu Dhabi, including Imran al-Radwan, undertook a hunger strike to protest against enforced strip searches, alleged sexual harassment and other ill-treatment by prison guards.

JUSTICE SYSTEM

The authorities refused to release at least five prisoners on completion of their sentence, including Osama al-Najjar, a prisoner of conscience arrested in 2014. Prison authorities at al-Razeen Prison, where those convicted in the UAE 94 case were detained, routinely harassed family members and prevented them from visiting their imprisoned relatives.

WOMEN'S RIGHTS

Women remained subject to discrimination in law and in practice, notably in matters of marriage and divorce, inheritance and child custody. They were inadequately protected against sexual violence and violence within the family.

WORKER'S RIGHTS – MIGRANT WORKERS

Migrant workers, who comprised the vast majority of the private workforce, continued to face exploitation and abuse. They remained tied to employers under the *kafala* sponsorship system and were denied collective bargaining rights. Trade unions remained banned and migrant workers who engaged in strike action faced deportation and a one-year ban on returning to the UAE.

In September, Federal Law No.10 of 2017 came into effect, limiting working hours and providing for weekly leave and 30 days' paid annual leave as well as the right to retain personal documents. The law appeared to enable employees to end their contract of employment if the employer violated any of its terms, and stipulated that disputes would be adjudicated by specialized tribunals as well as by courts. However, workers remained vulnerable to employers accusing them of overly broad and vague crimes such as "failing to protect their employer's secrets", which carry fines of up to Dh100,000 (USD27,225) or a six-month prison sentence.

In September the UN CERD Committee expressed concern over the lack of monitoring and enforcement of measures to protect migrant workers, and over barriers faced by migrant workers in accessing justice, such as their unwillingness to submit complaints for fear of adverse repercussions.

DEATH PENALTY

Courts handed down death sentences; one execution was carried out on 23 November.

UNITED KINGDOM

United Kingdom of Great Britain and Northern Ireland
Head of state: **Queen Elizabeth II**
Head of government: **Theresa May**

Women in Northern Ireland continued to face significant restrictions on access to abortion. Counter-terrorism laws continued to restrict rights. Full accountability for torture allegations against UK intelligence agencies and armed forces remained unrealized.

LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS

In March, the Prime Minister triggered Article 50 of the Treaty on the European Union, officially starting the withdrawal by the UK from the EU (Brexit). In July, the EU (Withdrawal) Bill received its first reading in the House of Commons. The Bill threatened to significantly reduce existing human rights protections. It excluded both the EU Charter of Fundamental Rights (in its entirety) and the right of action for violations of EU General Principles from domestic law after the UK's withdrawal. It also handed sweeping powers to ministers to alter legislation without

Annex 143

Asian Football Confederation (AFC), *AFC DEC issues USD$150,000 fine on UAE FA* (11 March 2019), *available at* http://www.the-afc.com/media/afc-dec-issues-usd-150-000-fine-on-uae-fa

Media

AFC DEC issues USD$150,000 fine on UAE FA

Monday, March 11, 2019

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Kuala Lumpur: The Asian Football Confederation (AFC) Disciplinary and Ethics Committee has sanctioned the United Arab Emirates Football Association (UAE FA) with a fine of USD$150,000 following the incidents that occurred during their AFC Asian Cup UAE 2019 semi-final match against Qatar on January 29 at the Mohammed bin Zayed Stadium in Abu Dhabi.

The infringements committed by the UAE FA related to the following matters:

Liability for spectator conduct
(Article 65, AFC Disciplinary and Ethics Code)
Organisation of Matches
(Article 64, AFC Disciplinary and Ethics Code)
Distribution of beverages
(Article 31, AFC Safety and Security Regulations)
Public passageways
(Article 33, AFC Safety and Security Regulations)

In addition, the UAE FA has also been ordered to play one (1) match without spectators (ie. a full stadium closure), which will come into effect during their next match played on the territory of the United Arab Emirates during the AFC Asian Cup 2023 (Qualifiers).

The UAE FA is required to settle the fine within 30 days in accordance with Article 11.3 of the AFC Disciplinary and Ethics Code and has been informed that any future violations may be met with more severe punishment.

All decisions made by the AFC DEC in respect of the AFC Asian Cup UAE 2019, which have been notified to the respective Member Associations, can be found **here** [http://www.the-afc.com/afc/documents/PdfFiles/list-of-the-afcdec-decisions-7-8-march-2019] . Meanwhile, please refer **here** [http://www.the-afc.com/afc/documents/PdfFiles/list-of-afc-dec-decisions-march-8] for the latest AFC DEC decisions on the 2019 AFC Cup.

Annex 144

M. Banton, *International Action Against Racial Discrimination* (Oxford University Press, 1996)

International Action Against Racial Discrimination

MICHAEL BANTON

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The Last of the Cold War

THE year 1978 is a convenient point to make a division between the period covered in the previous chapter—one in which the states which had been formed as a result of the decolonization process were exercising their new-found influence in the UN—and a further period in which that influence was waning. Between 1979 and 1987 the conflict between the Eastern and Western blocs re-emerged as the overriding feature of the political framework within which CERD had to operate. Changes in that framework have had more influence upon the work of the Committee than any changes in its membership. Over the nine-year period there were forty-one members in the eighteen committee seats. As in the previous period, the turnover was only partly the result of elections. It happened quite frequently that a member resigned and was replaced by the government of the country to which the member belonged. Yet these changes in personnel did not occasion noticeable changes in the Committee's activities.

POLITICAL PERSPECTIVES

During the years 1979–87 most of the earlier differences within the Committee persisted. The sharpest criticisms of some of the prevailing trends were voiced by Mr Dechezelles (France). He observed that he had attended the First World Conference to Combat Racism and Racial Discrimination and found it very much politicized. There had been many ideological speeches which bore little or no relation to racial discrimination. Instead they had focused on the political aspects of the struggle against racism to the detriment both of other aspects and of the means for campaigning against it. The impression he had gained was that one part of the world was putting the other part in the dock. The Conference had deviated from its prime objective, had become divided, and as a

result it had been a partial failure (SR 493, 590). His criticisms extended also to most delegations in the Third Committee, since they seemed to attach far greater importance to the international aspect of the struggle against racism than to the purely national one (SR 521).

When, in 1979, a report of the Byelorussian SSR was being considered, Mr Dechezelles declared that he was 'sceptical of statements claiming that in whole continents, or in at least very large areas of the world, not a single case of racial discrimination had been brought before the courts because racial discrimination had completely disappeared among the population' (SR 417). Later in the same session, when commenting on the fourth report of Sweden, Mr Sviridov welcomed the accounts of court decisions regarding cases of racial discrimination, but added that 'such practices did not exist in socialist countries'. Mr Nettel (Austria) retorted that he drew a contrary conclusion: he assumed that, when there were no such accounts, it was because in the country in question the man in the street was discouraged from making use of the courts or did not understand how to use the legal system. Sweden did not fear to show that racial discrimination occurred and 'he preferred that attitude to the position taken by some who claimed that under their particular social or economic system there was no discrimination'. Mr Dechezelles then added that:

> Mr Sviridov was not expressing the point of view generally held in the Committee. It was paradoxical that when a country identified incidents of racial discrimination, took specific measures to combat it and then provided the Committee with information on those measures, it was upbraided for the racism which it was trying to root out. In his view, it was sheer sophistry to suggest that a vast region of the world, spanning almost an entire continent, was free of racial discrimination owing to the social system adopted there.

Mr Sviridov replied that he 'could not agree . . . that racism was an inherent evil in every man. If that were true, the aims of the Convention could never be realized.' The Chairman brought this exchange to a close by stating that it was the Committee's 'generally held belief that racial discrimination existed almost everywhere' (SR 437). This indicates that there had been some change since Mr Sayegh commented on the views of states parties, but the difference of opinion between Mr Dechezelles and Mr Sviridov also suggests tensions between members of the committee.

These could reflect the East–West split or conflicts between neighbouring states (see, e.g., the exchanges between the members from Bulgaria and Yugoslavia in SR 296).

Mr Dechezelles disputed simplistic representations of the causes of racial discrimination. During the consideration of a report from Poland he insisted that, 'far from being unaware of the need to tackle one of the roots of that evil by opposing privilege and social and economic inequality, he stressed that racism, rooted as it was in human nature, had multiple causes which varied according to particular circumstances and countries . . .' (SR 491). As an indication of how some West Europeans felt at the beginning of the 1980s, it may also be relevant to note the first four words of one of Mr Dechezelles's observations on a report from a black African state: 'As a white man, he could only feel shame at hearing about the acts of segregation suffered by the people of Zaire in the past' (SR 486).

The Committee's discharge of its duties sometimes occasioned dissension within the General Assembly. Commenting on the reception of the Committee's report for 1982, the rapporteur, Mr Partsch, remarked that two controversial issues had prevented the Third Committee from adopting its resolution by consensus. One arose from the consideration of the report of Israel. Controversy had arisen because the opinions of some Committee members had been wrongly attributed to the Committee as a whole. The second centred upon whether the Committee was authorized to request information on the foreign policy of states parties towards the racist regime of South Africa. It had been argued that the obligations of states parties were laid down by the Convention and that neither the Committee nor the General Assembly could extend these obligations for political reasons. The rapporteur referred to this as 'the unsolved problem of the interpretation of article 3' (SR 621).

Further dissension arose in 1985 in connection with the Committee's consideration of a report from Morocco. Although CERD's report did not refer to the territory covered by Morocco's report, Algeria objected that the Committee had considered a report 'one chapter of which was devoted to measures taken by the State party in a territory it occupied by force. That decision was a serious breach of the Committee's terms of reference and of article 15 of the Convention' (A/C.3/40/SR 15).

Algeria's objection was reflected in the General Assembly's draft resolution on CERD's report, paragraph 4 of which read:

> *Considers* that the Committee should not take into consideration information on territories to which General Assembly resolution 1514(XV) applies unless such information is communicated by the competent United Nations bodies in conformity with article 15 of the Convention.

The Moroccan delegate raised several queries: was this view of ICERD's article 15 compatible with articles 3 and 9? could the General Assembly give CERD instructions on such matters? whose responsibility was it to interpret the provisions of the Convention? and what effect might adoption of this resolution have upon the work of the Committee?

A representative of the UN Office of Legal Affairs replied that CERD

> was not a subsidiary organ of the General Assembly but an autonomous treaty body . . . paragraph 4 . . . if adopted, would constitute a recommendation to the Committee and not a binding instruction. Furthermore, the right to give authoritative interpretations of the Convention, and the powers of the Committee thereunder, rested not with the General Assembly but, in the first instance, with CERD itself, as the body responsible for monitoring compliance with the Convention, and ultimately with the States parties. Hence, were paragraph 4 to be adopted, it would be the responsibility of CERD to determine the extent to which it could be given effect . . . (A/C.3/40/SR 46)

Delegates then held private discussions to see if an amended text could be agreed, but a separate vote had to be taken. Paragraph 4 was adopted by 82 votes to 9 with 36 abstentions. EC states voted against on the grounds that the General Assembly was not empowered to instruct the Committee. A separate vote had also to be taken on a reference in another paragraph to apartheid as 'a crime against humanity', with Western states abstaining and the USA opposing on the grounds that the reference was not directly relevant and was 'known to cause legal difficulties for many delegations'.

The tension between the political campaign against apartheid and the wording of article 3 was to be seen in 1979 in connection with the third report of Belgium. With respect to this article the state reported that there was 'no connection of any kind with such a system under Belgian legislation. There therefore appears to be no point in adopting measures at a national level to condemn a non-

existing practice . . . segregation, as practised in certain countries, is regularly denounced and stigmatized.' The state representative maintained that questions about Belgium's relations with the regimes in southern Africa were highly political in nature and therefore fell rather within the competence of the General Assembly and the Security Council (A/34/18, paras. 225, 231). This did not satisfy all members of CERD.

The priority given to the condemnation of South Africa could affect the consideration of other state reports, such as that of Lesotho in 1983. Mr Karasimeonov (Bulgaria) used the occasion 'to express his personal solidarity with the people of Lesotho in their struggle against the racist regime of South Africa'. Mr Dechezelles said that it was more important for Lesotho to have come before the Committee seeking sympathy than for it to have submitted a report. Mr Devetak (Yugoslavia) proposed to draw the attention of the General Assembly to the fact that a whole valiant country was under the pressure of discrimination and apartheid as a victim of the aggressive policy of South Africa. Mr Lamptey won the public support of only one of his colleagues when he protested that CERD was not a political committee. Its only task was to ensure the compliance of all states parties with the Convention; and in considering the various reports it could not make different demands on different states. The Committee must not allow its legitimate sympathy to blunt its view of what was basic to its work. Lesotho should consider the Committee's comments carefully and try to correct lacunae, as other countries were doing; that had nothing to do with Lesotho's front-line or land-locked situation (SR 608).

As in the preceding period, members insisted that action against apartheid had to be one of their highest priorities. Yet all they could do as a committee was to question states about their relations with the South African government, and to pass resolutions. Thus in 1985, when possible contributions to the Second Decade to Combat Racism and Racial Discrimination were discussed, CERD adopted decision 1(XXXII) to condemn the regime and appeal to states parties to implement a Security Council resolution. The Chairman made a long statement which was published in the annual report to the General Assembly (A/40/18, annex IV). No Committee member opposed these proposals, though some must have thought that political action against apartheid was better left

to other organs of the UN and that a committee which was called an expert body might have concentrated upon aspects of the Decade's programme which were related to its expertise.

TROUBLESOME REPORTS

Disguised interstate disputes continued to trouble the Committee. In 1981, in connection with its sixth report, the Syrian Arab Republic lodged a formal protest over its inability to exercise its responsibilities in the Golan Heights. On ratification Syria had entered a reservation stating that its accession 'shall in no way signify recognition of Israel or enter into a relationship with it regarding any matter regulated by the said Convention'. So Syria was appealing to the members' sense of justice and inviting them to study an illegal situation without placing the victim and the aggressor on the same footing. Mr Partsch proposed that this be regarded as an article 11 notification (Israel having become a state party two years earlier); on his reading of this article, it was for the Committee, and not the state party, to decide whether or not the article applied. The reservation entered by Syria could not prevent this, since, under article 20.2, no reservation was allowed which would inhibit the operation of any of the bodies established by the Convention. However, the Committee would not be able to pass on to the establishment of a Conciliation Commission under article 12.1 because of the reservation. Other members disagreed. The Chairman then ruled that the relevant section of the Syrian report did not constitute a communication under article 11 on the following grounds: (*a*) that the representative had expressly stated that his country was not invoking it; (*b*) that states parties had not objected to the reservation; and (*c*) that the reporting state had simply requested the Committee to study the conclusions of a special committee appointed by the UN. This ruling was maintained by a vote of 11 to 2, with one abstention. The state representative later said that he had expected a less juridical and more humanitarian response to his appeal (see A/36/18, paras. 170–3; SR 507–8, 519).

The Turkish occupation of part of the island has been the subject of regular protests on the submission of periodic reports from Cyprus, as in 1983, when it resulted in the adoption of decision 1(XXVII). Mr Lamptey and Mr Shahi declined to join the con-

sensus as they considered that one of the operative paragraphs fell outside the scope of the Committee's competence (A/38/18, para. 96). In 1989, on the ninth report of Cyprus, reference was made to this (SR 847), but by then it was considered inappropriate to do more than report expressions of concern.

Just as in 1975 the submission of a report from Chile had given rise to a preliminary discussion about whether the Committee should receive the report, so in 1980 submission of the initial report of Israel occasioned a preliminary procedural discussion. One member believed that the report implied that the West Bank, Gaza, Sinai, Golan, and East Jerusalem were part of the territory of Israel, and therefore expressed concern lest consideration of it should imply recognition of the illegal occupation of Arab lands. Other members felt that Israel's denial of the rights of the Palestinian people constituted a breach of the Convention and that the Committee should therefore reject the report. After CERD had agreed that consideration of the report should not be interpreted as implying the recognition of any title, the representative of Israel was invited to present the report. He replied that, in listening to the statements made by members of the Committee, he had found it hard to believe that it was a debate of experts, elected in their personal capacity. Given the biased discussion which had already taken place and which had prejudged the Israeli report, he would take no further part in the proceedings (SR 483). The Committee decided to postpone consideration of the report until the following session (A/35/18, paras. 330–4).

By that time Israel had revised its report, omitting references to occupied territory. Some members stressed that the Committee could nevertheless not disregard the fact of such occupation as conflicting with both the letter and the spirit of the Convention. They also considered that the discretion allowed to the Supreme Court amounted 'to a limitation on generally recognized law that formed part of *jus cogens*, under which the struggle against racial discrimination was being waged'. Regarding the demographic information in the report, one member considered that its division into Jews and non-Jews constituted racial discrimination (A/36/18, paras. 89, 91). After consideration of the report, the Committee held a separate discussion on the question of whether or not Israel should report on the implementation of the Convention in the occupied territories. Some members who were opposed argued that

the situation itself was a violation of the right to self-determination and was thus clear evidence of the existence of a form of discrimination which might be classified as racial. But to ask the occupying power to report would be to recognize its rights over such territories. On the other hand, the Committee would not be able to seek that information from the neighbouring states since they were prevented from exercising their jurisdiction. Members who took the other view pointed out that the Convention was universal in scope and applied to every person irrespective of whether the jurisdiction was legitimate. Since there was no consensus in the Committee, further discussion had to be postponed (A/36/18, paras. 107–10). The issue was reopened, though at less length, during consideration of Israel's combined second and third reports (A/37/18, para. 332; A/40/18, para. 203).

The politics of the Middle East sometimes appeared to affect the consideration of reports from other regions too. Commenting on the ninth periodic report of the USSR, Mr Banton (UK) asked about facilities for studying in Yiddish and the decline in the number of Jewish students admitted to universities, especially the evidence of discrimination for admission to study mathematics. Mr Aboul-Nasr then

> asked why so much fuss was made about Jews in all issues relating to human rights . . . Jews in the Soviet Union seemed to be privileged compared with other nationalities . . . the question therefore arose as to why the Soviet Union was treating Jews better than other groups. Was it perhaps because the Jewish lobby was stronger? (SR 779)

The question of whether it was more difficult for Jews than other Soviet citizens to obtain permission to leave the country led on to a question about where they would go if they left, and upon whose land they would settle.

One argument for refusing to receive a report from the government of Chile was that it emanated from an illegal government installed by a military seizure of power in 1973. In the case of Israel, however, Syria and some other states refused to recognize the existence of the state itself. The recognition of a new government is quite different from the recognition of a new state and poses other problems. Their nature can be sensed from the decision of the UK in 1980 that it would no longer accord recognition to governments as distinct from states, because the recognition of

governments was often taken to imply approval. This could be embarrassing when a government was violating human rights but nevertheless exercised effective control of the territory and could not be ignored. There is the further question of whether doubts about the recognition of a government should affect the operation of the Convention when the state is a party to it. (Apparently there were occasions in the early years of the Committee when diplomat members absented themselves during the consideration of a report from states which were not recognized by their governments.) The same question was raised in a different form with respect to Yugoslavia at the meeting of states parties in January 1994 (see the discussion in Chapter 8).

Governments change. The government of the Philippines submitted a periodic report in 1985 during the presidency of Ferdinand Marcos. The new government of President Aquino, which came into power the following year, withdrew that report and submitted a different one in 1989. In other cases (for example, that of Chile after the restoration of democratic rule) new governments have distanced themselves from the statements of their predecessors or have contradicted them. Should members of the Committee have taken the reports of the previous governments at face value if they had reason to think that they were not telling the whole truth and were likely to be replaced by governments which would give a different account of the situation? To discuss this question is to distinguish the legitimacy of governments as opposed to their legality. All governments seek to establish their rule as legitimate—that is, as morally justifiable—in the eyes of their own subjects and those of observers from other countries (see Beetham 1991). But whereas governments are adjudged to be either legal or illegal, legitimacy is a matter of degree. A lawful government can gradually lose legitimacy in the eyes of some of its electors, who then vote in a new government when they have the opportunity. A government can be regarded as legitimate by those who belong to the ethnic minority but be seen as illegitimate by members of a minority. This is one of the points at which law and politics continually interact.

The question of permissible sources was reopened by Mr Dechezelles in 1983. He referred to a document which he and other members of the Committee had received from the International League for Human Rights which he wished to transmit, through

the Bureau, to the government of Poland and to ask them in their next report to comment on any of the statements in it which they felt to deserve comment. Mr Devetak objected that there was no provision for this in the Rules of Procedure. He and others said that Mr Dechezelles should himself ask any questions he wanted answering, but the Chairman agreed to Mr Dechezelles's request. Later Mr Staruschenko (USSR) protested at the distribution of papers from 'an unknown non-governmental organization' and asked who had authorized their circulation. The representative of the UN Secretary-General replied that the Secretariat had authorized no distribution. The representative of Poland said that he would reply only to the questions of Committee members (see SR 600).

A similar incident occurred in the following year in connection with Uganda. Mr Staruschenko insisted that

> the Committee worked only with documents submitted by Governments, and it was not entitled to refer to material circulated by non-governmental organizations . . . to consider material from unofficial sources would be tantamount to expressing a lack of confidence in the Government. The fact that a non-governmental organization had managed to gain access to the conference room and to distribute copies of a document was regrettable. Why had that particular organization been permitted to circulate its documents, and not others? The Secretariat ought to take more effective measures to prevent the distribution of unofficial documentation.

Mr Partsch suggested that, as the relevant information might be available from the UN High Commission for Refugees (UNHCR), consideration of the report could be suspended. Mr Karasimeonov thought this would be a dangerous precedent. Mr Čičanovic (Yugoslavia) said that he had received three envelopes but had not read their contents since they had been distributed illegally. It was not clear to him what rule of procedure could justify the suspension proposed by Mr Partsch. Mr Staruschenko objected that, after Uganda had submitted its report, other documents had been submitted by certain parties interested in compromising Uganda, which had responded by submitting a revised report. Yet again:

> a compromising document had been received and had inspired the proposal before the Committee that it should for the first time defer consideration of a report in order to consider a document from an organization hostile to the reporting country. To do so would imply mistrust . . . Accessions to the Convention would be discouraged.

Mr Staruschenko and Mr Karasimeonov later deferred to the Chairman's wish to allow a postponement on the understanding that this would not set a precedent (SR 680).

At a subsequent meeting Mr Partsch said that he had found a legitimate source of information in a UNHCR press release concerning the circumstances of the refugees. He proposed that the Committee make a formal request to the government of Uganda referring to passages in its report and enquiring

> Whether the manifestations of 'ethnic antipathy' mentioned therein concern the movements, in October 1982, of thousands of refugees and displaced persons which caused special appeals of the UNHCR to the Head of State in the interest of securing guarantees for the safety of the affected persons; if this should be the case, why and to what extent 'enforcement measures to ensure security and tranquillity for all' were necessary in order to control these movements.

Mr Staruschenko thought it would be singularly inappropriate

> for the Committee to employ a special procedure in regard to Uganda at a time when that country's misfortunes had been heightened by the decision of the Government of the United States of America to suspend all aid to it, a decision announced only one day before the date of Uganda's initial report. (SR 687)

The Committee decided to make a request for the information in question in its annual report (A/39/18, para. 383) instead of formally requesting it under article 9.1.

Political influences could be discerned in connection with European states also, as with the fifth periodic report of the FRG. Mr Nettel then observed that 'when certain reports were being considered the usually quiet and placid atmosphere of the Committee was ruffled by a political breeze' (SR 440). A notable example of political influence was furnished when the Committee discussed the rapporteur's draft for that section of the 1982 annual report which dealt with the USSR. Mr Staruschenko maintained that the summary was one-sided. One of the changes he sought was a congratulatory reference to the sixtieth anniversary of the founding of the Soviet Union. He was supported by Mr Bahnev, but others thought this propaganda. A compromise was reached whereby the report read 'Members of the Committee congratulated the Soviet Union for having taken steps during the previous sixty years to eliminate racial discrimination . . .' (see SR 597; A/37/18, para. 421).

FORCED ASSIMILATION IN BULGARIA

What could, in retrospect, be seen as one of the last clashes of the Cold War occurred in March 1986, when CERD considered the eighth periodic report of Bulgaria. That report had originally been submitted in October 1984 and circulated to Committee members. It had then been withdrawn and a new version substituted in January 1986. Behind the change, apparently, was the state's introduction in December 1984 of a policy designed to achieve the assimilation by force of the country's Turkish minority. The 1984 report had stated 'Also living in our country are Bulgarian citizens of Turkish, Gipsy, Armenian, Jewish, Greek and other origins'; and that 'all Bulgarian citizens have the right to declare their national affiliation and this gives them the right to study and speak their native tongue, develop their national culture, maintain their traditions, etc.'. No passages of this kind appeared in the 1986 report. Committee members had also heard, from press reports, Amnesty International, the Bulgarian Turks of America, Turkish diplomatic missions, and other sources, that the Bulgarian government had started forcing Bulgarian Turks to change their names to Bulgarian names. Amnesty International had received the names of over 100 ethnic Turks alleged to have been killed by the security forces during the implementation of the campaign. Expecting a public dispute, many diplomats from missions in New York had come to the conference chamber to hear the exchanges.

Introducing his government's report, the Bulgarian state representative said, among other things, that a violent anti-Bulgarian campaign was being waged regarding the situation of Bulgarian Muslims. To understand what had been happening, it was essential to remember that during Ottoman rule Bulgarians had been under pressure to adopt Turkish culture and the Islamic religion. Since achieving independence, Bulgaria had been liberal in allowing Bulgarians with a strong Turkish national identity to migrate to Turkey. The others, Muslims and unbelievers with Turkicized names, had chosen to belong to the Bulgarian people and in recent times, particularly with the issuing of new identity documents, had availed themselves of the opportunity to change their names. This could also be seen as a reaction on the part of Bulgarian Muslims to Turkish claims concerning them. For good reason, Turkey was not a party to the Convention and its government could scarcely be

less qualified to say how it should be implemented in view of the human-rights abuses for which it was responsible (A/42/18, paras. 199–226; SR 761–2).

The first speaker on the report was Mr de Pierola y Balta (Peru), a member who was often supportive of the position taken by East European states. He said it would be useful to have more demographic information, but was not critical of the state's record. The Chairman, Mr Cremona (Malta), speaking as a member of the Committee, asked about the interaction of two legal provisions. Mr Aboul-Nasr said that, in view of previous references to an ethnic Turkish minority, he could not understand the statement that there was no longer such a minority. Mr Öberg (Sweden) spoke at greater length, drawing attention to discrepancies between the two official reports. Since reports of human-rights violations had caused great damage to Bulgaria's reputation, it would be in the government's interest to allow impartial observers to move freely and gather accurate first-hand information. Mr Shahi observed that the reports of forcible assimilation had caused great anguish in the Islamic Conference and throughout the Muslim world. He sought reassurance concerning the reported closure of more than 1,000 mosques and of restrictions on the observance of Muslim religious rites. Mrs Sadiq Ali also queried the conclusion that Bulgaria was an ethnically homogeneous state.

Mr Čičanovic reviewed the references to minorities in successive reports from Bulgaria, drawing attention to the 'disappearance' of the Macedonian minority. He asked for additional information on any contemplated measures to ensure that such groups could exercise their rights under article 1 of the Convention. Mr Yutzis maintained that it was unlikely that a relatively large group of people would suddenly decide to change their names, since names are important to cultural identity. Mr Braunschweig enquired whether it would be possible for a group of observers representing the Committee to visit Bulgaria in order to obtain objective information on the situation; the Committee was currently in no position to draw any conclusions. Mr Partsch opined that there was admissible evidence that the Muslim minority in Bulgaria was being subjected to a coercive assimilation campaign in violation of their minority rights. He recalled that the General Secretary of the Bulgarian Communist Party had claimed that the Bulgarian Muslims were in reality Bulgarians who had been forced to adopt

Islam when the country was under Ottoman rule. He supported Mr Braunschweig's view and insisted that the Committee must act. Mr Song had some further queries on the demographic aspects.

Mr Starushenko commented that the discussion had assumed a political character. The apparent problem was a consequence of five centuries of alien domination. He had studied Turkish and on frequent visits to Bulgaria had noticed a decline in the numbers who spoke that language. The decline could be explained by the ending of alien domination and the creation of an environment in which people did not need to believe in any god. There were no grounds for sending observers. Each state party used its own methods to solve its problems. Which method was best might be debated, and a country might not choose the best method, but only that country had the right to make that choice. Mr de Pierola y Balta then asked for the floor a second time to say that, if the problem of the Turkish minority was politicized, then it should be politicized within a world-wide framework. The peoples of Latin America, Africa, and Asia had been compelled to participate in the rivalry between two groups of developed countries. He wondered whether external pressure was being brought to bear on the government of Bulgaria. Mr Banton observed that the Committee had never formally reported non-compliance by a state party. A situation might occur in which this would be necessary. It was questionable whether Bulgaria was being candid with the Committee. If, as Mr Starushenko said, a state might not always choose the best methods of dealing with a problem, then a dialogue might be possible on that basis. A visit might be organized through the Islamic conference. Mr Sherifis (Cyprus) thought the Committee should exploit whatever possibilities there were for dialogue. Several other members then chose to explain points on which they thought they might have been misunderstood.

At this point the Chairman suggested that the ninth periodic report, which was already due, might include answers to the points raised. Mr Karasimeonov maintained that the Committee should follow its usual procedure. Mr Partsch suggested that the Committee should have a closed meeting in order to discuss proposals made in the current meeting. Mr Karasimeonov, Mr Starushenko, Mr de Pierola y Balta, and Mr Shahi spoke against this, so no more was heard of Mr Partsch's suggestion. Invited to respond to questions, the Bulgarian representative then elaborated

upon some of his earlier observations. He promised that Bulgaria would always be very hospitable to visiting experts from the Committee as guests, but under no circumstances would the government agree to a commission of inquiry. Mr Yutzis gave reasons for finding the replies unpersuasive. Mr Shahi queried the kind of historical justification that had been advanced, remarking that, as a result of the British conquest of India, his country now had a large Christian population; to try to redress history by mistreating them would produce only chaos. Mr Čičanovic repeated that there were ethnic minorities in Bulgaria and if there were no figures about their size that was only because no effort had been made to collect them. Mr Öberg indicated his support for the three previous speakers' views, and then the Chairman announced that consideration of the reports had been completed, making it impossible to reopen the question of any further dialogue until the next report was received (which would not be until 1991).

Mr Banton thought it wrong that a member of the Committee should have tried to influence a decision concerning action on a report from the country of which he was a national, so he subsequently introduced a motion to amend the rules of procedure in this respect (A/42/18, para. 845). The proposal failed, partly because the members from Sweden and the Sudan had both vigorously criticized their own countries' reports (SR 768, paras. 27–9; 784, paras. 47–55). Since this also concerns a possible conflict of interest, it may be relevant to note that in 1987 and 1988, but not in 1993, the Chairman continued to preside over the Committee when his own state's report was under consideration (SR 755, 822, 971).

Reverting to the consideration of the 1986 Bulgarian report, and in the knowledge that there had, as alleged, been many serious human-rights abuses, the main conclusion must be that up to 1988 CERD was in no position to act against any but a pariah state. Chile and Israel found themselves in this position, and South Africa would have done had that country become a state party. There was insufficient trust within the Committee for it to take decisions other than by consensus, and this permitted any small minority to exercise a veto. Many members saw their obligations very much in diplomatic terms, and perhaps could do little else while the opposition between East and West hung over so many of the decisions that had to be taken.

Mr Öberg, a member of the Committee from 1984 to 1988, commented subsequently upon interpretations of the member's role in a booklet written in Swedish. He wrote:

> Whether a representative or not, every member is influenced to some degree by the general values of his or her fellow citizens. It is unlikely that any government even in the most democratic of countries would nominate as a candidate someone who had already been critical of that government's discharge of its obligations under the Convention. Sweden might have faced that challenge but in the end it was not put to the test. During the consideration of Sweden's report in 1986 I advanced a sharp criticism of the government's neglect to prohibit racial discrimination in the workplace. Before my term of office expired in 1988 I notified the government that I would not be available for renomination. In accordance with an agreement between the Nordic states about rotation in the nomination of candidates for treaty bodies, these states then agreed to support a Danish candidate.
>
> In 1985 Ecuador's report was considered. The member from that country, who had earlier been its foreign minister, was then CERD's chairman. He passed his gavel to a vice-chairman so that in his personal capacity he could comment on the report of a government composed of his party's opponents. When his term of office expired he was not re-nominated.

It should be noted, however, that the member from Ecuador did not use this opportunity to be very critical; he said that the report showed that in this field there were no ideological divergences between successive governments (SR 702, para. 14). That he was not renominated was probably due to a change in the political complexion of the government. Mr Öberg remarked on the solidarity shown by members from states of the East European group. When he was a member of the Committee he had himself commented on a remark of Mr Staruschenko that he spoke 'as the representative of a socialist country' in order to explain a difference of opinion between them (SR 792). He was not a member when a black African member referred to the black representative of a Caribbean reporting state as 'my sister'; had he been, he might have cited this as evidence of a solidarity based upon colour. Mr Öberg had the impression that Muslim members were like Western members in being inclined to look tolerantly upon the shortcomings of states in their own group. Diplomats, he said, were often obliged to take a placatory stance.

To take an actual example, one Committee member was at the time stationed in Belgrade and knew that he was soon to take up a new post as his country's ambassador to Moscow. Just how critical could one expect him to be in his comments on the reports of Yugoslavia and the USSR? The diplomat in question is of unusual charm and mild disposition. It was no surprise when at the next election to the Committee he received the largest number of votes of any candidate. (Öberg 1990: 11–13)

CERD'S LOSS OF MOMENTUM

By way of conclusion to this chapter, it should be asked whether the years 1979–87 saw any improvements in the implementation of the Convention? The record shows that, while some states parties improved their application of it, others continued to have only a limited understanding of the obligations they had assumed. For example, the initial report of Gabon, considered in 1982, simply stated that

> the Government of Gabon has not deemed it necessary to adopt any legislative, judicial, administrative or other measures relating to racial discrimination to give effect to the provisions of the relevant international convention, particularly because no discrimination exists between the different components of the Gabonese nation.

On another occasion Mr Nettel objected that the fifth report of Fiji was identical to its fourth with the exception of four lines relating to population figures. 'The submission of such a report was a waste of time and money for both the Committee and the Secretariat' (SR 629). Mr Braunschweig once regretted that state reports were 'frequently repetitious, incoherent and imprecise'; he thought that they should be more sharply focused (SR 808). Other states represented relations within their countries as idyllic. The representative of Uruguay admitted to the presence of 'what had been described as *angelismo*' in his country's seventh report (SR 579). Others might also have considered this possibility. For example, presenting its seventh report Brazil claimed that 'its harmonious racial and ethnic heritage . . . formed a unity and attested to the wholeness of the Brazilian nationality. The Indian, African, European and Asian elements had combined to form a single *ethnos*, which could be found in the personality of every Brazilian' (SR 612).

Some states had difficulty accepting the independence of committee members. Mr Ghoneim (Egypt) reported that his government had received a protest in relation to a statement he had made at the preceding session in connection with a state report. His government had responded in the appropriate manner, but such action could have a detrimental effect upon the Committee's work. Others agreed, so it was decided to publicize this view in the annual report (see A/38/18, paras. 78–9).

The Committee's contribution to the implementation of the Convention during this period failed to maintain the momentum of the years 1970–8. In 1983, presenting the report to the General Assembly, the director of the Centre for Human Rights cited the work of the Committee as a reason for the increase in the number of ratifications of the Convention (A/38/18, para. 19). But this was a charitable view, for in many respects the Committee had simply stood still. In particular, it tended to concentrate upon matters of foreign policy and on the texts of legislation without investigating the effectiveness with which the laws were applied. For example, Australia's second report, considered in 1979, included, as annexes, copies of reports from the Commissioner for Community Relations which have been described as

> something of an embarrassment to the Government, not only for revealing the extent of the problems in the racial discrimination area that continue to exist in Australia, particularly at the level of defiance by State governments (notably Queensland), but also because they reveal weaknesses and the inadequacy of the resources made available . . . (Nettheim 1981: 135).

All periodic reports are translated into the Committee's official languages, but annexes are not usually translated or circulated. They are available for consultation in a file in the Committee's meeting-room. It would appear that on this occasion no Committee member read the reports of the Commissioner or made use of them in the examination of the government's report.

The Committee did not bear all the blame for the loss of momentum. Its ability to extend the rule of law and put pressure upon states parties to fulfil their obligations depended upon the kinds of person the states had elected, their ability to attend sessions, and the preparation they had undertaken. In 1985 there were further indications that the Committee some-

times had difficulty obtaining a quorum. According to the annual report,

> some members had encountered difficulty in participating faithfully in the regular sessions . . . a member [Mr Yutzis] introduced orally a draft proposal recommending that States parties, in nominating and electing a candidate, should take into account the availability of that candidate to attend meetings regularly . . .

The Committee decided that the matter should be discussed at its next session (A/40/18, para. 10), but the proposal was overtaken by the UN's financial crisis. Since some states were not paying their assessments, the crisis led to the cancellation or abbreviation of many of CERD's sessions. The failure of the other states parties to take effective action against those of their number who contributed to this situation scarcely suggested much appreciation for the Committee's work.

In 1979–87 CERD built very little upon the foundations that had been laid in the earlier period. It extended to new states the principles established in that period (at the closing of the Committee's last session in 1978 there were 100 states parties; this had increased to 124 by the closing of the last session in 1987). The Committee reinforced the application of its earlier principles in its dialogue with all states parties, but it undertook no major initiatives to improve implementation of the Convention and was inclined to involve itself with the same political disputes as were being addressed in other UN organs.

9

Dialogue with European States

IN the 1950s and sixties the states of the East and West European blocs were profoundly suspicious of one another and, given the high spending on the arms race, they had cause for alarm. It may be conjectured that their reasons for ratifying or acceding to the Convention reflected these and other international tensions. Representatives of the Eastern states were accustomed to maintaining that the policies initiated by the USSR had solved 'the national problem' and eliminated racial discrimination, but they feared the possible revival of nazi ideologies in the West and were reluctant to confer powers upon international bodies lest this work to their disadvantage. To further their interests in international politics they sought to increase their influence with the recently decolonized states, and campaigning against apartheid gave them great opportunities. They ratified early to gain maximum influence in the new enterprise.

The states of Western Europe had already come together in the Council of Europe and had drawn up, in 1950, the European Convention on Human Rights and Fundamental Freedoms. This was testimony to their belief that the development of international human-rights law was important to future peace throughout the world. Most of them did not recognize that within their own societies there was any racial discrimination, or even any potential for it. Contemplating the UN convention, they had to calculate the balance of advantage to themselves. Ratification would give their critics opportunities to criticize their policies, but, since the Convention was coming into force and the treaty body was being established, it was to their advantage to take part in the process and use what influence they could acquire to see that the Convention was developed in the kinds of way they thought desirable. Indeed, it is notable that the UN official who oversaw the drafting of the Convention should have concluded his account of that process by remarking that it was in the interest of the Western Powers

to become full participants, because 'Without such participation, there is the danger of the Committee on the Elimination of Racial Discrimination becoming an instrument for manoeuvers of one camp against the other, since the Committee will be a creation of the States Parties and not a subsidiary organ of the UN' (Schwelb 1966: 1058).

By 1983 all the European states admitted to membership of the UN had acceded to the Convention except Albania and Ireland (Albania acceded in 1994, by which time Ireland had decided to do likewise). Some states had legislated against racial discrimination before the Convention came into effect and might well have done so in any case, but others chose to legislate because they intended to ratify. State action in this field has usually been impelled by both internal and external pressure. Internally, groups within the majority population have sometimes been shocked by evidence of discrimination as incompatible with the moral standards they set for their countries. Externally, there have been diplomatic and moral reasons for accepting the obligations detailed in human-rights conventions. It is relatively easy to list those obligations and to note what laws obtain in states, but this sheds no light upon why compliance is almost always less than perfect. It is often difficult to find reasons why a state should have met certain obligations but not others; the answers may lie in the institutions of the state in question and in the political circumstances of particular periods.

Consider, for example, why it was that the UK introduced comprehensive legislation earlier than other West European states. The political contexts of the three Acts of 1965, 1968, and 1976 were straightforward. The Labour government that assumed office in 1964 wished to maintain restrictions on immigration from countries of the New Commonwealth (primarily the West Indies and South Asia). They could satisfy their supporters only by making this part of a package; this had to provide protections for immigrants who were already settled in order to promote their integration into the majority society. The protections enacted in 1965 were very limited. The man appointed to head the agency responsible for implementing them accepted the post only on condition that they would be reviewed after three years. An experimental study was then conducted which convincingly demonstrated that the incidence of racial discrimination in employment, housing, and the provision of services was far more extensive than anyone had

believed. The findings shocked public opinion and created an atmosphere in which it was possible for the 1968 Act to extend the protections. Then in 1975 parliament passed an Act against discrimination on grounds of sex. The importance of the female vote was such that no party could oppose it. The following year a revised Act against racial discrimination was introduced in terms paralleling the Act against sex discrimination. Some Conservative members of parliament disliked it but nevertheless hesitated to oppose something so similar to the law they had enacted the previous year. This suggests that anyone seeking to secure the passage of reforming legislation needs to choose an opportune moment.

A comparable example is that of voting rights for settled immigrants. In Sweden they were enabled to vote in the local elections of 1976 and subsequently. Some eight years later a similar proposal was advanced in France, but failed for lack of public support. Then with the adoption of the Treaty of Maastricht a more limited right was accepted for citizens of states within the European Union. Parties at different points of the political spectrum seek support from different sections of the electorate and take up different positions. They have now to pay more attention to the policies of neighbouring states. Such influence as CERD can exert is subject to similar constraints. Its opinions weigh more heavily with some ministries and at some periods than with other ministries and at other periods.

Until the late 1980s membership of the Council of Europe was limited to the states of the West, but by 1993 membership had been extended to thirty-two states, many of them in the East. The Council has continued to be active in the promotion of human rights and in the prevention of racial discrimination and xenophobia. The European Community was created in 1969 by the amalgamation of three already existing regional communities, and after ratification of the Treaty of Maastricht it became, in 1993, the European Union. In 1975 thirty-five European and other states gave their political assent to the Final Act of the Conference on Security and Cooperation in Europe (the 'Helsinki Accord'), important sections of which set forth various human-rights obligations and which have since been built upon by further action, including the appointment of a High Commissioner on National Minorities. So it is relevant to note that European participation in ICERD has the support of a set of regional bodies. Some of these

have encouraged their members to make the declaration under ICERD article 14 permitting individual petition, but so far with only limited success. It is equally important to note the strength of NGOs within most of these countries and their influence in campaigns for better implementation of international human-rights standards.

Table 2 is based on figures collected since 1987 (the table and relevant description can be found at the end of Chapter 8). It provides in a compressed form a great deal of information about the Committee's working methods and its interaction with states.

Before trying to decide to what extent the dialogue between states parties and the Committee has led to improved implementation of the Convention, it is necessary to note the influence of the political conditions governing the Committee's operation. As was shown in Chapters 6 and 7, in the work of CERD prior to 1988 there were what looked like political manœuvres by one camp against the other. The changes in Eastern Europe that started about that time have been reflected in the reports received from Moscow and in their reception.

THE EASING OF POLITICAL CONSTRAINTS

In the 1970s some members of CERD were ready to heap praise on the USSR for having eradicated racial discrimination by the changes inaugurated at the revolution. A stress on general juridical principles continued to be a feature of Soviet reports up to the ninth one submitted in 1986. That began by saying that since the last report 'an event of enormous historical importance has taken place in the life of the peoples of the USSR'. This was the Twenty-Seventh Congress of the Communist Party of the Soviet Union, which had drawn up a programme for the further democratization of Soviet society. The Congress had been told that

> national oppression and inequality of all types and forms have been done away with once and for all . . . The Soviet people is a qualitatively new social and international community, cemented by the same economic interests, ideology and political goals . . . Such development holds out the long term historical prospect of the complete unity of nations.

There was no information on the application of laws against racial

discrimination, because such discrimination no longer occurred. People outside the USSR had heard accounts of African students being treated less favourably, especially when, for example, they became friendly with Russian girls, but it was difficult to use accounts of such a kind as a basis for criticizing the state's policies.

The tenth report, of 1988, struck a very different note. It described the process of restructuring (*perestroika*) that had started. The eleventh report explained that that this process had given rise to national regeneration and national movements.

> The democratic forces involved in these movements reflect the legitimate desires of citizens of all nationalities for self-determination and self-government, an improvement in living conditions and the protection and development of national cultures. The memory of historical injustices, the unsatisfactory pace of democratic changes, the fall in the standard of living, the crisis affecting the structures of power, the criminal exploitation of national sentiments for partizan and mercenary purposes have paved the way for an exacerbation of antagonisms between nationalities and of centrifugal tendencies.

It was scarcely necessary for Committee members to voice any suspicion that the Russians had not, after all, become a qualitatively new social community, or that they had all the weaknesses of peoples in other parts of the world and that their legislation was not furnishing the hoped-for protections.

Prior to 1988 any criticism of Soviet compliance was likely to be interpreted in political terms. Since that time, the Committee's ability to assess reports from Moscow, Minsk, and Kiev has been limited by the shortage of reliable information about events from sources independent of the governments. Such discrimination as occurs is likely to be on grounds of ethnic or national origin and may not always be as flagrant as that associated with differences of skin colour.

Reports from other East European states have also shown some significant changes. For example, the ninth to eleventh reports of Bulgaria were presented in 1991 by the state representative who had presented the reports which had occasioned controversy in 1986. According to him:

> The repression of Muslims and Bulgarian Turks and the attempt to force them to assimilate, particularly during the last six years of the totalitarian regime, had been strongly condemned by the State and public opinion

after the regime had collapsed. The episode represented a sad chapter of Bulgarian history, even if the number of the victims and the nature of the repression could not be compared to the ethnic strife with which a number of European countries were currently afflicted. In the previous two years a broad range of legislative and administrative measures had been introduced in order to restore rights violated during the attempted forced assimilation and to provide compensation for wrongs and injuries. In particular, the judicial procedure for the restoration of names forcibly changed had been replaced by a more streamlined administrative procedure with the amendment in November of the Citizens' Names Law, adopted in March of that year. By April 1991, some 600,000 applications for such restoration, mostly from Bulgarian Turks, Pomaks and Muslim Gypsies, had been approved. (SR 918).

The country rapporteur, Mr de Gouttes, commented on the many questions generated by the new reports; that 'the Committee should ask such questions and expect a reply—something which could scarcely have been hoped for in the past—was a tribute to the democratization of Bulgaria'.

Another set of events which brought out into the open some of the political constraints under which the Committee had been working was provided by the outbreak of ethnically based hostilities in Yugoslavia. In March 1993 CERD reviewed its previous considerations of Yugoslav reports. Members wondered whether they should have noticed impending trouble and either issued a warning or attempted some kind of preventive action. They noted wryly that some committee members had been full of praise for government policies. Mr Öberg had said that 'it was quite remarkable that a country like Yugoslavia could exist'; its viability could be attributed to its 'concerted policy of mutual respect for the various groups, languages, customs and religions present in the country' (SR 738). Mr Song had affirmed that 'racial discrimination did not exist in Yugoslavia', while Mr Staruschenko had thought it provided 'convincing demonstration of socialism's ability to resolve the nationality question'. Mr de Pierola had regarded Yugoslavia as 'an admirable model for the elimination of racial discrimination'.

The ninth and tenth reports were considered in 1990 (A/45/18, paras. 192–205; SR 874–5). Members asked why relations between Croats and Serbs had deteriorated and were told in reply that this was because the government of the Croatian republic had objected

to demands for a referendum on the creation of an autonomous Serbian region within Croatia. Why was there tension in Kosovo? The state representative referred to 'the aspiration of a part of the national Albanian minority to make the province a republic and a sovereign state, and to declare what it considered the right of that minority to self-determination and secession'. This had led to the temporary suspension of the Assembly and Executive Council of Kosovo. Regarding the claim to self-determination, he stated that 'nowhere in the world did national minorities have that right . . . Kosovo formed part of Serbian territory and had never in history belonged to Albania'. Serbs had been forced to leave Kosovo 'partly as a result of intolerance by Albanian authorities but also because of the misguided attitude and policy of certain Serbian and Yugoslav politicians. The Albanians were not entirely to be blamed for the situation.'

If the Committee failed to assess properly Yugoslavia's compliance in 1990, that failure may be attributed in part to the insufficiency of accurate sources of information independent of the government's report. Readers may recollect the view of Mr Staruschenko, mentioned in Chapter 7, that the nature of the Convention is such that the Committee should normally trust governments to provide a truthful account of circumstances. They should also remember the need to treat all states equally. If Yugoslavia was deficient in 1990, were not some other states parties even more deficient?

The Committee decided that in August 1993 it would review the eighth and tenth reports of Yugoslavia considered in 1985 and 1990, and the Committee's consideration of them, to see whether any lessons could be learnt about the processes generating ethnic conflicts and about the ways in which the Committee could react to signs of increasing tension. That August it held a closed meeting to reflect upon its own record in this matter, and a sequence of four meetings in which it considered the updating information supplied by the government. In the course of a discussion of 'ethnic cleansing' one member suggested the following definition for the Committee's purposes: 'Ethnic cleansing is the expulsion or elimination from a given territory of persons who do not belong to the ethnic group responsible for such actions. It is an enforced segregation contrary to article 3 of the International Convention on the Elimination of Racial Discrimination' (SR 1003).

The government's report implied that the situation in Serbia and Montenegro was normal, leading the country rapporteur, Mr van Boven, to observe:

> Although the oral statement by the government representative did come closer to reality, it was striking to note that blame was put either on the international community or on the minorities in the country itself which were said to have abused their rights. He appreciated the government's wish for a balanced view of the situation, but considered the government's presentation itself to be unbalanced. (SR 1003)

The Committee's concluding observations were extensive (A/48/18, paras. 530–47). It

> considered that by not opposing extremism and ultranationalism on ethnic grounds, State authorities and political leaders incurred serious responsibility . . . links existed between the Federal Republic of Yugoslavia (Serbia and Montenegro) and Serbian militias and paramilitary groups responsible for massive, gross and systematic violations of human rights in Bosnia and Herzegovina and in Croatian territories controlled by Serbs . . . The Committee was deeply concerned by reports indicating that in Kosovo, as well as in Vojvodina and Sandzak, members of national minorities had been subject to a campaign of terror carried out by paramilitary organizations . . .

Among its other recommendations the Committee urged the government

> to undertake all measures at its disposal with a view to bringing to an end the massive, gross and systematic human rights violations currently occurring in those areas of Croatia and Bosnia and Herzegovina controlled by Serbs. The Committee also urged the State party to assist efforts to arrest, bring to trial and punish all those responsible for crimes which would be covered by the terms of reference of the international tribunal established pursuant to Security Council resolution 808 (1993). (A/48/18, para. 545)

A similar recommendation was addressed to Croatia concerning those areas of Bosnia controlled by Croats. At subsequent sessions the Committee requested further information from the governments of Yugoslavia (Serbia and Montenegro), Bosnia and Herzegovina, Croatia, and the Former Yugoslav Republic of Macedonia. It continued to keep the situation in the region under review, though members differed in their opinions as to an appropriate role for the Committee in the prevailing circumstances.

To assess the extent to which a state meets its obligations under the Convention is much more difficult than looking through the books to see what laws exist on paper. A proper assessment requires first an appreciation of the circumstances in which suspicions of racial discrimination might arise in the state in question. Then, secondly, an understanding of the state's legal order including its provisions regarding discrimination. Thirdly, and no less important, is information about the extent to which the laws are effectively deployed to prevent discrimination or deal with its consequences. To assess the compliance of almost any country in the industrial world is therefore a research project in itself, and, given the number of European states, a task beyond the reach of this chapter. What it will attempt instead is to discuss the Committee's attempts, by dialogue, to improve implementation.

Chapters 10, 11, and 12 will review the Committee's dialogue with states in America, Africa, and Asia, taking states in an order similar to that employed in Chapter 5. This, as the first of the regional chapters, will pursue a different plan and follow the sequence given by the articles of the Convention, describing some of the occasions on which committee members have called attention to particular features of these. Proceeding in this manner will introduce some comments on the various articles which do not relate to the European states alone and could equally well have been associated with a review of dialogue with states in the American, African, or Asian groups. Since this chapter, therefore, does double duty, it has to be substantially longer than the other regional chapters, but this seems the best way to cope with the complexities of the material. Because one three-week committee session generates a summary record of some 300-odd closely typed pages, any account of the dialogue has to be highly selective. This account reflects the features and potentialities of the Convention which most interest the present author, quoting both from the summary record and the concluding observations. Other members of the Committee would doubtless wish to highlight different dimensions of the dialogue.

ARTICLE 1

Two features of article 1.1 have recently attracted comment: the reference to distinctions *based* on race, and the question of whether they have either the *purpose* or the *effect* of nullifying rights.

The first of these concerns the test for what is 'based upon race'; it was raised in 1992, in connection with the ninth and tenth periodic reports of Austria (SR 947), when Mr Banton drew attention to article 1 of the Federal Constitutional Law of 3 July 1973. According to this law, the 'legislative and executive powers shall refrain from any discrimination on the sole ground of race, colour, descent or national or ethnic origin'. Since discriminatory actions may arise from multiple grounds, the restriction of the prohibition by the insertion of the word 'sole' must occasion further questions about the adequacy of the protection provided. He thought the Austrian government might find it of interest to consider the experience of Australia, where the legislation had been amended to

> remove the requirements that racial discrimination be shown to be the dominant reason for an action in order for that action to be unlawful. This provision presented a significant range of complainants with problems of proof. The Act now provides that an action is unlawful if one of the reasons for the action constitutes racial discrimination, regardless of whether it is the dominant reason. (Australian eighth report, para. 46.)

In his response, the state representative noted that the 1973 law prohibited discrimination:

> he wondered exactly what was meant by the term discrimination. Did it imply different treatment, or unjustified treatment? If the latter were the case, the restriction contained in the law would be open to criticism. He pointed out, however, that there did exist positive forms of discrimination . . .

This may have been on his part an interim response to a difficult question, and the next periodic report from Austria may include considered replies on these and other questions asked at the same time.

The Netherlands Equal Treatment Act of 1994 prohibits both direct and indirect discrimination but appears to render unlawful only those actions which are based on the *sole* grounds of political opinion, race, sex, nationality, heterosexual or homosexual

orientation, or civil status. This will doubtless occasion questioning when that country's next periodic report is considered.

In Europe it is sometimes difficult to distinguish one ground of action from another. For example, the members of some religious groups hold views on abortion which lead them to take action that is political in character. They might maintain that it is not possible to separate the religious and political components in their motivation. Race, like religion, can be a shared attribute which leads to the formation of a group which displays a political character in some settings but not others. In other regions of the world membership of a racial group may be even more sharply coterminous with membership of a religious or political group. The concept of a ground of action as a part of the attempt to regulate behaviour by law will therefore necessitate much development in the future.

A second feature of article 1.1 is the distinction between purpose and effect (which is also known as that between direct and indirect discrimination, or between disparate treatment and disparate impact). Members of the Committee have raised this in connection with several state reports, and it was put to the Austrian representative, again with reference to Australian practice. Australia's report had continued:

> The amendments make clear that unlawful racial discrimination under the Act includes 'indirect discrimination', that is where a rule or requirement not explicitly based on race none the less has a discriminatory effect. They further provide that employers are vicariously liable for acts of racial discrimination by employees in connection with their duties. This will assist complainants by reducing problems that have arisen in some cases of fixing responsibility for an act of discrimination on the appropriate person; it will also encourage employers to take measures to prevent racial discrimination in the workplace.

The Austrian representative thought that the effect of such legislation must be

> to reverse the burden of proof; in his view, such a measure would only be justified in very specific cases, since if the right to a remedy was automatic, anyone could allege that he had been a victim of racial discrimination and it would then be for the accused party to prove the contrary . . . when there were four applicants for a post and only one was chosen, the others might claim that they had been rejected for reasons connected with their race, and might sue the employer for damages: how was the latter to prove that nothing of the kind had occurred?

Mr Banton replied that he thought these fears exaggerated; the problem did not arise in the same way in civil proceedings, and he asked Austria to take note of the remedies available in some other countries. Mr van Boven supported this, citing experience in the Netherlands.

Some European countries have prohibited only actions which are racially discriminatory in respect of their purpose. For example, Belgium told the Committee that in 1992 an amendment had been proposed to make the prohibition of racial discrimination more effective, but 'it should be noted that in all cases proof of racist intention must be adduced' (A/47/18, para. 62). The position in France is similar, so CERD in 1994 recommended 'that France strengthen its laws to prohibit actions which are discriminatory in effect'.

Article 1.2 excludes from the definition of racial discrimination distinctions made by a state between citizens and noncitizens. It shuts out any consideration of whether or not a state's immigration laws are 'racist', though it leaves open the possibility of considering whether such laws are implemented in a racially discriminatory manner. When the Convention was being drafted, the demand for labour in many European countries exceeded the supply, leading to immigration from outside Europe. In the early 1970s the balance changed. Then by the end of the 1980s even those countries which had traditionally been hospitable to asylum-seekers adopted restrictive immigration policies. These could not but clash with the inclusion of indirect discrimination within the definition in article 1.1 of racial discrimination since the excess labour supply was in countries with populations racially distinct from those in Europe. The exception in this subarticle has therefore been very important.

Some states have regarded the same subarticle as absolving them from any obligation to report upon measures to protect noncitizens from racial discrimination. This interpretation was first challenged in 1989 in connection with the eighth and ninth periodic reports of Germany. Mr Banton said that he could not accept the state's claim that the employment of ethnically distinctive foreign workers was not subject to compulsory reporting.

The exception created by article 1, paragraph 2, applies only to distinctions made by the state party, while article 2, paragraph 1(*c*) recognizes a state's obligation to eliminate racial barriers and divisions. So the Federal

Republic should tell us if there are patterns of foreign-worker segregation in work, housing, schooling, and so on, as a result of actions by employers, municipalities, private citizens or the workers themselves. (SR 844 para 63)

Mr Aboul-Nasr and Mr Rechetov expressed support for the German government's interpretation of article 1.2, whereas Mr Garvalov agreed with Mr Banton. The German representative replied that in his view the Convention was not intended to guarantee all the rights provided for in article 5 to citizens and aliens alike, as seemed obvious in the case of the right to vote.

In 1992 Mr Banton had put the same point to the Austrian representative, maintaining that ICERD article 1.2

recognizes the right of a State to decide who may be a citizen and the rights a citizen may enjoy, but it does not cover distinctions, exclusions, restrictions or preferences made by bodies other than the State (e.g. by private employers). There is therefore an obligation on the State to see that differences of race, colour, descent, and national or ethnic origin do not occasion less favourable treatment, and to report on action taken in discharge of that obligation.

The representative's response was to say 'That was an entirely new concept, which in his view was not in keeping with the spirit of the Convention.'

In March 1993 the Committee adopted a general recommendation which, while acknowledging that actions by a state party which differentiated between citizens and noncitizens were excepted from the Convention's definition of racial discrimination, affirmed that states were under an obligation to report fully upon legislation on foreigners and its implementation. By this time the German government had already prepared its twelfth period report, which included a restatement of their view that the Convention contained no obligation to report on such legislation. It remains to be seen whether this position will be maintained.

Among other features of article 1, it may be noted that discrimination on grounds of ethnic or national origin is prohibited. A man can change his nationality but not his national origin. Linking the prohibition to 'origin' has proven simpler than attempting to relate it to membership of an ethnic group, since 'membership' is in these circumstances difficult to define. Many individuals can claim multiple ethnic origins, and there may sometimes be room for argument about whether less favourable treatment has been based

upon a particular ethnic origin. Since there is no prohibition of discrimination on grounds of religion, cases may arise in which someone complaining of discrimination belongs in a group defined by both religion and ethnic origin, like those of Jews and Sikhs. Since there are persons who regard themselves, and are regarded by others, as Jews and as Sikhs, but who do not practise the Jewish or Sikh religion, the ethnic group is larger than the religious one, and can be distinguished from it. The 'but-for' test approved by the courts in England in sex-discrimination cases could also be used in these circumstances. A court would have to decide whether the complainant would have been treated more favourably *but for* the presumption that he or she was of a certain ethnic origin. This test will work better when it is applied to the treatment of an individual than when it has to be applied to a group. It might not solve the problems presented by a possible mixture of motives in some of the cases that could arise in Africa, and which are outlined in Chapter 11.

The reference to 'public life' in article 1.1 was inserted to remove from the scope of the Convention discrimination within private relations. Queries as to the meaning of the restriction arose, not in dialogue with states parties, but in a committee discussion of the ways that in some countries schools and municipal services as well as social clubs have been removed, by privatization, from the scope of anti-discrimination legislation. The Committee appeared to agree that the effect of the phrase in article 1.1 was to define the political, economic, social, and cultural fields of life as fields of public life and to say that, if any other similar fields were ever recognized, they too would come within the scope of the definition of racial discrimination. The action of a state in permitting the privatization of schools is not sufficient to except them from the reach of the Convention. (SR 969)

ARTICLE 2

States parties are allowed some discretion as to how they implement their obligations. In some states the act of ratification automatically makes the Convention part of domestic law, so that it is then self-executing. Greece and Spain offer examples of European states in which the Convention has been incorporated into domestic (or

'municipal') law. In some states international obligations take priority over domestic law if they come into conflict, but this is a technical subject which requires separate treatment by a specialist. Even when international treaties automatically become part of domestic law, further legislation would be needed in the case of ICERD to specify the punishment that would follow breach of the declaration under article 4(*a*), and to give particular tribunals jurisdiction. Other states may enact statutes either recapitulating the provisions of the Convention or amending existing statutes to ensure that the provisions of the Convention are covered. In these circumstances the Committee has quite often expressed doubt about whether all the provisions have been fully covered.

Many states have written provisions against discrimination into their constitutions. For example, in Germany, article 3.1 of the Basic Law embodies the equality of all people, while article 3.3 provides that no one may be prejudiced or favoured because of his or her sex, parentage, race, language, homeland, or origin. Any allegation of a violation by a public authority would be adjudicated in the constitutional court, whereas cases of discrimination by private persons can be taken to a civil court or a labour court.

Article 2.1 requires a state to pursue a policy for eliminating racial discrimination. The policies of some states are part of larger social policies, such as those promoting national integration. In 1990 France established a Haut Conseil à l'Intégration to help formulate this ideal. The Council has stated that

> integration is evoking the active participation in society of all men and women who have decided to live permanently on our soil, accepting that there are cultural differences but putting the emphasis on similarities and convergencies in the equality of rights and duties needed to ensure the cohesion of our social tissue.

This is seen as very different from 'the logic of minorities' (HCI 1993: 8). The French policy is therefore teleological in conception, whereas the other West European countries which have tried to define their objectives have done so in more open-ended terms. The UK has declared that it is a fundamental objective of the government, acting in concert with other public and private agencies, to enable members of ethnic minorities 'to participate freely and fully in the economic, social and public life of the nation, with all the benefits and responsibilities which that entails, while still being

able to maintain their own culture, traditions, language and values' (thirteenth periodic report). Sweden in 1975 declared that its actions should be based on the three principles of equality, freedom of choice, and partnership, while Norway stressed freedom of choice but said that it must be complemented by cooperation, reciprocity, and tolerance. What France calls a logic of minorities can be exemplified in the Netherlands, which has a minorities policy 'directed towards the achievement of a society in which the members of the minority groups living in the Netherlands are given an equal place in society and full opportunities for development, both as individuals and as members of groups'.

Sometimes state policies are primarily concerned with the public sector. The report from Austria prepared in 1986 explained that the state constitution prohibited any form of racial discrimination and put the legislative and executive powers under an obligation to refrain from any discrimination. The controls were comprehensive in that the state was liable for any injury; damages could be paid; there was an ombudsman, and legal aid was available. Provisions for preventing discrimination by private persons were to be found in penal legislation protecting public order. The right to work was set against the free contract of employment between the parties which was subject to civil law, but there was no indication of any remedies available by this means. No information was provided on the number of persons who had complained of racial discrimination. This was characteristic of the reports of many states. Their representatives often claim that the absence of cases proves the absence of discrimination, whereas the critic may suspect that the remedies are ineffective because the victim is unaware of them or has no confidence in them.

As was explained in Chapter 3 some states assume that whether or not a group constitutes a minority is a question of law rather than a question of fact. An interesting variation is to be found in Sweden. There the only reindeer-breeders are Saami. As will have been noted from a case mentioned in the same chapter, they enjoy special protections by virtue of their occupation but not on account of their ethnic distinctiveness. The power to define the nature of groups in this way can be of great significance. It has already been noted that one justification offered by Serbian nationalists for their denial of rights to ethnic Albanians in Kosovo—rights that they insist should be accorded to ethnic Serbs in Croatia—was that Serbs

in Yugoslavia are a nation, whereas Albanians were only a national minority.

CERD is empowered under article 9.2 to 'make suggestions and general recommendations'. The former can be directed to particular states but according to *The First Twenty Years* (UN 1991*c*: para. 120) up to 1990 'No suggestions have been directed at or addressed to individual States parties, except for decisions requesting additional information.' The first such suggestion would therefore appear to be the one addressed to Greece in 1992 (A/47/18, para. 92):

> Bearing in mind the provision of article 2(1)(*c*) of the Convention, the Committee called upon the Government of Greece to revise its Nationality Act as far as it differentiated between ethnic Greeks and non-ethnic Greeks, together with any legal or administrative practices which relied on such a distinction.

When the eleventh periodic report of Greece (a document incorporating the eighth, ninth, and tenth reports because the government had fallen behind with its reports) was considered by the Committee, the country rapporteur was Mr Wolfrum. He observed that under the 1955 Act a person of non-Greek origin who left Greece, not intending to return, could be declared to have lost Greek nationality. It was not clear how the authorities could establish such an intention. He was also concerned that such a decision could be made by a Minister of the Interior without a hearing, judicial review, or the right of appeal. He asked how many persons had lost their nationality under the provision (SR 940).

Mr Wolfrum posed further questions about charges brought against two particular individuals (with Turkish-sounding names) and why no action had been taken to punish those who had instigated riots against members of the Turkish minority in 1990. Mr Wolfrum asked for better demographic information concerning persons of Turkish ethnic origin in Thrace. Was it true that most Turkish associations in western Thrace had remained closed following a High Court decision in 1988 ordering their closure on the ground that the use of the term 'Turkish' to describe Greek Muslims endangered public order? Other members of the Committee also asked questions about ethnic minorities and about the government's practice of using the name of a religion to identify a group distinguished by its ethnic origin.

The state representative provided little information in response, and sought to evade certain of these questions. For example,

> he wondered what exactly was meant by the term 'minority'. If no more than a few families scattered around the country could be so designated, then there was indeed an Albanian minority in Greece. However, it should be recalled that until the First World War a large part of Albanian territory was inhabited by Greeks under Ottoman administration and it was more appropriate to speak of a Greek minority in Albania. (SR 941)

Members of the Committee expressed disappointment that many questions had gone unanswered. In its concluding observations the Committee reported

> an absence of information about judicial proceedings in which the respective provisions of the Greek criminal law had been invoked.
>
> In order to determine whether the social differentiation of Muslims, Pomaks, Gypsies, Armenians and others, especially but not solely in western Thrace, had the effect of impairing the human rights and fundamental freedoms of members of those groups, the Committee called upon the Greek Government to include in its next periodic report information on the economic, social and cultural circumstances of these groups, bearing in mind the Committee's General Recommendation VIII regarding the criteria for the identification of ethnic groups, according to which the identification of individuals as members of a racial or ethnic group should be based upon self-identification by the individual concerned. (A/47/18, paras. 90–1)

Since 1992 the argument about whether there is a Macedonian nation, and its relation to the 2,260,000 Macedonian Greeks, has intensified. Some of this argument is between those who would deny ethnic distinctiveness to the inhabitants of the Former Yugoslav Republic of Macedonia on the grounds that they lack any long historical pedigree as a separate group, and those who maintain that, whatever happened earlier, the people in question developed a distinctive ethnic consciousness during the Tito era.

Article 2.1(*d*) is unqualified in its requirement that a state party bring to an end racial discrimination; it is not limited to the state sector or to governmental action or to the enactment of laws, but makes the state responsible for bringing to an end racial discrimination throughout the society. Article 2.1(*e*) is similarly extensive in requiring action against 'anything which tends to strengthen racial division' and in obliging the state to offer encouragement to non-state organizations.

ARTICLE 3

As will have been apparent from Chapter 6, this article was always interpreted as being directed simply at apartheid until 1989, when Mr Banton, in connection with reports from the FRG and Sweden, contended that the reference to segregation was not limited to state-enforced segregation. In the FRG there were residential and other concentrations of foreign workers which would show up in any statistical analysis as patterns of separation or segregation. This might result from the wishes of the foreign workers themselves, and be a form of self-segregation. Nevertheless there was an obligation to report on it; the Committee should be told if segregation in work, housing, and schooling, as a result of actions by employers, municipalities, or private citizens, gave rise to any racial discrimination or fear of it (SR 844). In Stockholm, Sweden, there was a suburb where a few years earlier 65 per cent of the population had been of foreign descent and some 100 languages were spoken. The disadvantages of the first-generation settlers could be transmitted to their children and this possibility needed monitoring (SR 850). The Swedish representative said that his government was aware of the possible problems, but German representatives have hitherto been less forthcoming on these points.

In most European countries there are middle-class and working-class residential neighbourhoods, and the schools reflect the class composition of the areas from which their pupils are drawn. The negative consequences of such segregation are the greater when ethnic differences are added to those of class. In some countries parents can choose schools for their children within the state sector, and this is thought to improve standards by encouraging competition between schools. Parental choice may, however, increase the tendencies towards ethnic segregation. In its eighth periodic report in 1988 (para. 55), the Netherlands stated: 'A recent development is what has become popularly known as the "white/black school problem". The term has come about because there are schools where children from ethnic minorities are in a majority. There was a widespread fear that this might cause a deterioration in educational standards.' The government had concentrated on positive action to improve facilities at schools with a large proportion of ethnic minority pupils. Members of the

Committee indicated their concern about the implications of school segregation and returned to the issue in 1994 in connection with the report from France. They then expressed 'concern about social trends which result in segregation in areas of residence and in the school system'.

In March 1993 Mr Banton introduced a draft general recommendation on segregation (SR 969). The intention was to advise states that the scope of ICERD article 3 is not restricted to measures directed against apartheid, and that, while segregation can arise from state policy, it can arise from other sources also. He had circulated a memorandum recalling the drafting history of this article, and contending that, though a law might have been drafted with one object in mind, it might subsequently render illegal some form of conduct that was not in contemplation when the law was enacted. Article 3's reference to apartheid might have been directed exclusively to South Africa, but if the reference to segregation were also directed exclusively to one country, the article would not have required states in the plural to act 'in territories under their jurisdiction'. The article as a whole prohibited all forms of segregation. According to the text, states parties condemn *both* racial segregation *and* apartheid. Segregation is mentioned first, consistent with the view that apartheid is to be seen as *one* form of segregation. In view of the changes in South Africa, it could be timely for CERD to explain that the condemnation of segregation would remain, even if apartheid were completely eliminated.

Support for this interpretation could, he maintained, be drawn from other international instruments, from English-language dictionaries and practice, and from national laws. *The Oxford English Dictionary* listed the two first senses of the word 'segregation' as '1. The action of segregating . . .' and '2. The condition of being segregated . . .' When the tenth periodic report of Sweden was considered, there was a difference of opinion between two members of the Committee which centred upon whether segregation was to be defined only as 'the action of segregating' or also included 'the condition of being segregated'.

Since separation could be a cause of racial disadvantage and in turn give rise to discrimination, Mr Banton proposed that the Committee affirm that the condition of being racially segregated could arise from causes other than intentional action and have undesired consequences both for those who were segregated and

for their descendants. In many societies in which there were no distinct barriers between races, economic and social segregation operated in such a way that there was a greater probability that persons of certain races would find themselves at a disadvantage relative to others. Therefore the Committee should invite states parties to review all practices which could give rise to racial segregation, intentional and unintentional, undertake preventive action, and notify the Committee of their progress in this respect in their periodic reports.

Since this proposal received support, Mr Banton was asked to redraft it and a recommendation was eventually agreed in 1995. In March 1993 the Committee had considered whether, as in the past, its general recommendations should be drafted in the form of resolutions or should follow the style of the Human Rights Committee and be written in what Mr van Boven called a 'narrative' form (SR 967). Some subsequent general recommendations have been drafted in this form, but a proposal to rewrite some of the earlier ones in this form so that they can all be consolidated has so far made little progress (see SR 1025). CERD seems to find it more difficult to secure agreement on general recommendations than the Human Rights Committee.

ARTICLE 4

In the 1965 General Assembly debate the delegate of the Netherlands said that he 'regarded article 4 as the key article of the Convention; it would make it a universal instrument'. It was indeed the key article for those who saw the dissemination of ideas based on racial superiority or hatred as the prime cause of racial discrimination, but other articles were equally universal. Article 4 was also taken by the Committee in the 1970s as a key article for its dialogue with states, because in their view it generated mandatory and uniform obligations to be discharged by all states.

It has also proven the most controversial article. As Mr Partsch has recalled (1992*b*: 24), the draft of the Convention prepared by the Commission of Human Rights and forwarded to the General Assembly proposed that 'all incitement to racial discrimination resulting in acts of violence or incitement to such acts' should be

punished by law. This wording was close to that in article 20 of the ICCPR. In the Third Committee Czechoslovakia proposed an amendment to declare a punishable offence all 'dissemination of ideas and doctrines based on racial superiority or hatred' without requiring any connection with violence. Other amendments resuted in the final wording, which requires states to act: '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 . . .'.

Mr Partsch (1992*b*: 24) has discussed three different views about the effect of the 'with-due-regard' clause upon the obligations of the states parties. The first is that states are not authorized to take any action which would in any way limit or impair the rights referred to in this clause (a position adopted by the USA). The second is that states parties must strike a balance between the fundamental freedoms and their duties under the Convention (a position adopted by Partsch himself). The third is that states may not invoke the protection of civil rights as a reason to avoid implementation of the Convention (a position regarded sympathetically by the author of CERD's study on article 4 (UN 1986)).

Committee members have had to address two general issues. One was that some states, primarily in western Europe, had entered reservations as to the effect of this article's provisions (as mentioned in Chapter 6). The other was that some states claimed that article 2.1(*d*) allowed them discretion as to whether or not they met their obligations by legislative or by other means.

A crucial issue is whether the dissemination of propaganda must have resulted in violence, incited hatred, or caused discrimination before it becomes punishable. Apart from this, it is very difficult to perceive any right protected by the reservations entered by Austria, France, and Italy, or by the UK's statement of interpretation, that is not covered by the due-regard clause, given that article 29.2 of the Universal Declaration states that the rights may be limited only for securing 'due recognition and respect for the rights and freedoms of others', while ICERD article 5(*d*)(viii) and (ix) lists the rights to freedom of opinion and expression and to peaceful assembly and association. Unless the reservations have some additional effect, they are redundant, and therefore incompatible with the spirit and purpose of the Convention. The Committee has therefore questioned these states about the justification for

maintaining their reservations; the dialogue on this point in the early years is summarized in UN (1986).

Two countries, Norway and Sweden, considered entering reservations, but decided that this was not necessary, since they inferred that article 2.1(*d*) gave them discretion as to whether they fulfilled their obligations under article 4 by legislative means or by other means. (They might have done better to rely instead upon the 'due-regard' clause of article 4 and the second of the two positions described by Partsch.) Norway revised section 135 of its penal code to meet the requirements of article 4(*a*) but did not make any changes on account of article 4(*b*). In 1977 CERD reported to the General Assembly that, with regard to article 4(*b*),

> the measures taken in Norway were directed not against the existence of certain organizations but against certain offences. While one member of the Committee thought that the situation was satisfactory, other members were of the view that the Committee required States parties to prohibit associations which promoted racial discrimination. (A/33/18, para. 185; quoted in UN 1986: para. 140)

CERD adopted the position that the obligations of article 4(*b*) were categoric and unconditional (cf. UN 1986: para. 143). It acknowledged that certain states had sought to retain a discretion in this connection by means of reservations, but went on: 'It has been said that this kind of reservation is incompatible with the object and purpose of the Convention and cannot be permitted under article 20, paragraph 2' (UN 1986: para. 222). According to E. Schwelb's article on the Convention's drafting history (1966: 1018) the qualification 'as required by circumstances' was inserted to make it clear that legislation was required if, and to the extent that, discriminatory practices occurred in the country in question. The Committee took a different view when (UN 1986: para. 221) it stated that 'Article 4 aims at prevention rather than cure'; a parallel reference to 'the preventive aspects of article 4' appears in general recommendation VII of 1985.

Reference was made to the phrase 'as required by circumstances' and its significance when, in 1986, the seventh periodic report of Sweden was considered. The report stated in paragraph 51 the government's view that article 2.1(*d*) allowed each state party a margin of appreciation. Members of the Committee disagreed. According to the annual report (A/42/18, para. 351),

They pointed out that the optional character of the use of legislative measures, among others, in pursuing the policy of eliminating racial discrimination under article 2 paragraph 1 (d) of the Convention did not override the precise mandatory character of the provision of article 4(*b*), which in relation to article 2 was a *lex specialis*.

This passage in the report was based on an observation of Mr Cremona, with which Mr de Pierola agreed, and the remark of Mr Partsch that article 2.1(*d*) conferred no latitude with respect to article 4 (SR 769, paras. 30, 31; 769 para. 1). Mr Partsch's view was that the discretion conferred by the reference to circumstances in article 2.1(*d*) was applicable 'except in so far as the Convention makes special provision in other articles . . .' (Partsch 1992*b*: 23).

The dialogue with Sweden on this point continued in 1994. Presenting his country's eleventh report, the state representative gave an account of a bill currently before the Riksdag which introduced new measures against racial attacks and defined racial motivation as an aggravating characteristic of an offence. The bill was based on the recommendations of a committee which had carefully considered the requirements of the Convention and the observations of Committee members. In his government's view the new law would fulfil Sweden's obligations under article 4, even though it did not make all dissemination of ideas based upon racial superiority a punishable offence in itself or prohibit organizations which promote racial discrimination. The country rapporteur, Mr Rechetov, rejected these claims. The freedoms of expression and association could not be used in order to denigrate ethnic groups. In his view there was no legal basis for the reservations some states had entered concerning this article. Other members of the Committee did not go so far, but they repeated their view that the wording of article 4 was so peremptory that it excluded this article from the discretion otherwise conferred in article 2.1(*d*), and disagreed that Sweden had fulfilled its obligations.

In the view of the Committee the discretion to employ appropriate means is overridden in the case of racial incitement by the wording of article 4(*a*) and (*b*). In saying that certain acts shall be punishable, the Convention requires sanctions under the criminal law. Actions prohibited under other articles of the Convention can be dealt with under other branches of law: administrative law, constitutional law, civil law, labour law, and so on, but not those to which articles 4(*a*) and (*b*) relate (Wolfrum 1990).

The dialogue with Norway on this point in 1994 led to CERD's concluding observation

that the State party has not implemented the provisions contained in article 4(*b*) of the Convention and has not provided information on the practical application of provisions of article 4. In that connection, it is noted that between 1982 and 1989 some 500 possible breaches of section 135(*a*) of the Penal Code were reported to the authorities and that very few led to any proceedings. The situation has not improved since 1989. It is regretted that no information has been provided by the State party on the existing case law.

Further to reports about the use of local radio to disseminate ideas which may be in breach of article 4(*a*) of the Convention, more detailed information is desired about the monitoring of transmissions and the implementation of procedures for receiving licenses to broadcast.

Addressing both Norway and Sweden in similar terms, the Committee stated:

paragraphs (*a*) and (*b*) are of a mandatory character . . . it notes that so far these provisions have not been fully implemented in Norway; therefore the Committee recommends that the State party should carry out each obligation . . . (A/49/18, paras. 254, 256, 261)

CERD's report for 1993 with respect to the report from the UK stated:

The Committee expressed concern that the State party was not implementing its obligations under article 4 of the Convention, which called for the adoption of specific penal legislation. By not prohibiting the British National Party and other groups and organizations of a racist nature, and by allowing them to pursue their activities, the State party was failing to implement article 4, which called for a condemnation of all organizations attempting to justify or promote racial hatred and discrimination. Additionally, the Committee considered that in the light of the increase in manifestation of racist ideas and of racially motivated attacks, the restrictive interpretation of article 4 violated the purpose and objective of the Convention and was incompatible with the general recommendation XV of the Committee.

The Committee encouraged the State party to review its interpretive statements and reservations, in particular, those with regard to articles 4 and 6 of the Convention, with a view to withdrawing them. (A/48/18, paras. 416, 422)

In its thirteenth periodic report (para. 36) the UK replied

robustly that the banning of groups like the British National Party would be counter-productive, leading to greater publicity and support for the groups in question; it would therefore run counter to the object and purpose of the Convention.

Mr Rechetov (1992) has elsewhere summarized the reports to CERD of states which have commented upon how they balance the prohibition of racial incitement with the obligation to protect freedom of speech, and has described the first case to come before a court in Russia in which K. V. Ostashvili was tried for incitement to hatred against Jews.

A case arose in Denmark which exemplifies the possible conflict between a state's obligation to implement article 4 and citizens' rights under article 19 of both the UDHR and the ICCPR. Two journalists had interviewed some young men who had been attacking immigrants and who justified their conduct on racial grounds. The young men (who called themselves 'Greenjackets') were convicted of offences, but the journalists were separately convicted for disseminating ideas based on racial superiority or hatred under legislation that had been enacted by Denmark to meet its obligations under ICERD. Did their conviction breach the journalists' rights to freedom of expression guaranteed by Denmark to meet article 10 of the European Convention on Human Rights? That article resembles article 19 of the two international instruments. It states:

1. Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society . . . for the protection of the rights and reputation of others . . .

On a vote of 12 to 7, the European Court of Human Rights in 1994 concluded (*Jersild* v. *Denmark*, 36/1993/431/510) that the reasons advanced by the government were not sufficient to establish that the interference was 'necessary' or that the means employed were proportionate to the aim of protecting 'the rights and reputation of others'. There had therefore been a breach of the European Convention. The Danish legislation had been amended

before the case reached the European Court, but the decision will be important to the future interpretation of ICERD article 4.

The same article was held to be relevant to the communication *L.K.* v. *The Netherlands*, which was described in Chapter 8. In that case CERD found

> that the remarks and threats made on 8 and 9 August 1989 to L.K. constituted incitement to racial discrimination and to acts of violence against persons of another colour or ethnic origin, contrary to article 4(*a*) of the Convention, and the investigation into these incidents by the police and prosecution authorities was incomplete.
>
> The Committee cannot accept any claim that the enactment of law making racial discrimination a criminal act in itself represents full compliance with the obligations of States parties under the Convention.

It added that the prosecutor's discretion, commonly known as the expediency principle,

> should be applied in each case of alleged racial discrimination in the light of the guarantees laid down in the Convention.
>
> When threats of racial violence are made, and especially when they are made in public and by a group, it is incumbent upon the State to investigate with due diligence and expedition. In the instant case, the State party failed to do this.
>
> The Committee finds that in view of the inadequate response to the incidents, the police and judicial proceedings in this case did not afford the applicant effective protection and remedies within the meaning of article 6 of the Convention.
>
> The Committee recommends that the State party review its policy and procedures concerning the decision to prosecute in cases of alleged racial discrimination, in the light of its obligations under article 4 of the Convention.
>
> The Committee further recommends that the State party provide the applicant with relief commensurate with the moral damage he has suffered.

In August 1994 the representative of Canada was asked why her country had not so far made a declaration under article 14 of the ICERD when it had accepted the Optional Protocol of the ICCPR. She suggested that one reason for hesitation might be the scope of article 4, which conflicted with the Canadian view of the freedom of speech. Mr van Boven answered that any such concern might be misplaced. In his view, articles 2 and 4 dealt with policies to be pursued by states and were therefore unlikely to give rise to

individual communications under article 14. Complainants were most likely to appeal to the rights secured by articles 5 and 6.

ARTICLE 5

For those who believe that the main causes of racial discrimination are ideological and intentional, article 4 is the most important; but for those who believe that more racial discrimination springs from unconscious assumptions and the intergenerational transmission of inequality, it is article 5 that is the key article.

In 1973 CERD discussed the scope and implications of article 5 without being able to come to any agreement on several basic issues. That discussion, together with all the other relevant material available at the time, was reviewed in an article by Mr Partsch (1979). He concluded that the text and context of the provisions of article 5 appeared to give the right to equality before the law at least the same importance as the undertaking to prohibit and to eliminate racial discrimination. The drafting history tended to lay greater emphasis on the right to equality before the law. Reservations and interpretive statements also emphasized the right to equality before the law and supposed a mandatory character of the rights listed. Some members of the Committee, however, have taken the view that, if in a particular state a given right was not guaranteed by law, there could be no guarantee in respect of non-discrimination in its enjoyment. Mr Partsch maintained that a state fails to comply with this article only if a restriction upon one of the specified rights has been imposed as a result of a racial motivation or with the effect of impairing the full enjoyment of the right to equality before the law on grounds of race, colour, or national or ethnic origin. His article also discusses implementation up to 1978 of Article 5's subparagraphs (*a*)–(*d*). The Committee returned to this issue on several occasions between 1993 and 1995 in connection with a draft general recommendation proposed by Mr Wolfrum which enjoys wide support but had not been adopted by the end of the summer session of 1995. According to the draft:

> Article 5 of the Convention, apart from the guarantee in the exercise of human rights to be free from racial discrimination, does not of itself create civil, political, economic, social or cultural rights, but presumes the existence of these rights. It obliges States to prohibit and eliminate racial

discrimination in the enjoyment of human rights as they are guaranteed in the country concerned.

The rights and freedoms mentioned in article 5 do not address the same groups of persons. Some are related to all living in a given State, such as the right to equal treatment before tribunals; some are the rights of citizens, such as the rights to participate in elections, to vote and stand for election.

. . . Where the practices of private bodies influence the availability of opportunities, the State must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.

To give any account of the dialogue between the Committee and European states concerning implementation of article 5, it is necessary to call attention, if only briefly, to the five paragraphs and the many subparagraphs which comprise the article. The law relating to any one paragraph would be material enough for a whole book, so all that can be done here is to give an indication of the sorts of point that have been raised in connection with reports from European states.

Two preliminary points of different character should be borne in mind. The first is that the list of rights in the Convention follows those of the two covenants, but it is not exclusive. The opening paragraph concludes 'notably in the enjoyment of the following rights'; other, unspecified rights may be covered by it. The second preliminary point is to note that it may be impossible to ascertain whether or not there is equality before the law without quantitative data on the experience of persons of different race or ethnic origin. To collect such data individuals have to be classified, possibly by asking them to which ethnic group they assign themselves. There is considerable resistance to the collection of information on this basis. Some people, in many countries, refuse to assign themselves to such a category, believing the whole principle to be contrary to attempts to overcome the effects of racial differentiation. France in 1979 enacted Law 78-17 of 6 January 1978 on computer technology, files, and freedoms. This specifies that data on racial origins may not be stored electronically without the express agreement of the person concerned. Anyone who breaches the provisions of this act shall be imprisoned for a period between six months and five years or fined up to two million francs. The Centre Nationale d'Informatique et des Libertés monitors application of the Act. It has authorized exceptions in favour of official research projects

into the social participation of young people who have received social assistance, and into the social and geographical mobility of immigrants and their children. It has also authorized the collection of data on racial origins for epidemiological research into cognitive ageing, risks of acquiring cancer, and for vaccines against human immunodeficiency virus (HIV). Applications for exceptions are carefully scrutinized. Many French people would contend that this protection of privacy is indispensable to the individual's dignity and the development of his or her personality.

In its concluding observations on the French report considered in 1994, CERD reported: 'concern is expressed lest the law on computer technology, files and freedoms impair the Government's readiness to ascertain whether victims of racial discrimination lack effective protection and remedies' (A/49/18, para. 148).

Paragraph 5(*a*) covers equality of treatment before organs administering justice. It has occasioned concluding observations regarding reports from several European states. In 1994 the Committee expressed the concern of members

> that the implementation of [new laws of immigration and asylum] could have racially discriminatory consequences, particularly in connection with the imposition of limitations on the right of appeal to expulsion orders and the provision of preventive detention of foreigners at points of entry for excessively long periods. Concern is also expressed that these laws might generate or reinforce a xenophobic atmosphere in French society.
>
> Concern is expressed over procedures concerning identity controls which confer on the police, for preventive reasons, broad discretion in checking the identity of foreigners in public, a measure which could encourage discrimination in actual practice. Concern is also expressed that the law enforcement services should reflect the ethnic diversity of the population and that adequate training with respect to racial discrimination be organized.
>
> Concern was expressed in 1983 about the adequacy of sentences imposed for racially-motivated crimes; a new concern is added about whether the sentences for racially-motivated homicides are consistent, regardless of the ethnic background of the victims.

Among the suggestions and recommendations made by the Committee to the government were

> that France strengthen its laws to prohibit actions which are discriminatory in effect, on grounds of race, ethnic or national origin, in accordance

with its General Recommendation XIV(42), and in order to provide compensation to victims of such discrimination.

that the Government take further preventive measures to counter racist violence and to implement fully article 4 of the Convention, which obliges States parties to declare illegal and prohibit organizations which promote and incite racial discrimination.

that the training of law enforcement officials in human rights standards be strengthened and that their recruitment be broadened to include more members of differing ethnic backgrounds.

These were followed by two requests for information

on whether languages other than French (including Breton, Basque and German) may be used in official settings and in mass media publications.

on judicial decisions relating to racial discrimination, penalties applied and a payment of compensation. (A/49/18, paras. 144–57)

In its 1993 concluding observations on another state, the Committee said that it was

of the view that the German Government should guarantee equal protection to all minority groups living in Germany. In addition, the Government should consider reviewing certain restrictive provisions recently adopted with regard to asylum-seekers to ensure that they do not result in any discrimination in effect on grounds of ethnic origin. (A/48/18, para. 448)

The following year the Committee expressed its concern to Norway that

the exercise of discretion not to invoke criminal proceedings may result in an absence of effective remedies.

the arrangements for compiling lists from which juries are selected may not guarantee to qualified persons of minority ethnic or national origin an equal chance that their names will appear on the lists. [This should be read in conjunction with the opinion in respect of *Narrainen* v. *Norway* described in Chapter 8.]

insufficient information was provided on measures to ensure that persons of minority ethnic and national origin receive equal protection against acts of violence, and on measures to counteract their reported belief that it is futile for them to report such attacks to the authorities.

The 'suggestions and recommendations' made to Norway included:

that Norway both improve the training of public officials (including immigration officers) to avoid racial discrimination, and improve methods of supervision to ensure that there are effective controls upon their conduct.

that the State review its measures for guaranteeing the human rights of asylum-seekers, particularly women and children, and particularly their economic and social rights, to see whether there is room for improvement.

that the State review its measures for guaranteeing the economic and social rights of naturalized immigrants and resident aliens of minority ethnic or national origin, with particular reference to the rights to work and housing. (A/49/18, paras. 255–63)

In 1993 the United Kingdom was told that:

The Committee recommended that, in accordance with the proposal made by the Commission of Racial Equality, the State party should take adequate legislative and other measures, to better implement the provisions of the Convention. The State party should, in particular, consider amending the 1976 Race Relations Act. The Committee also recommended that the State party either adopt legislation relating to protection against racial discrimination in Northern Ireland, or extend the scope of the Race Relations Act to Northern Ireland. (A/48/18, para. 419)

The legislation in Spain has also been found insufficient. In 1994 CERD recommended that

necessary legislative measures should be taken in order to give effect to the provisions of article 4. In view of the fact that the draft new criminal Code will soon be submitted to the Parliament for approval, it is recommended that the requirements of article 4 be taken into account as well as the suggestions of the Committee in order to ensure full conformity of the new provisions of the Code with the Convention.

The Committee recommends that information be provided in the next periodic report on the implementation of the provisions of article 5 of the Convention. The State party is requested to provide detailed information on cases of complaints of racial discrimination brought before the courts and on remedies made available to victims of racism and xenophobia, according to the provisions of article 6 of the Convention. Information was also requested on the cases filed by the Defensor del Pueblo, together with the annual report he presents. (A/49/18, paras. 508–9)

As will be apparent, the adoption of concluding observations like these has greatly tightened the manner in which the Committee monitors implementation of the Convention. CERD's opinion in the case of *L.K.* v. *The Netherlands*, discussed in connection with article 4, also has a bearing upon article 5(*a*).

Paragraph 5(*b*) covers the right to security of person. It has entitled the Committee to request additional information from states

in which ethnic conflict has been reported and enables it to review reports of racial attacks. Thus CERD told France of its

serious concern at the manifestations of racism and xenophobia which appeared to be on the increase in France, as well as in many countries in Europe and other continents. A particular concern is the high proportion of young people who, according to official statistics, were involved in actions of racial violence. It appears that an active extremist minority propagating nationalist and racist ideologies received increasing support in those sectors of society most affected by unemployment. (A/49/18, para. 143)

Likewise, in 1993 the Committee expressed to the government of Germany

serious concern at the manifestations of xenophobia, anti-semitism, racial discrimination and racial violence that had recently occurred in Germany. In spite of the Government's efforts to counteract and to prevent them, it appeared that these manifestations were increasing and that the German police system had in many instances failed to provide effective protection to victims and potential victims of xenophobia and racial discrimination, as required by the Convention. The Committee particularly held that all those who carried out functions in public and political life should in no way encourage sentiments of racism and xenophobia.

In view of the serious nature of the manifestations of xenophobia, racism and racial discrimination in Germany, the Committee recommended that practical measures should be strengthened with a view to preventing such manifestations, particularly acts of violence on an ethnic basis, and to punishing those who committed them. Measures should be taken, in that regard, against the organizations and groups involved.

While commending the Government of Germany for taking measures to prohibit extremist organizations disseminating ideas based on racial superiority or hatred, the Committee was of the view that appropriate measures should also be strictly applied against such organizations and especially against persons and groups who were implicated in racially motivated crimes.

In accordance with its General Recommendation XI, the Committee appealed to German Government to continue reporting fully upon legislation on foreigners and its implementation. (A/48/18, paras. 445–50)

After considering the twelfth report of the UK in 1993, the Committee stated that it

shared the concern of the State party about the rising number of racial attacks. However, it was of the opinion that not enough had been done to

inquire into the causes of such attacks and the manifestations of racist ideas.

In addition, the Committee suggested that further effective legislative and other practical measures should be taken with a view to preventing incidents of incitement to racial hatred and racially motivated attacks; that, in particular, the causes of such attacks should be more accurately analysed; that current efforts to encourage recruitment into the police of members of ethnic minorities be reinforced; and that the activities of organizations of a racist nature be prohibited and the dissemination of ideas based on racial hatred declared punishable by law. (A/48/18, paras. 413, 421)

Paragraph 5(*c*), which covers political rights, particularly participation in elections, has not played any prominent part in the dialogue with European states. It is followed by paragraph (*d*) on 'other civil rights'—in particular, rights to freedom of movement, to leave a country, and to return to one's country. As has already been mentioned (see Chapter 7), the latter question was raised in CERD, though not with any force, in connection with the number of Jews who wished to leave the former USSR. When the number was allowed to increase, this then caused concern to Arab states because so many settled in Israel.

The right to nationality is affected by ICERD articles 1.2 and 1.3, which except from the definition of racial discrimination the actions of a state party in deciding who may be a national or citizen and what may be the rights of citizens, but these subparagraphs do not permit a state to discriminate racially between different classes of citizen. Many political rights, such as the rights to vote and to stand for election to the legislature, to take part in the conduct of public affairs, and to occupy certain kinds of position, are reserved to nationals of the state concerned. The right to own land may be similarly restricted. It is easy to understand a requirement that members of the police and armed services, and responsible officials of state institutions, shall be nationals, but the same argument may not justify a requirement that no one may be appointed to a position in the postal service delivering letters unless he or she is a national, so there is some scope for questioning the justifiability of restrictions that are widely drawn. This issue was raised in connection with the eleventh report of France in 1994 when in its concluding observations the Committee recommended 'that when France reviews its rules restricting occupations to French

nationals, it ensures that none is discriminatory in effect' (A/49/18, para. 152).

In some countries there are large numbers of 'undocumented workers', 'illegals', or 'clandestines' who are liable to deportation and can more easily be exploited than workers who are nationals. Asylum-seekers need to be registered while their applications are under consideration so they are not equally vulnerable.

The question of nationality can therefore be important to discussions of racial discrimination. The 'New Commonwealth' immigrants in UK are entitled to vote, whereas (unless they have dual nationality) North Africans in France and Turks in Germany are not; this has a profound influence upon their relations with the societies in which they live. Nationality can be acquired in several ways: by birth in the national territory (the so-called *jus soli*); by virtue of a parent's nationality (the so-called *jus sanguinis*); by naturalization; and by marriage to a national. In Germany individuals seeking naturalization are obliged to abandon their previous nationality, but France is not opposed to dual nationality.

Not all nationals of a country may possess the same rights. The British Nationality Act, 1981, created three distinct classes: British citizenship; British Dependent Territories citizenship; and British Overseas citizenship. British citizens have a right of abode in the UK. British Dependent Territories citizens have a right of abode only in the territory from which they originate. There is a further category of Commonwealth citizens; persons in this category may, after perhaps two years' residence, be entitled to take part in elections in other Commonwealth countries.

Within the UK there has been much criticism of the 'primary purpose rule' under which the spouse of a British subject may be denied entry to the country if it is thought that the marriage was contracted with the primary purpose of securing a right of entry. This rule was criticized by CERD in 1993:

> The Committee notes with concern that . . . the primary purpose rule regarding marriage under the immigration regulations may entail discrimination in effect on grounds of ethnic origin.
>
> In the case of Hong Kong, in particular, the Committee expresses its concern at the discriminatory provisions of the British Nationality (Hong Kong) Act of 1990, according to which the authorities may register as British citizens only 50,000 'key people'. (A/48/18, paras. 417–18)

Other rights protected from discrimination under this paragraph include the rights to marriage, property, inheritance, freedom of thought, opinion, and association—the first three have not occasioned question, while the main issue concerning the remaining subparagraph has been covered in connection with article 4.

Paragraph (*e*) lists economic, social, and cultural rights, in particular subparagraph (i) the rights to work. After its consideration of Sweden's seventh report in 1986 the Committee reported that its members

> observed with concern that, after 15 years of implementation of the Convention, no legislation had yet been adopted in Sweden to prohibit ethnic discrimination in the labour market. It was pointed out that the Swedish Commission on Ethnic Prejudice and Discrimination had found discrimination in hiring, promoting and training and concluded that legislation was needed in order to comply with the Convention; however, the Government had decided against such legislation because of the legal technicalities referred to in the report. It was further noted that, in the absence of any legal means, employers could, for instance, refuse to hire blacks and immigrants with impunity and that some cases of discrimination arose from agreements between managements and labour unions. (A/42/18, para. 353)

By 1994 the situation had changed. The Ethnic Discrimination Commission had re-examined the matter, taking careful account of views expressed in CERD, and the government had introduced a measure to provide remedies in civil law for those who had suffered ethnic discrimination in the workplace.

Like most European countries, Austria is behind Sweden in this respect. After considering its tenth report, CERD concluded:

> 'The Committee found it necessary to recall that under article 5(*e*)(i) of the Convention, everyone in Austria must be guaranteed the right, without distinction as to race, to equality before the law in the enjoyment of the right[s] to work. This guarantee must cover the private as well as the State sector. (A/47/18, para. 198).

Similar recommendations have been addressed to some other countries, including France:

> that France introduce législation to provide effective protection of the exercise, without discrimination, of the rights to work and to housing, in both the public and private sectors, and to provide compensation to victims of discrimination. (A/49/18, para. 155)

and Germany:

> taking into account that practices of racial discrimination in such areas as access to employment, housing and other rights referred to in article 5(*f*) of the Convention were not always effectively dealt with, the German authorities should give serious consideration to the enactment of a comprehensive anti-discrimination law. Such a law would constitute a clear reaffirmation by the German authorities that racial discrimination was absolutely unacceptable, detrimental to human rights and human dignity. Other preventive measures such as information campaigns, educational programmes and training programmes addressed particularly to law enforcement officials, in accordance with article 7 of the Convention and General Recommendation XIII of the Committee, would strengthen the effectiveness of legal provisions. (A/48/18, para. 447)

Norway was told that

> insufficient information was provided on the implementation of provisions of article 5 of the Convention dealing with non-discrimination in respect of economic, social and cultural rights. (A/49/18, para. 259)

The UK was told that

> The Committee noted with concern that in spite of various measures taken by the authorities the rate of unemployment affecting ethnic minorities remained very high . . . (A/48/18, para. 417)

Subparagraph (ii), on the right to form and join trade unions, has not attracted attention in dialogue with European states; nor has there been much questioning on (iii), the right to housing. In the last case it seems as if many European states are disinclined to try to regulate discrimination in the private housing sector, and the kind of information on its incidence which has been collected for many years in the UK has not been collected in other countries. The Committee members have not pursued this topic with any vigour, though in 1995 Italy was asked whether it was unlawful for the owner of a property to give discriminatory instructions to an agent selling it or advertising it for rent, or for a person to accept discriminatory instructions. The Committee was told that the new law now covered such circumstances (SR 1075–6).

Nor, hitherto, have members of CERD attached priority to subparagraph (iv) on the right to public health, medical care, social security, and social services. Mr Banton has raised this on occasion, as in a question addressed to Norway:

With respect to the right to health specified in article 5(*e*)(iv), it is relevant to recall that discrimination occurs if like things are treated differently, or if unlike things are treated in a manner that fails to recognize their differences. Research in Britain has found that persons of African and Caribbean ancestry experience higher rates of strokes, high blood pressure, accidents, maternal mortality and tuberculosis, but lower rates of bronchitis. Persons with origins in the Indian subcontinent experience higher rates of heart disease, diabetes, accidents, tuberculosis, but lower rates of bronchitis and certain cancers. One study also found that there was a longer time interval before Asian patients with heart disease were seen by hospital consultants, either because their general practitioners treated them less favourably or because the Asian patients took longer before they sought treatment. If all sections of the population are to be treated equally, those responsible need to monitor such processes. No doubt persons from ethnic minorities in Norway have distinctive health problems. Will the government report on equal treatment in this field?

Subparagraph (v) of article 5 requires that an individual shall be able to enjoy the right to education and training without distinction as to race. Discussing the ninth report of Italy, Mr de Gouttes commended the state's policy to integrate foreign pupils into Italian schools, but asked what happened in practice? Were some schools reluctant to take foreign pupils or, on the other hand, were there some areas where the majority of pupils were of foreign origin (SR 1075)? *De facto* segregation might, however, derive not from reluctance on the part of the schools but from the exercise of parental right to choose a school for their children, as has already been discussed in connection with Article 3.

Subparagraph (vi) provides that the right to equal participation in cultural activities shall be protected. Television programmes are very influential in the formation and transmission of images of ethnic groups. This has been recognized in France by the Haut Conseil à l'Intégration, which in its 1993 report *Intégration à la française* (HCI 1993: 127–33) commented on the underrepresentation of immigrants and immigrant-descended people in the media and its plans to open a dialogue with the responsible parties in this field. It was suggested that it would be helpful were the next periodic report from France to notify any progress in this field, as the Committee might well wish to prepare a general recommendation on this component of article 5. CERD has also noted the manner in which political controls upon television and radio in the former Yugoslavia and in Rwanda were utilized to aggravate

racial hatreds. This poses a problem to which there is no ready solution.

Paragraph (*f*) lists the last of the rights to be specifically mentioned in article 5, namely those of access to services for the general public, such as transport, hotels, restaurants, cafés, theatres, and parks. In France there have been criminal prosecutions where restaurants, dance halls, and theatres have refused to serve persons on grounds of their race (in 1992 there were four convictions for offences of this character). Yet criminal prosecution is not necessarily the best or the most effective method of preventing discrimination in such establishments. In Europe they usually require a licence from the local municipality, and that licence may be withheld when they discriminate, which may bring the decision within the scope of administrative law. Several European states (including Germany and the Netherlands) prefer to rely on administrative measures to deal with these forms of discrimination.

ARTICLE 6

While the criminal law may prevent discrimination, it is not necessarily the most effective means available to a government, and it needs supplementation if 'just and adequate reparation' for victims is to be provided in fulfilment of the terms of article 6. Experience in some countries suggests that remedies in civil law are often more effective than criminal prohibitions. Their advantages have been summarized as follows:

1. The standard of proof is different. In criminal proceedings the state, being so powerful, is required to prove its case beyond reasonable doubt. In civil proceedings, the plaintiff needs only to prove his or her case on the balance of probabilities.
2. In criminal proceedings the accused may have a right of silence, both in police custody and in court. He or she need not then testify and expose himself or herself to cross-examination, and no inference of guilt can be drawn from such silence. Under the British law on racial discrimination, if the respondent does not reply the tribunal can infer that the applicant's statement of the facts is reliable.
3. It is usually the police who initiate criminal proceedings, though the prosecutor takes the final decision. Victims or their relatives sometimes complain about a reluctance to prosecute or to prefer the most

serious charge. In racial discrimination cases the applicant has unhindered access to the tribunal.

4. Criminal proceedings have an all-or-nothing character (though the prosecutor sometimes accepts a guilty plea to a lesser charge instead of continuing with a contested hearing on a more serious charge). In racial discrimination cases the parties can settle privately without any admission of fault by the respondent. (Banton 1994: 56)

ARTICLE 7

Most discussions of action to combat racial discrimination conclude that legal prohibitions need to be complemented by educational measures of the kind described in article 7. CERD has issued a general recommendation and published a study (UN 1985) on this obligation, but it remains one that is difficult for the Committee to monitor.

In 1992 CERD reported that

> The Committee was disturbed to learn that in Austria, as in other parts of Europe, there were signs of an increase in racism, xenophobia and anti-Semitism, and readiness to ignore the rights of members of ethnic groups, including Jews. Since such hostile attitudes can be exploited by racist organizations, the Committee sought information about preventive and educational countermeasures. (A/47/18, para. 198)

Since educational measures are not necessarily effective, and Norway had been arguing that the Council of Europe should campaign to this end, her government was asked in 1994:

> In view of the importance of measures in the fields of teaching, education and culture to combat prejudices which lead to racial discrimination, the Committee requests the State party to inform it on which measures it has found most effective, and which measures can reach those sections of the population most likely to engage in racist activities.

When replies are received from Austria, Norway, and Sweden (to whom a similar request was directed), the Committee may look for more specific ways in which to develop its responsibilities for the implementation of this article.

ARTICLE 14

By 1995 Bulgaria, Denmark, Finland, France, Hungary, Iceland, Italy, the Netherlands, Norway, the Russian Federation, Sweden, and the Ukraine had made declarations recognizing the competence of the Committee to consider communications from individuals within their jurisdiction who claimed that their rights under the Convention had not been protected. Other European states have apparently decided not to do so for the time being but have not publicized their reasons.

When Lord Lester asked in the House of Lords (13 June 1994) whether the UK government would make such a declaration, the government referred to its having accepted the right of individual petition under the European Convention on Human Rights, adding:

> The European system gives individuals access to a compensatory mechanism and it, therefore, affords a stronger form of redress than that under the International Convention on the Elimination of Racial Discrimination. In addition, domestic legislation allows for compensation to be sought through industrial tribunals. The Government do not consider that there is need for a further mechanism, but we will keep the position under review.

This repeats the answer given to CERD by a UK representative in 1994. It was not well received by the Committee, since it failed to acknowledge that there are many rights protected by ICERD (notably economic rights) which are not covered by the European Convention. The claim that the European system affords a stronger form of redress exaggerates the differences.

CONCLUSION

From time to time the Committee learns that a state has modified its legislation to bring it into line with the Convention's standards. For example, in 1987 CERD was told by the UK that its new Public Order Act 1986 penalized conduct which was *either* intended to stir up racial hatred *or* likely to have that effect. Previously conduct had been penalized only if it had *both* such an intention *and* such an effect. In conversation shortly afterwards the author found that one of his colleagues attributed the change to the Committee's comments on earlier reports, whereas the author himself thought that it had been brought about by political pressure within the

country. The Committee has no means of knowing how influential its dialogue is with the state when balanced against internal political considerations. It can only guess at the processes behind the submission of a periodic report or those which follow after consideration of it.

Sometimes it appears as if some of those within a state who should be implementing the Convention do not know of its existence, or pay it no attention because there is no pressure upon them to do otherwise. That may be because the Committee itself has not previously drawn attention to some shortcoming, or because domestic policies are insufficiently sensitive to international obligations. The reader should have learnt from this chapter that there are many passages in the Convention—particularly in article 5—which are relevant to circumstances in European states in ways that have not yet been fully examined in the reporting process.

Sweden is outstanding because it has attended so carefully to the Convention and because changes in its legislation have evidently been influenced by its dialogue with CERD. It is notable also because its has explicitly maintained a view of its obligations under article 4 which is at variance with the Committee's. Many other states have not yet prohibited discrimination in effect, have failed adequately to prohibit discrimination in the private sector, or have not allowed victims effective remedies and opportunities to obtain compensation.

The dialogue between the Committee and the states parties in Europe has, on the whole, been productive. This has been partly because, quite apart from the Convention, there is pressure within the Western states at least for improved action against racial discrimination. The state representatives have been open-minded in their exchanges (if occasionally irritated by observations from individual members), but their governments are still far from discharging all their obligations. Dialogue has been less intense with the states of Eastern Europe because the problems associated with immigration from the Third World have been less salient there. Some East European states have to contend with forms of discrimination resulting from the presence of national minorities which seek greater independence or which threaten the existing pattern of state boundaries. Accusations of racial discrimination then have a more political character and at present are less easily resolved by reference to the Convention.

Annex 145

A. A. Cançado Trindade, *The Application of the Rule of Exhaustion of Local Remedies in International Law* (Cambridge University Press, 1983)

THE APPLICATION OF THE RULE OF EXHAUSTION OF LOCAL REMEDIES IN INTERNATIONAL LAW

Its rationale in the international protection of individual rights

A.A. CANÇADO TRINDADE

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THE EXTENT OF APPLICATION OF THE RULE OF EXHAUSTION OF LOCAL REMEDIES

It is especially in the context of the international protection of human rights that the question of the extent of application of the rule of exhaustion of local remedies has evolved and been debated in recent years. In this respect the contribution of the case-law of the European Commission of Human Rights is far from negligible, particularly on such items as the application of the rule – *ratione personae* – in inter-State cases under the European Convention, and – *ratione materiae* – in relation to contentions of legislative measures and administrative practices allegedly incompatible with the provisions of the Convention. The Commission's jurisprudence on such problems, examined *infra*, pp. 172–212, may pave the way for a more adequate and clearer delimitation of the extent of application of the local remedies rule, particularly in the system of human rights protection.[1]

I. Exhaustion of local remedies in inter-State cases: the practice under the European Convention on Human Rights

1. Introduction: statement of the problem

The European Convention on Human Rights provides for a system of complaints which may be lodged with the European Commission of Human Rights either by individuals, private groups or non-governmental organisations (Article 25), or by States Parties to the Convention (Article 24). But while acceptance of the Commission's competence in inter-State cases is entailed automatically upon ratification of the Convention, acceptance of its competence is made optional in applications coming from individuals, which require an express declaration to that effect under Article 25 of the Convention.[2] There can be little doubt that the rule of exhaustion of local remedies applies to applications from individuals (Article 27(3)), but there has been some controversy as to whether the local remedies rule applies or should apply to applications coming from the States Parties themselves.

Surely a sovereign State cannot be made to exhaust domestic remedies in the courts of another State. *Par in parem non habet imperium, non habet jurisdictionem.* But this is assuming that the injury complained of is done *directly* to the claimant State. The fundamental question, the answer to which will be decisive for the determination of the applicability or not of the local remedies rule to complaints brought by one State against another, can be formulated thus: do all claims advanced by States concern directly and immediately the States themselves? The *Mavrommatis* principle provides a negative answer, by describing the espousal by the State of the case of its subject as the action whereby the State, *acting on his behalf,* asserts its own right and tries to ensure in the person of its subject respect for the rules of international law.[3] Hyde's categorization of international claims was in this respect straightforward, by distinguishing two broad classes of claims, namely, 'first, those which are based upon private complaints of individuals whose government acts as their representative in espousing their cause; secondly, those which "concern the State itself considered as a whole" '.[4] It is thus apparent that the starting-point for the study of the problem at issue resides in the *nature of the claim.*

The oral arguments in the *Aerial Incident* case (1959 – *infra*, p. 180) focused *inter alia* on the notion of 'direct injury', whereby a State complains of a direct breach of international law by another State causing immediate injury to itself. This instance is clearly different from cases of diplomatic protection. Acts concerning certain subjects are bound to constitute direct injuries to the State itself, for example, injuries caused by one State to another State's diplomatic or consular representatives in the exercise of their public functions (or injuries to State property, or treaty violations, and so forth). The classification of a case as one of direct injury to a State may leave it outside the scope of the local remedies rule.

It has been suggested that the classification of a case as one of direct injury or as one of diplomatic protection should be made to depend on those elements which seem to be *preponderant*, taking the case as a unity (undivided in its constituent elements) once classified in one way or another. Thus, a test for the classification of a case can be found in the 'real interests and objects' pursued by the claimant State: this latter can be found either to be seeking to secure objectives mainly of its own, or else to be espousing the cause of its subject and thus exercising diplomatic protection.[5] In this latter case the preponderant element would be the interest of the national whose cause was

espoused, rather than any other distinct interest of the State apart from the espousal;[6] it goes virtually without saying that it is the international organ's appreciation and decision, rather than the contending parties' formulation, that will ultimately count for the classification of a case into one category or another.

This classification or distinction is of paramount importance for the study of the problem under review. The *locus classicus* of the application of the local remedies rule is afforded by the situation where a dispute of a *private* origin between a State and an alien is 'internationalized' by virtue of the State's espousal of the claim of its national abroad. This suggests *prima facie* that only applications lodged with an international organ by individuals can be made subject to the local redress rule, unless applicant States choose to act on behalf of individuals (not necessarily their nationals) by virtue of express provisions of the Convention. This situation may at times give rise to uncertainties, as will be seen.

2. Non-application of the local remedies rule in inter-State cases

In the *First Cyprus* case (Greece v. United Kingdom, 1956), the Commission declared that 'the provision of Article 26 concerning the exhaustion of domestic remedies according to the generally recognized rules of international law does not apply to the present application, the scope of which is to determine the compatibility with the Convention of legislative measures and administrative practices in Cyprus'.[7] The Greek application was thus declared admissible by the Commission.[8] Even though the Commission declared the local remedies rule inapplicable in that inter-State case, its decision did not shed much light upon the crux of the problem under examination; for the decision was taken on account of the incompatibility with the Convention of certain emergency laws and regulations then in force in Cyprus. The problem of the inapplicability *per se* of the local remedies rule in inter-State case *as such*, irrespective of the existence of wrongful domestic measures or practices, remained unsolved.

For reasons similar to those in the *First Cyprus* case, the Commission, in the *First Greek* case (Denmark/Norway/Sweden/Netherlands v. Greece, 1968), declared that the Convention provisions on the exhaustion of domestic remedies did not apply to those applications, the object of which was 'to determine the compatibility with the Convention of legislative measures and administrative practices in

Greece'.[9] Here, again, the existence of those measures and practices appeared to have been the decisive factor in the Commission's decision to waive the application of the local remedies rule.

It would therefore be more appropriate to examine inter-State cases where the problem at issue was debated *without* the invocation of any generalized wrongful legislative measures or administrative practices: this would enable identification of the Commission's position on the matter in principle. First, however, it is pertinent to notice a relevant doctrinal contribution to the study of the problem, proposed by Eustathiades, who added to his knowledge of the drafting of the European Convention his experience as one of the draftsmen of the UN Covenants on Human Rights. In 1953–5 Eustathiades admitted that the local remedies rule as incorporated in Article 26 of the European Convention applied to individual complaints as well as inter-State ones.[10] However, in a study published in 1957,[11] looking more closely into the question, he reached the opposite conclusion.

To him, both the historical background and the content itself of Article 26 supported the view that this provision was directed in particular to applications emanating from individuals. This could be seen first from the reference contained in Article 26 to the 'generally recognized rules of international law': it resulted from international practice prior to the Convention that the exhaustion of local remedies was required in cases of diplomatic protection where States acted on behalf of their subjects by espousing their claims. The reference made by Article 26 to general international law embodied a certain analogy between individual applications under the Convention and the exercise of diplomatic protection by States in traditional international law. This analogy was maintained despite the fact that the Convention substituted for that exercise of diplomatic protection the right of individual petition under the Convention. And by that reference to general international law, Article 26 tried to avoid derogating from prior international practice which conditioned the exercise of diplomatic protection to previous exhaustion of local remedies.[12]

On the other hand, Eustathiades went on, when a Contracting State brought a complaint in accordance with Article 24 of the Convention, it was not simply demanding reparation for damages suffered by individuals, but rather attempting to ensure respect for the obligations ensuing from the Convention, and, therefore, the rule of exhaustion of local remedies did not apply.[13] Furthermore, the author added significantly:

en plus de la lettre, l'esprit et le but de la Convention conduisent – réserve faite de la protection diplomatique – à ne point devoir considérer l'épuisement des recours internes comme une condition de recevabilité des requêtes étatiques. En effet, les recours en vertu de l'article 24 de la Convention ne constituent pas une extension de la protection diplomatique. Ils appliquent l'idée de garantie collective qui domine l'ensemble du mécanisme de mise en oeuvre établi de façon obligatoire par la Convention. À l'article 24 ce n'est pas la lésion qui, comme à l'article 25, se trouve à la base de la requête, mais bien l'intérêt général, l'observation de la Convention. [...] Le requérant de l'article 25 devant prouver qu'il est victime d'une violation alléguée afin qu'il puisse être admis à présenter un recours, il est compréhensible qu'avant l'épuisement des recours internes on ne pourrait dire que l'ordre interne s'est montré défaillant, dans un cas particulier, à offrir réparation à la 'victime' de la violation de la Convention. Par contre, il n'est pas exigé du requérant de l'article 24 qu'il soit directement ou indirectement (en la personne de ses ressortissants) lésé par l'inobservation de la Convention. Le seul fait de l'existence d'une mesure législative, administrative ou judiciaire contraire à la Convention, autorise toute Partie Contractante d'exercer une action en vue de garantir le respect des droits de l'homme, action qui, sous la forme d'un recours conformément à l'article 24, réalise une garantie collective et n'est pas liée à la lésion d'un intérêt propre de l'État requérant, mais vise à la protection de l'intérêt de la collectivité, à savoir de l'intérêt qu'il y a à voir la Convention respectée au sein de cette collectivité.[14]

Eustathiades' inevitable conclusion was that the local remedies rule constituted a condition of admissibility of applications coming from individuals, but *not* of complaints taken to the Commission by States.[15]

Other authors, while not necessarily subscribing to these views, have nevertheless displayed some sympathy for them.[16] Support has been given, for example, to the view that it is of the essence of the notion of 'collective guarantee' underlying the Convention that a State is and should be entitled to intervene even if the victims are not its own nationals, since what ultimately counts here is the *general interest* in securing the observance and respect *erga omnes* of the obligations deriving from the Convention.[17]

The problem of the non-application or otherwise of the local remedies rule in inter-State cases under the Convention came neatly to the fore throughout the proceedings before the Commission of the *Austria* v. *Italy* case. The case was lodged with the Commission by Austria in July 1960; it concerned criminal proceedings leading to the conviction of six young men for the murder of an Italian customs officer in the German-speaking part of South Tyrol. The applicant government alleged that those proceedings were in breach of the

Convention provisions (Article 6) which laid down rules concerning the proper administration of justice and the protection of an accused person's rights. But in the admissibility proceedings of 1961, the Italian government raised an objection of non-exhaustion of local remedies, maintaining that the local remedies rule 'covered a considerably wider field in the European Convention than in general international law' (i.e., the Convention 'extended' the rule to nationals and stateless persons), applying 'equally to individual applications and to those by Contracting States'.[18]

The Austrian government, on the other hand, defended the thesis that individual applications differed from applications from States in that the local remedies rule applied to the former but *not* to the latter. The Austrian government explained:

> Articles 26 and 27(3) of the Convention appeared in quite a different light in the case of individual applications and in the case of applications from States. Persons, non-governmental organizations and groups of individuals could only apply to the Commission under Article 25 if they complained that they were *victims* of a violation of their rights and freedoms; this they could not validly do unless they had exhausted all domestic remedies. On the other hand, Article 24 authorized any Contracting State to refer to the Commission without having suffered any prejudice and even without any individual having been harmed simply because it felt justified as asserting that another State had committed some breach of the provisions of the Convention, perhaps merely by promulgating a law or decree. Unlike individuals, States had not the right to plead violations of the Convention before the courts of other States. Save for complaints made in exercising diplomatic protection, exhaustion of domestic remedies would appear, then, to be irrelevant to the admissibility of applications from States, which would be based on concepts of collective guarantee and general interest.[19]

The Commission, however, rejected this view, and, for reasons stated below, took the opposite standing, namely, that the local remedies rule under the Convention applies to individual as well as inter-State applications.

3. Application of the local remedies rule in inter-State cases

An early indication of the Commission's application of the local redress rule in inter-State cases was afforded by the *Second Cyprus* case (Greece v. United Kingdom, 1957), where the Commission required the exhaustion of local remedies from the alleged victims at least for some of the complaints (those where the perpetrators of the alleged ill-treatment – or some of them – had been identified).[20] It was not

until four years later, however, that the Commission dealt with the matter at length and clarified its position on the issue, in deciding on the *Austria* v. *Italy* case (admissibility stage).

Against the contentions of the Austrian government, the Commission began by observing that the local redress rule incorporated in Article 26 of the Convention did 'not, in express terms, make any distinction between matters referred to the Commission by a High Contracting Party under Article 24 and matters referred to it by an individual, non-governmental organization, or group of individuals under Article 25'.[21] Some of the uncertainties were due to the clumsy placement of paragraph (3) of Article 27; while paragraphs (1) and (2) of that provision expressly limited the grounds of admissibility contained therein to applications from individuals under Article 25, paragraph (3), in contrast with the two preceding paragraphs of the same Article, did not so limit the requirement of prior exhaustion of domestic remedies.

Could it then be inferred that this requirement was thereby extended not only to individual but also to inter-State applications? The Commission believed so; it deemed that this had been the intention of the Contracting States, and, furthermore, it felt unable to find in the reference made by Article 26 to 'generally recognized rules of international law' any indication that the High Contracting Parties intended to limit the operation of the rule to matters submitted to it in applications by individuals. The Commission explained:

> If it is true that under the generally recognized rules of international law the domestic remedies rule has no application to international claims presented in respect of non-nationals of the claimant State, it is equally true that it has no application to claims presented to international tribunals by individuals. [...] In both types of case the reason is simply that the claims themselves are inadmissible under general international law, irrespective of the exhaustion of domestic remedies. [...] It follows that if the insertion of the words 'according to the generally recognized rules of international law' were to be taken as indicating an intention to exclude the operation of the domestic remedies rule in case of applications brought by States under Article 24, it would equally be necessary to interpret them as excluding its operation in the case of applications brought by individual, non-governmental organization, or group of individuals under Article 25.[22]

It was however beyond question that the rule operated in the case of applications from individuals;[23] it followed that likewise it operated *a fortiori* in the case of applications from States. Thus, while paragraphs (1) and (2) of Article 27 applied only to applications from individuals

(Article 25), paragraph (3) of Article 27 together with Article 26 applied *prima facie* to *all* applications under the Convention (Articles 24 and 25), inter-State as well as individual. This has been the position of the Commission on the matter. More recently, in the *Ireland* v. *United Kingdom* case (1972), *part* of the application was rejected for non-exhaustion of local remedies;[24] and in the *Cyprus* v. *Turkey* case (1975) the waiver of the local remedies rule was due *not* to the inter-State character of the case, but rather, as the Commission made it clear, to its characterization as a case involving large-scale human rights violations relating to a military action by a foreign power.[25] The Commission's support for the principle of application of the local remedies rule to individual as well as inter-State cases seems to have gained general support from expert writers in recent years.[26]

4. General assessment and conclusions

The rule of exhaustion of local remedies under the European Convention on Human Rights is applicable *in principle* to all applications, whether coming from individuals (Article 25) or from States (Article 24). This results from the provisions of the Convention. Article 26 contains no limitation of the rule to applications from individuals; and paragraph (3) of Article 27, however misplaced it might be in the *corpus* of the Convention, coming after paragraphs (1) and (2) that are expressly limited to applications from individuals, is also applicable to '*any* petition' under the Convention. Moreover, the draftsmen of the Convention seem to have recognized this position as being the correct one: on 24 September 1953, after the Convention had come into force, the *rapporteur* of the Committee on Legal and Administrative Questions, Mr Teitgen, stated the opinion that 'cases may not be brought before the Commission, *whether they concern a member State, a private individual or group or a non-governmental organization*, until all local remedies have been exhausted. I refer you to Article 26.'[27] And furthermore, the Commission itself has in its practice lent support to the applicability of the local remedies rule in inter-State cases as well (*supra*, pp. 177–9).

But having laid down the principle, one may now turn to some of its qualifications or related problems. It has been observed at the beginning of this section that the nature of the claim and the wrong complained of should constitute the starting-point of the study of the problem presently under examination. It is clear, for example, that the local remedies rule does not apply when one State inflicts an injury

directly and immediately upon another. Thus, throughout the oral hearings in the *Norwegian Loans* case (1957), counsel for Norway, Mr Bourquin, tried to dispose of one of the French contentions whereby the Norwegian government could arguably no longer raise an objection of non-exhaustion of local remedies because it had not done so at the time when diplomatic negotiations had *transformed the case* into an inter-State dispute.[28] And while relying on the strictly State-to-State character of the *Aerial Incident* case (1959), counsel for Israel, Mr Rosenne, contended that there had been a direct injury to the State, and that therefore the local remedies rule – which applied 'solely to the case of so-called diplomatic protection' – did not apply to the present case.[29]

There does not seem to be any reason to believe that cases of alleged 'direct injury' might be relevant to the application of the local remedies rule under the European Convention. The Convention simply is not concerned with direct injuries to States. It is concerned with the basic rights of the human person, and not with the rights of States. Thus, the hypothesis of direct injury could be rejected *de plano* from the present considerations.

Nor could it be inferred, conversely, that cases moved by States under the Convention would then necessarily fit into the category and pattern of cases of diplomatic protection. They may and they may not resemble them, and herein lies the remarkable distinction of the Convention as a system of international protection of human rights, which cannot be equated with the more traditional exercise of diplomatic protection; this suggests certain nuances in the application of the local remedies rule in one system and another.

Under the Convention, for example, a Contracting Party may raise a complaint against another Contracting Party for a breach of certain obligations deriving from the Convention. Here the applicant State could hardly be made to pursue the case before the domestic courts of the respondent State. The claimant State is setting in action the 'collective guarantee' of the Convention, without primarily aiming at any form of redress for a breach of the Convention against specific individuals. Here any analogy with traditional general international law would prove inadequate, *notwithstanding the reference to it contained in Article 26 of the Convention.*

But the applicant State may also be seeking redress for a breach of the Convention against persons subject to the jurisdiction of the respondent State, *irrespective of their nationality*. Here an analogy with

diplomatic protection would be *prima facie* possible, but only *on condition* that the persons concerned possessed the nationality of the claimant State, or were its subjects. Thus, even in such cases any analogy with traditional general international law would be of a very limited value, *notwithstanding the reference to it contained in Article 26 of the Convention.*

These situations are illustrative of the risks of false analogies in attempting to approach the system of international protection of human rights under the Convention with the same conceptual apparatus that was once proper to the law and practice of diplomatic protection. But there is another difficulty arising from what has just been pointed out. Two kinds of situations in inter-State cases under the Convention have been distinguished: firstly, an alleged breach of the Convention relating to a *general prevailing situation* and not any particular individual or group of individuals aggrieved (for example, a complaint of one Party against another Party for a breach of its obligation, under Article 3 of the First Protocol to the Convention, to hold free elections at reasonable intervals by secret ballot); secondly, an alleged breach of the Convention in respect of a *particular* individual or group of individuals. In this latter case the local remedies rule applies, in the former it does not.[30]

In the latter case the individuals concerned ought to exhaust local remedies before the claim on their behalf can be pursued by the State Party (whether their own State or any other Contracting State) which decided to take the case to the Commission. In the former case, concerning a general prevailing situation in breach of the Convention, recourse need not be had to local remedies. But not necessarily because this is a dispute *between* Contracting Parties, since inter-State cases under the Convention fall *in principle* within the scope of application of the local remedies rule (*supra*, pp. 177–9). The decisive test here is not the inter-State character of the dispute, but rather – coming back to the initial consideration above – the *nature* of the claim and the wrong complained of: as no individual or group of individuals is particularly aimed at, complaints concerning a general prevailing situation do not fall within the scope of application of the local remedies rule. Furthermore, the test of effectiveness of remedies would most likely render the local remedies rule inapplicable in such complaints concerning a general prevailing situation.

The fact that the complaints are lodged by a Contracting State is not the decisive factor for the application of the rule as of principle: it is a

precondition for the lodging of the claim with the Commission, since individuals can only complain of violations of the Convention of which they themselves are *victims* (Article 25), whereas States Parties are entitled to refer to the Commission *any* alleged breach of the Convention by another State Party (Article 24). But once a claim is lodged with the Commission, it is immaterial for the purposes of application of the local remedies rule whether the applicant is a State or an individual, since that condition of admissibility extends to all complaints under the Convention.

In the words of the Commission, in its decision in the *Austria* v. *Italy* case (1961), '*by including the words "according to the generally recognized rules of international law" in Article 26 the authors of the Convention intended to limit the material content of the rule and not its field of application* ratione personae'.[31] Thus, in inter-State cases, it is submitted, attention ought to be paid to whether the complaint is related to a general prevailing situation or to specific injuries suffered by a determined individual or group of individuals. In the former case there will be no room for application of the local remedies rule and presumptions can be made to work in favour of potential or actual victims of the violation of the Convention perpetrated by the general prevailing situation.

The nature of the claim and the wrong complained of thus constitutes the determining factor for the non-application of the rule in such a case; the inter-State character of the complaint is immaterial, for if an inter-State complaint seeks redress for particular wrongs suffered by certain individuals, the local remedies rule will apply. The reference to general international law contained in Article 26 is no basis for the non-application of the rule (in the case above) either, since – as recalled by the Commission in the *Austria* v. *Italy* case – customary or general international law does not normally know of individual applications to an international organ such as those contemplated in Article 25 (i.e., applications extended to non-nationals and stateless persons as well).

The proposition may therefore be advanced that in the systems of international protection of human rights (European Convention and others),[32] as far as *complaints lodged by States* are concerned, the local remedies rule applies in cases of *violation of the guaranteed rights*, where the individual victims ought first to seek local redress; on the other hand, the local remedies rule does not apply in cases of a breach of an obligation of a general order, amounting to a *general prevailing*

situation, of which individual victims are not indicated or identified in the inter-State complaint. Significantly, this conclusion can be reached without reliance on misleading analogies with the law and practice of diplomatic protection in general or customary international law.

It may be argued that the case of a general prevailing situation of the kind referred to above may be equivalent to a case of legislative measures and administrative practices incompatible with the Convention provisions. This can be accepted only to a certain extent, and there is a tendency in the Commission's jurisprudence *not* to apply the local remedies rule in inter-State cases when such legislative measures and administrative practices are properly substantiated (of which a conspicuous example is afforded by the *Greek* cases).[33] It seems preferable, however, not to rely solely on contentions of legislative measures and administrative practices in examining inter-State cases of non-application of the local remedies rule, not only because those contentions remain the object of a still evolving case-law of the Commission under Article 26 of the Convention, but also for two main reasons: firstly, because those contentions may, as already indicated (*supra*), render obscure the essence of the problem at issue, and secondly, because although cases of 'legislative measures and administrative practices' may present similarities with inter-State cases relating to a 'general prevailing situation' in breach of conventional obligations, they may not necessarily amount to one and the same thing. A complaint of a State Party to the Convention of a breach of a conventional obligation by another State Party reflected in a certain prevailing situation (for example, an omission on the part of the State) may not necessarily amount to a generalized administrative practice or a series of legislative measures incompatible with the provisions of the Convention[34] – the difference being one of degree and not of nature.

The concepts of 'collective guarantee' and 'general interest' underlying the Convention system help to explain the condition of inter-State applications within the framework of the Convention as a whole. But once one comes to the particular problem of exhaustion of local remedies under the Convention and specifically in inter-State cases, one ought to be careful not to oversimplify the matter on the basis of the notions of 'collective guarantee' and 'general interest'. Although they *explain* the condition of inter-State complaints under Article 24, they do not suffice *per se* to justify the non-application of the rule if what is being sought by the complaint is redress for a wrong

inflicted upon certain individuals. There does not seem to be any inherent incompatibility between the incidence of the local remedies rule in *such* inter-State cases and the concepts of 'collective guarantee' and 'general interest' underlying the protective system of the Convention.[35]

These two concepts call for further consideration in the present context. They undoubtedly constitute the novelty of the Convention system and this latter's advance in the protection of individual rights *vis-à-vis* the old law and practice of diplomatic protection in State responsibility for injuries to aliens. But there is a certain limit beyond which they cease to be useful concepts and become rather fictitious: the history of inter-State cases under the European Convention to date shows that applicant States have been prepared to exercise the duty of collective guarantee in the general interest of having human rights preserved and protected, but that exercise has not been entirely devoid of unstated and underlying political motives. This may be a handicap of inter-State applications as an instrument for securing the observance of human rights: the implicit political motives may threaten to overlay the legal issues involved,[36] and thus create an atmosphere where States may deem fit to safeguard themselves behind their own sovereign attributes, as reflected in their insistence upon such conditions of admissibility of complaints as the local remedies rule being strictly applied.

But even here one ought to be careful not to oversimplify. The extent of political motivation (intermingled with humanitarian grounds) seems to vary from case to case, even though seemingly present in all. One could hardly place on the same footing, for example, the two cases moved by Denmark, Norway and Sweden (together with the Netherlands in the earlier case) against Greece (the two *Greek* cases, 1968 and 1970), and, in a possibly different degree, the *Austria* v. *Italy* case (1961) with the two countries' larger dispute over the Tyrol, the *Ireland* v. *United Kingdom* case (1972 onwards) with the two countries' major troubles over the status of Northern Ireland, and the *Cyprus* v. *Turkey* case (1975 onwards) with the broader disputed situation stemming from Turkish intervention in Cyprus.[37] The unstated political motives seem to be always present, though admittedly to a varying degree.

This fact can only emphasize the prominence in the system under the Convention of individual applications under Article 25, where the

individuals concerned ought to claim to be *victims* of a violation of the Convention by a Contracting State. The 'politicization', if it may so be termed, of inter-State cases can also be made to militate in favour of the maintenance of the *principle* of the application to them of the local remedies rule, with the qualifications and reservations *supra*, pp. 177–9. The maintenance of the principle itself in the system of the European Convention seems to be corroborated by the parallel regional experiment on human rights protection enshrined in the 1969 American Convention on Human Rights: this latter has gone a step further by providing for the Inter-American Commission's *automatic* competence to receive applications from individuals upon ratification of the Convention (Article 44), and its *optional* competence to receive inter-State applications (Article 45), with the local remedies rule applying to *all* applications, either from individuals (Article 44) or from States (Article 45), by express provision of Articles 46 and 47 of the Convention.[38]

By and large, it seems that the aspect of the European system considered in this section, leaving aside the inconvenience surrounding inter-State applications just referred to, constitutes an advancement in international law in the protection of the human person, in allowing States to act on the basis of the fundamental notions of collective guarantee and general interest in securing respect for the obligations ensuing from the Convention. Precisely because that inter-State action cannot necessarily be equated with traditional forms of diplomatic protection, the local remedies rule, applicable in principle, should be interpreted in the light of the ultimate purposes of the human rights system itself and applied with *less severity* than in the traditional law and practice of diplomatic protection. The reasons for this have already been discussed (*supra*, pp. 6–56), it being submitted in this connection that particular inter-State instances revealing a *general prevailing situation* would fall outside the scope of application of the local remedies rule.

This flexibility in the application of the local redress rule by the Commission in inter-State cases under the Convention could be accomplished through distinct means. One would be the limitation of the material scope of the rule (as advocated above). Another would be the 'softening' of the rule by means of procedural devices. Thus, rule 44 of the rules of procedure of the Commission stipulates: 'Where, pursuant to Article 24 of the Convention, an application is brought

before the Commission by a High Contracting Party, the president of the Commission shall through the secretary-general of the Council of Europe give notice of such application to the High Contracting Party against which the claim is made and shall invite it to submit to the Commission its observations in writing on the admissibility of such application.'[39] The State concerned is thus formally granted an opportunity to raise objections to the admissibility of such application, or to remedy the alleged wrong within the framework of its own internal legal system (local redress).

However, it might well happen, even in applications from individuals (Article 25), where admissibility issues can be dealt with in a 'swifter' manner by the Commission itself without necessarily a notification to the respondent government, that this latter may not wish to invoke the local remedies rule on its own initiative. It might well happen that it may be in the State's interest to have the matter decided by an international organ and to have the international law issues thus clarified, however theoretical this situation might be. In fact, in a case where fifty-seven inhabitants of Louvain and its environs lodged complaints with the Commission against Belgium, the respondent government raised an objection of non-exhaustion of local remedies in its *written observations* on the admissibility issues to the Commission;[40] but subsequently, in the *oral hearings* (of 5 March 1964), for whatever reason,[41] counsel for the Belgian government expressly declared before the president of the Commission that he did not want to pursue the objection of non-exhaustion and had therefore decided to withdraw it.[42]

This was a case lodged by a group of inhabitants of a city and its environs (Article 25). In the case of applications lodged by States (Article 24) and of rule 44 of the Commission's rules of procedure in particular, it seems fair and reasonable to maintain that, if the respondent State in a given case fails to avail itself of the opportunity of raising an objection of non-exhaustion of local remedies upon notification of the application by the Commission, there does not seem to be any compelling reason why the Commission should subsequently insist *motu proprio* on the requirement of exhaustion.[43] If the proposition can be accepted, it may result in some flexibility in the handling of certain inter-State cases by the Commission, in so far as application of the condition of admissibility set forth in Articles 26 and 27(3) – common to all applications under the Convention – is concerned.

II. Exhaustion of local remedies in relation to legislative measures and administrative practices: the practice under the European Convention on Human Rights

1. Introduction: statement of the problem

In cases where individual rights are claimed to have been disregarded in violation of international law, the State where the violation occurred should have the opportunity to redress the wrong by its own means and within the framework of its own domestic legal system before resort may be had to an international organ. The incorporation of this well-established rule of international law in the system under the European Convention on Human Rights has been met with innumerable problems of interpretation in the handling of concrete cases. One of the most difficult problems that the organ entrusted with the admissibility of complaints (the European Commission of Human Rights) has faced in this connection has been that of the application of the local redress rule when a whole pattern of administrative practices or of legislative measures is complained of before the Commission as being incompatible with the provisions of the Convention. In such cases is there room for the application of the local remedies rule as enshrined in Article 26 of the Convention? The main difficulty lies in the fact that, in situations of the kind, even though local remedies may exist or be alleged to exist, it may be forcefully argued that their availability or effectiveness may be rendered questionable by the existence of certain administrative practices or legislative measures.

A related problem which has arisen in the Commission's practice has been the notion of the 'victim'. In cases of legislative measures and administrative practices, must an individual applicant be a victim of a specific act already perpetrated, or may he complain of administrative and legislative acts that may in the near future be very likely to violate his rights as set forth in the Convention? In a useful indication for a study of the problem, the Commission has approached the question in applications both from States (Article 24) and from individuals (Article 25). It is necessary, therefore, to survey inter-State and individual applications before proceeding to an assessment of the matter. Special issues developed by the recent practice of the Commission will further be considered.

2. Inter-State cases

In the early days of the Commission, in the *First Cyprus* case, the

applicant government brought charges against the respondent government (in May 1956) on account of the latter's legislative measures and administrative practices in Cyprus.[44] In its decision on the admissibility of the application (of 2 June 1956), the Commission declared that 'the provision of Article 26 concerning the exhaustion of domestic remedies according to the generally recognized rules of international law does not apply to the present application, the scope of which is to determine the compatibility with the Convention of legislative measures and administrative practices in Cyprus'.[45] The Greek application was accordingly declared admissible and retained by the Commission.[46]

In the following year the Commission was seized of the *Second Cyprus* case, concerning cases of alleged ill-treatment by officials in Cyprus.[47] This time there was no explicit mention of an 'administrative practice' as such, but rather references to instances of individual cases – classified into three separate categories – of maltreatment.[48] The Commission decided (12 October 1957) that in all those cases where the perpetrators (or some of them) of the alleged ill-treatment had already been identified, domestic remedies ought first to have been exhausted in conformity with Article 26 of the Convention.[49] Accordingly, in all those particular instances the Commission upheld the plea of inadmissibility on the ground of non-exhaustion of local remedies[50] and, without prejudice to the merits, declared the application admissible with regard to certain facts and inadmissible with regard to other facts.[51] It is to be noticed, however, that in the *First Cyprus* case, where 'legislative measures and administrative practices' were as such being complained of before the Commission, the latter held the application admissible and declared that in such a particular situation the rule of exhaustion of local remedies did not apply.

This decision was relied upon by the Commission while examining the *Austria* v. *Italy* case (11 January 1961), but it immediately added that the situation in the present case was manifestly not the same as in complaints concerning the compatibility with the Convention of legislative measures and administrative practices regardless of any individual or specific injury.[52] It was therefore made clear that the local remedies rule would in principle not apply only when the complaints related to the alleged incompatibility of 'legislative measures and administrative practices' with the Convention, as

distinguished from complaints of individual specific injuries, in which the rule applied.

Years later, in the *First Greek* case brought before the Commission in September 1967, the applicant governments complained of some constitutional acts as well as 'legislative and administrative measures' incompatible with the Convention, 'regardless of any individual or specific injury'.[53] The three Scandinavian governments in particular submitted that, on the basis of the Commission's finding in the *First Cyprus* case (*supra*), Article 26 did not apply to the present case.[54] In its admissibility decision of 24 January 1968, the Commission began by rejecting the respondent government's objection to its competence as 'unfounded',[55] and added that 'in determining the question of admissibility, the provisions of Article 26 and Article 27(3) of the Convention concerning the exhaustion of domestic remedies according to the generally recognized rules of international law do not apply to the present applications, the object of which is to determine the compatibility with the Convention of legislative measures and administrative practices in Greece'.[56] Accordingly, the Commission declared the applications admissible.[57]

Thus, the Commission again stated that legislative measures and administrative practices did *not* fall within the scope of application of the local remedies rule in international law. The applicant governments insisted that Article 26 of the Convention did not apply to further allegations they raised in the course of the proceedings, also relating to administrative practices of the respondent government;[58] alternatively, should the Commission deem the local remedies rule applicable on the ground that an administrative practice had not been established, they submitted that local remedies alleged to be available were in fact 'inadequate and ineffective'.[59] The Greek government, maintaining that the new allegations should be rejected for non-exhaustion of domestic remedies, argued further that 'an essential element of an "administrative practice" is that the practice concerned should be based on specific legislation, executive authority express or implied, or finally on established custom', and that in Greece no such ground existed on which existence of the alleged administrative practice could be based.[60]

The Commission considered (decision of 31 May 1968) the meaning of the term 'administrative practice' (first with regard to allegations under Article 3 of the Convention). Assuming that an 'administrative

practice' might exist in the absence of, or contrary to, specific legislation, the Commission stated, the applicants had not adduced at that stage of the proceedings substantial evidence that such a practice existed in Greece (with particular reference to ill-treatment within the meaning of Article 3 of the Convention); therefore, it added, the application of the local remedies rule (Article 26) to the present allegations could not be excluded on the above ground.[61] But after examining the domestic remedies to be exhausted in the case, the Commission did not find that they could be considered as effective and sufficient, concluding therefore that the present allegations could *not* be rejected for non-exhaustion of local remedies.[62]

As to the other set of allegations (under Article 7 of the Convention and Article 1 of the First Protocol), the Commission categorically stated that the local remedies rule did *not* apply to them, 'the object of which is to determine the compatibility with the Convention and the Protocol of legislative measures of the respondent government'.[63] The Commission, therefore, without prejudice to the merits, finally declared admissible the new allegations of the applicants[64] in the *First Greek* case.

In its report on the case, adopted on 5 November 1969, the Commission observed that 'the Convention does not in terms speak of administrative practices incompatible with it, but the notion is closely linked with the principle of exhaustion of domestic remedies'.[65] The local remedies rule (Article 26) was based on the assumption[66] that for a breach of the Convention there was a domestic remedy available and effective. However, where an administrative practice of ill-treatment existed, the Commission considered:

> the remedies prescribed will of necessity be side-stepped or rendered inadequate. Thus, if there was an administrative practice of torture or ill-treatment, judicial remedies prescribed would tend to be rendered ineffective by the difficulty of securing probative evidence, and administrative enquiries would either be not instituted, or, if they were, would be likely to be half-hearted and incomplete.[67]

On 10 April 1970, the governments of Denmark, Norway and Sweden filed with the Commission a further application against Greece on account of a trial in alleged violation of Articles 3 and 6 of the Convention[68] – the *Second Greek* case. The Commission invited the respondent government to submit within a four-week time-limit its observations in reply to the applicants' submission that the local remedies rule did not apply to the present allegations (partial decision

of 26 May 1970),[69] and examination of the case was adjourned.[70] The respondent government failed to make any submissions,[71] whereas, on the other hand, the applicants insisted that the local remedies rule did not apply to the present application, 'the object of which is to have determined the compatibility with the Convention of certain administrative practices and legislative measures'.[72] The Commission's final decision on the admissibility of the application (16 July 1970) was rendered in particularly emphatic terms: 'It is true that, according to the Commission's constant jurisprudence, the condition of exhaustion of domestic remedies does not apply where an application raises, as a general issue, the compatibility with the Convention of "legislative measures and administrative practices".'[73]

In the instant case, the Commission dealt first with allegations of administrative practices and then with contentions of legislative measures. As to the former (under Article 3 of the Convention), as they concerned an administrative practice of the respondent government (which in the *First Greek* case the Commission had found to exist), if further substantiated they would not be subject to the local remedies rule, in accordance with the Commission's jurisprudence; therefore, they could not be rejected for non-exhaustion of local remedies.[74] As to the latter submissions (under Article 6 of the Convention), relating to a trial before an extraordinary court martial and to the special legislation creating such courts, the Commission added that as the applicants' object was 'to have determined the compatibility of this legislation with the Convention',[75] the condition of exhaustion of domestic remedies 'again does not apply'.[76] These allegations concerning the special legislative measures in force in the field of the administration of justice could not therefore be rejected for non-exhaustion of domestic remedies, and the application was accordingly declared admissible by the Commission.[77]

Possibly one of the most remarkable features of the Commission's final admissibility decision in the *Second Greek* case was its express and reiterated reliance upon its own *jurisprudence constante* to the effect of placing the question of the compatibility with the Convention of 'legislative measures and administrative practices' outside the scope of application of the rule of exhaustion of local remedies in international law.

The matter was further discussed in the *Ireland* v. *United Kingdom* case. In its written and oral submissions, the applicant government maintained that the local remedies rule in Article 26 did not apply to

any part of the application 'whose object and purpose was to seek a determination of the compatibility of certain legislative measures and administrative practices with the respondent government's obligations under the Convention'; it further pointed out that the application was 'neither in form nor in reality concerned with compensation for, or reparation of, wrongs committed in respect of individual persons', and that 'there was no domestic remedy available in respect of such a claim by a High Contracting Party and no question of exhausting any domestic remedies could arise'.[78] The present application was a 'breach of treaty claim', as such not subject to the local remedies rule, as it was 'only concerned with ensuring the observance by the respondent government of the obligations undertaken by them in the Convention', thus seeking to obtain a determination of the compatibility with those obligations of certain 'legislative measures and administrative practices'.[79] The respondent government replied that the applicant's allegation of an administrative practice was 'unsupported by any assertion of law or fact from which such practice was to be deduced'; as the burden of proof in this connection was incumbent on the applicant government, 'in the absence of such supporting material the issue of exhaustion of domestic remedies was not to be excluded' at the present admissibility stage.[80]

The Commission's admissibility decision of 1 October 1972 in the *Ireland* case concerned itself with four major items. The Commission first examined allegations under Article 2 of the Convention (failure, as a matter of administrative practice, to protect right to life by law): while it was true that the local remedies rule did not apply where an application raised as a general issue the compatibility with the Convention of 'legislative measures and administrative practices', the Commission held, it was not sufficient on the other hand that the existence of such measures and practices should be 'merely alleged'. In order to exclude the application of the local remedies rule, it was also necessary that their existence should be 'shown by means of substantial evidence'.[81] As this was lacking in the present case, those allegations (under Article 2) could not be dealt with until local remedies had been exhausted. And with regard to the argument that the local remedies rule did not apply where breaches of treaty were alleged (*supra*), the Commission replied that it was required by Article 27(3) of the Convention to apply the rule (as set out in Article 26) to *any* application, whether brought under Article 24 or Article 25 of the Convention. Accordingly, the Commission found

that it must declare under Article 27(3) that part of the application inadmissible.[82]

Secondly, the Commission considered the applicant's allegations under Article 3 of the Convention (certain interrogation techniques and other forms of ill-treatment of persons in custody, constituting an 'administrative practice'). The Commission had 'no doubt' that the employment of certain interrogation techniques amounted to an 'administrative practice'; therefore, in accordance with its own jurisprudence, those allegations (under Article 3) could not be declared inadmissible for non-exhaustion of local remedies, and were thus retained for further examination on the merits.[83]

Thirdly, allegations in connection with Articles 5, 6 and 15 of the Convention (relating to internment without trial and detention under special regulations) were examined; the issue of exhaustion of local remedies was not raised in this regard, and the Commission found the matters complained of admissible.[84] Fourthly, the Commission considered the applicant's allegations that detention and internment under special regulations had been and were carried out 'with discrimination on grounds of political opinion in violation of Article 14 of the Convention'.[85] As the complaints were very closely related to the previous items, the Commission found that they should likewise be retained for further examination of the merits.[86]

Thus, except for the applicant's initial allegations under Article 2 of the Convention (*supra*, p. 192), which were declared inadmissible, all its other allegations were declared admissible by the Commission and retained for further examination without pre-judging the merits of the case,[87] in conformity with the Commission's case-law on the matter. As for the exception indicated above (complaints relating to Article 2 of the Convention), those allegations in particular were declared inadmissible for the sole reason that the applicant had not sufficiently demonstrated the existence of the 'legislative measures and administrative practices' complained of. But once this proves to be the case, it is the Commission's *jurisprudence constante* that the rule of exhaustion of local remedies does not apply.

3. Applications by individuals[88]

The problem of the application of the local remedies rule in cases of alleged wrongful 'legislative measures and administrative practices' has also been raised before the European Commission in applications lodged by individuals. Thus, in an application concerning Ireland

lodged with the Commission as early as 20 March 1957, in which the applicant complained against domestic legislation allegedly incompatible with the provisions of the Convention, the Commission remarked that it could properly receive an application only from an individual who claimed to be the *victim* of a violation by one of the High Contracting Parties of the rights set forth in the Convention.[89] It followed that it could examine the compatibility of domestic legislation with the Convention *only* with respect to its application to an individual and *only* in so far as its application was alleged to constitute a violation of the Convention *in regard to the individual applicant*.[90] The Commission was thus not competent to examine *in abstracto* the question raised in an individual application under Article 25 of the conformity of domestic legislation with the provisions of the Convention.[91] Furthermore, in the present case, even if the applicant had claimed to have been a victim of violations of the Convention, as he did not avail himself of his right to appeal to a higher court against his convictions, his application had to be rejected for non-exhaustion of local remedies; the application was therefore declared inadmissible on that ground.[92] It should not pass unnoticed, however, that the legislation complained of in the case consisted of a law and its amendment,[93] and that at no moment did the applicant seem to complain of a *pattern* of legislation, still less of administrative practices. But the case remains useful for the light it sheds on the notion of 'victim', a notion which subsequently, as it will be seen, was to assume vital importance in cases brought by individuals complaining against 'legislative measures and administrative practices' as such.

One complaint of this sort, questioning the compatibility with the Convention of certain legislative measures, was properly raised in the *Kjeldsen* v. *Denmark* case. The two applicants complained that, by making sex education compulsory in Danish public schools, the Danish government failed to respect the parents' right to ensure that the education of their children should be in conformity with their religious and philosophical convictions (Article 2 of the First Protocol to the Convention). Referring also to the manner in which that education was carried out by the various authorities concerned, they pointed out that the introduction of compulsory sex education in the only school available in the locality where they lived might oblige them to keep their daughter away from school and thereby amount to 'a denial of her right to education'.[94] The Danish government, in their turn, first remarked that by the country's Constitution (Article 76)

Danish parents were *not* obliged to send their children to public schools, but only to ensure that they received an elementary education; sex education had been compulsory in the whole country since 1970, the educational policies lying ultimately in the hands of the Minister of Education, even though the administration of public schools was decentralized.[95] The respondent government added that the applicants had made 'no attempt to take their complaint before the Danish courts'.[96]

Elaborating on the question of exhaustion of domestic remedies, the Danish government, after dwelling upon the proper relationship between international law and municipal law in the circumstances of the case,[97] indicated that Article 63 of the Danish Constitution authorized domestic courts 'to decide any question bearing upon the scope of the authority of the administration'.[98] In the Danish government's submission, moreover, 'the applicants were at liberty to bring an action against the Minister of Education claiming that the Minister be ordered to recognize the applicants' right to have their daughter exempted from obligatory sex education': the application should thus be rejected on the ground of non-exhaustion of available domestic remedies.[99]

The applicants, on their part, stated that they had in fact written a letter to the Danish Parliament (in May 1971), which had not been answered, and thus the government was 'not justifiable' in declaring that the applicants had failed to exhaust domestic remedies 'which the government had failed to point out to them when it had had the opportunity'.[100] Alternatively, the applicants submitted, Article 63 of the Danish Constitution entitled domestic courts to decide any question bearing upon the scope of the authority of the administration, but the present case was not about the authority of the administration, but rather about an Act of Parliament 'which had itself laid down the basic rule, i.e. compulsory sex education, and authorized the Minister of Education to issue regulations to implement this rule'.[101] Besides, a decision of the Danish Supreme Court of 26 September 1972 showed that 'Article 63 of the Constitution could not be invoked against an Act of Parliament'.[102] The applicants, thus, although conceding that they had brought no proceedings before the Danish courts regarding the matters complained of, submitted that a legal action of the kind suggested by the respondent government 'would not be an effective remedy for the purposes of Article 26 of the Convention'.[103]

In its decision of 16 December 1972 on the *Kjeldsen* v. *Denmark* case, the Commission considered two questions in connection with the issue of the exhaustion of local remedies. First, with regard to the possibility of challenging administrative regulations, the Commission began by recalling that in order to comply with Article 26 of the Convention an applicant was obliged to exhaust 'every domestic remedy which cannot clearly be said to lack any prospect of success'.[104] Although in the present case the respondent government had not been able to show that the Danish courts, in proceedings brought under Article 63 of the Constitution, had ever ruled on 'the question whether the Convention could be invoked in judging the legality of administrative regulations', on the other hand the government explained that 'it is a widely accepted view in Danish legal theory that a valid treaty, such as the Convention, imposes on the domestic authorities an obligation to apply and interpret national law in a manner to ensure that, wherever possible, Denmark's treaty obligations are fulfilled'.[105] The Commission found that, in regard to administrative measures concerning the manner in which the sex education should be carried out, it could not be stated that the remedy indicated by the respondent government would clearly have been without any prospect of success.[106] It followed that, in this respect, this part of the application should be rejected for non-exhaustion of local remedies.[107]

Secondly, the Commission considered the question whether there was any remedy against the Danish Act of 27 May 1970 which laid down the principle of compulsory sex education and authorized the Minister of Education to issue regulations on the manner in which the instruction should be given. As the respondent government did not contest the applicants' assertion that no proceedings could be taken (under Article 63 of the Constitution) against an Act of Parliament, and as it did not suggest that any other specific remedy might be available, the Commission thereby concluded that 'there was no effective domestic remedy available to the applicants with regard to the principle of compulsory sex education as embodied in the Act', and that therefore, in this respect, the application could not be rejected for non-exhaustion of local remedies.[108]

The Commission thus declared the application admissible in so far as it complained of the 1970 Act on compulsory sex education in the public schools as violating Article 2 of the First Protocol, and declared the application inadmissible in so far as it related to the directives

issued and other administrative measures taken by the Danish authorities regarding the manner in which such sex education should be carried out.[109]

This decision served as basis for the Commission's subsequent partial decision (of 29 May 1973) in the *Pedersen* v. *Denmark* case, which involved similar complaints and allegations.[110] The examination of the part of the application not declared inadmissible was adjourned until 19 July 1973, the date of the final decision on the case; the Commission confirmed that the reasons it had given for declaring the *Kjeldsen* v. *Denmark* case partly admissible applied 'with equal force' to the corresponding part of the *Pedersen* v. *Denmark* case.[111] As in the view of the Commission, determination of the issues raised depended on an examination of the merits of the case, the *Pedersen* application was declared admissible in so far as the applicants complained that the Act of Parliament (of 27 May 1970) providing for compulsory sex education in Danish public schools constituted a violation of Article 2 of the First Protocol to the Convention.[112]

One of the most illustrative cases for the problem under study has been that of *Donnelly and Others* v. *United Kingdom*, concerning ill-treatment of the applicants – while in custody – by the security forces in Northern Ireland (in April and May 1972) contrary to Article 3 of the Convention.[113] The seven applicants maintained that the maltreatment practices and procedures complained of constituted 'part of a systematic administrative pattern' permitting and encouraging violence, incompatible with the Convention, and rendering inapplicable the local remedies rule.[114] To the respondent government's argument that an *individual* application (under Article 25), unlike an inter-State application, could not advance such a general claim regarding the compatibility of domestic legislation with the Convention,[115] the applicants replied that their present application, whereby they sought to have the Commission protect them, had no connection with the government which had initiated the inter-State application (cf. the *Ireland* case, *supra*, pp. 191–3); their claim pertained to 'the direct application to each of them' of an administrative practice of ill-treatment which 'violated their rights under Article 3', directly affecting them as victims.[116]

The British government argued that the application was inadmissible as each of the applicants had failed to exhaust remedies available under domestic law, and had further failed to show that he had been impeded in the access to available local remedies.[117] On their part, the

applicants submitted that the exception to the local remedies rule relating to administrative practices (in the context of Article 3), previously elaborated by the Commission (*supra*, pp. 189–90), was *not* limited to inter-State applications (under Article 24), but applied also to their present application, as they claimed to be individual victims of an administrative pattern against which they had 'no adequate or effective domestic relief'.[118] They added that they would be bound to exhaust local remedies only in 'normal circumstances' (for example, an 'isolated incident' of ill-treatment), but not in the present case, where a systematic practice of ill-treatment in detention and interrogation was being complained of.[119]

Thus, in the applicants' view, to hold that the exception to the local remedies rule did not apply to their case would run 'counter to the purpose of the Convention which was *to provide full protection not to States but to individuals*'[120] and would also be 'contrary to normal rules of interpretation of treaties generally'.[121] It would thus be 'unreasonable' if an 'administrative pattern' could not be questioned by an individual applicant.[122] Claiming that in the circumstances of the case 'domestic remedies were not adequate and effective', the applicants stated that the existence of the administrative practice of which they had offered 'substantial evidence' was the primary factor in rendering any 'theoretically available domestic remedy' ineffective.[123]

Such were the main contentions of the two parties before the Commission. In its admissibility decision of 5 April 1973 on the *Donnelly* case, the Commission began by observing that the Convention provisions did *not* prevent an individual applicant from raising before it a complaint in respect of an alleged 'administrative practice' in breach of the Convention, provided that he brought '*prima facie* evidence of such a practice and of his being a victim of it'.[124] Recalling its previous opinions whereby the local redress rule did not apply in cases raising as a general issue the compatibility with the Convention (Article 3) of an administrative practice, the Commission added in particular that where there was 'a practice of non-observance of certain Convention provisions, the remedies prescribed will of necessity be side-stepped or rendered inadequate'; thus, if there was an administrative practice of maltreatment, 'judicial remedies prescribed would tend to be rendered ineffective by the difficulty of securing probative evidence, and administrative enquiries would either not be instituted or, if they were, would be likely to be half-hearted and incomplete'.[125] By similar reasoning, the Commission considered,

'where an applicant under Article 25 submits evidence, *prima facie* substantiating both the existence of an administrative practice [...contrary to Article 3], and his claim to be a victim of acts part of that practice, the domestic remedies' rule in Article 26 does not apply to that part of his application'.[126]

The Commission examined the allegations made in the present *Donnelly* case in the light of its previous admissibility decision of 1972 in the *Ireland* v. *United Kingdom* case (cf. *supra*, pp. 189–93). After drawing a parallel between the issues involved in the two cases, the Commission found that the present applicants:

> have provided evidence which *prima facie* substantiates their allegations of an administrative practice in violation of Article 3 and of their being victims of that practice. It therefore follows that the domestic remedies' rule does not apply to this part of the present applications and [...] the applicants' complaint in this respect raises issues of law and fact whose determination should depend upon an examination of the merits of the case.[127]

The Commission then turned to the question whether each applicant was himself a victim of specific acts – as distinct from an administrative practice – in violation of Article 3. In principle, the Commission observed, the applicants must comply with the local remedies requirement before complaining of such acts; however, the Commission recalled in this connection its own case-law to the effect that 'the exhaustion of a given remedy ceases to be necessary if the applicant can show that, in the particular circumstances of his case, this remedy was unlikely to be effective and adequate in regard to the grievances in question'.[128] In the present case the question of the effectiveness of available remedies was 'closely linked with the alleged existence of an administrative practice in breach of Article 3'.[129] In such circumstances, the issue under Article 26 could not be examined without an examination of questions concerning the merits of the applicants' complaint with regard to the alleged administrative practice. As with the previous part of the present application, the Commission found it appropriate to join to the merits also the issue whether each individual applicant had himself been a victim of specific acts in breach of Article 3 and exhausted local remedies under Article 26 of the Convention. The Commission, in conclusion, declared admissible and retained (without pre-judging the merits of the case) the issue raised by the applicants that they were victims of an 'administrative practice' in violation of Article 3 of the Convention, and joined to the merits 'any question relating to the remedies to be

exhausted by each applicant as the alleged victim of specific acts, as distinct from an administrative practice, in violation of Article 3'.[130]

4. Assessment

The relatively little writing to date on the problem under examination[131] may possibly be explained by the fact that only recently did the problem of the exhaustion of local remedies in relation to legislative measures and administrative practices undergo some of its most important developments in the experiment of the Council of Europe. There has been a consistent tendency of the Commission to dispense with the requirement of the exhaustion of domestic remedies when an application (inter-State or individual) raises the compatibility with the Convention of alleged 'legislative measures and administrative practices'. Examination of this problem has compelled the Commission to elaborate on related questions of relevance for the interpretation of Article 26, and indeed of the Convention as a whole – for example, the proper relationship between international law and municipal law (in connection with the application of the local remedies rule), often involving examination of constitutional law issues (as in the *Kjeldsen* and *Donnelly* cases), and the Commission's elaboration on the notion of 'victim'. This may in the long run prove beneficial to the jurisprudence of the Convention organs as a whole.

Consideration of the notion of 'victim' was by no means restricted to applications by individuals; although it was in the *Donnelly* case that the Commission had possibly the best opportunity so far to develop that notion in relation to an administrative practice, the question has attracted the Commission's attention in a series of decisions in the course of several years. Earlier, in the *Austria* v. *Italy* case in 1961, the Commission stated that the local remedies requirement of the Convention 'appeared in quite a different light in the case of individual applications and in the case of applications from States': individuals could apply to the Commission (under Article 25) only if they claimed to be *victims* of a violation of their rights as set forth in the Convention and if they had exhausted all domestic remedies, whereas States could refer to the Commission (under Article 24) 'without having suffered any prejudice and even without any individual having been harmed'.[132] Thus, a State Party to the Convention could claim that another High Contracting Party had committed some breach of the Convention's provisions by, for example, promulgating a law or decree. This had the necessary implication of rendering apparently

irrelevant the requirement of exhaustion of local remedies under the Convention to the admissibility of applications *from States* based on 'concepts of collective guarantee and general interest'.[133]

As was remarked by the Commission in the *First Greek* case, while under Article 25 of the Convention 'only such individuals may seize the Commission as claim to be "victims" of a violation of the Convention', the condition of 'victim' was not however mentioned in Article 24 on inter-State applications; consequently, the Commission added, 'a High Contracting Party, when alleging a violation of the Convention under Article 24, is not obliged to show the existence of a victim of such violation either as a particular incident or, for example, as forming part of an administrative practice'.[134] In their turn, individual applicants must claim to be *victims* of a violation of the Convention as a condition of receivability of their applications (cf. the *X* v. *Ireland* and *X* v. *Norway* cases, *supra*, pp. 193–4, and *infra*, p. 374). The Commission elaborated on the notion of 'individual victim' in its decision of 13 July 1970 in the *X* v. *F.R. Germany* case, in which it stated that the term 'victim' meant 'not only the direct victim or victims of the alleged violation but *also any person who would indirectly suffer prejudice* as a result of such violation or who would have a valid personal interest in securing the cessation of such violation'.[135] This notion of '*indirect* victim' was also relied upon or upheld by the Commission in at least two other decisions.[136]

This new element gave more precision to the conception of 'victim' under the Convention, which, however, remained nonetheless construed in rather strict terms. Hence the great significance of decisions such as those in the *Kjeldsen* and the *Donnelly* cases. In the *Kjeldsen* case the Commission allowed the two applicants, *prospective* or *future* victims, to raise the general issue of the compatibility with the Convention (and Protocol) of the introduction of compulsory sex education in public schools. When the Commission declared their application admissible in so far as it was directed against the Danish Act providing for that compulsory education, the Commission was implicitly but clearly recognizing, it may be submitted, that individuals could raise the issue of the compatibility of legislative measures with the Convention, measures whose general and widespread effects (like those of administrative practices) might well go far beyond the immediate requests and interests of the individual applicants in particular. The way would be paved, in this manner, for the Commission to be concerned with the protection not only of

victims of past violations of the Convention, but also of those who may in the future, in circumstances such as those described in the *Kjeldsen* and *Pedersen* cases, be the object of likely violations of rights.

The significance of the *Donnelly* case, for its part, was a distinct one. The exception to the local remedies rule on account of 'legislative measures and administrative practices' had until then been developed by the Commission only in inter-State cases (*First Cyprus, First Greek, Second Greek* and *Ireland* cases). In the *Donnelly* case the Commission was called upon for the first time to state whether an individual victim could also rely on that exception to the local redress rule recognized in inter-State cases. The Commission found that if the individual concerned submitted *prima facie* evidence of the existence of an administrative practice in breach of the Convention and of acts of which he was a victim, the local remedies rule would not then apply to that part of the application.

This is *not* therefore, it is submitted, merely a question of subjective appreciation by the applicant of the existence of an administrative practice of maltreatment for the purpose of waiving the local remedies rule. As early as 6 September 1957, in a case against Germany, the Commission categorically stated that the personal opinion of the applicant (unsupported by evidence) on the ineffectiveness of remedies shall not be taken into consideration for the determination of the application or not of the local remedies rule.[137] Moreover, the lack of evidence cannot be an objection *in particular* to a claim of wrongful administrative practice, but possibly to any claim under the Convention. A claim against an administrative practice does *not* differ from a claim of ineffectiveness of local remedies, in that *it is the Commission and not the applicant* that ultimately examines it for the purpose of rejecting or upholding it for further investigation. The applicant's subjective appreciation uncorroborated by evidence seems altogether irrelevant in this context.

In the European experiment under the Convention, it has been suggested that, by lodging an application under Article 25, the individual concerned is initiating an *action publique* (set forth in the Convention) rather than strictly pursuing a *droit subjectif*.[138] The whole procedure can in this way be approached on the basis of rights as well as *duties*. Writing in 1957, before the Commission had developed its case-law on the problems raised by legislative measures and administrative practices, Eustathiades observed that individual applications

certainly aimed at reparation to the victims, but served also a general interest, particularly when they concerned legislative measures and judicial or administrative practices independently of their application *vis-à-vis* the individual applicants; inter-State applications were even more closely related to the *general interest* of seeing the Convention observed *vis-à-vis* all persons concerned.[139]

Henri Rolin identified in individual applications a point of coincidence between the individual and the general interest: complaints of individual violations in a way helped to secure respect *erga omnes* for the provisions of the Convention. The *action publique* initiated by the individual complainant worked not only as a means to obtain *reparation* for particular injuries, but also – in cases of legislative measures and administrative practices – as a *preventive measure of protection*, in an identification between the individual and the general interest. Furthermore, once seized of a case, the Commission's task was not limited to that of redressing a tort, but of ensuring the observance of the engagements undertaken by the High Contracting Parties under the Convention (in the terms of its Article 19).[140]

The Commission itself stressed the '*objective* character' of the engagements undertaken by the States Parties to the Convention (Article 19) in the *Austria* v. *Italy* case. The Commission emphasized that an application from a State referring to an alleged breach of the Convention was 'not to be regarded as exercising a right of action for the purpose of enforcing its own rights, but rather as *bringing before the Commission an alleged violation of the public order of Europe*'.[141] The Commission, as the international organ seized of the applications under the Convention, has a *duty* and not only a faculty of examining the complaints and giving continuance to the procedure for the settlement of the cases.

The application of the local remedies rule and related problems can first be approached on the basis of the different kinds of *interests* involved, for example: the individual's interest in having the international wrong judicially settled and remedied as quickly and efficiently as possible; the respondent State's interest in having a chance of doing justice in its own way and by its own domestic courts in order to discharge its responsibility; the international community's interest is seeing that local remedies work efficiently in order to have the dispute settled in the quickest, most effective and least expensive way.[142] But the whole question can also be approached on the basis of

the *duties* of the parties concerned, for example, the individual's duty to exhaust local remedies, the respondent State's duty to provide local remedies.[143]

In cases concerning legislative measures and administrative practices, the individual, having shown that such a practice exists, is *not* under the duty of exhausting local remedies, and is entitled to raise the question of the compatibility with the Convention of those measures or practices. The Commission's findings in, for example, the *Kjeldsen* and *Donnelly* cases may have the effect of strengthening the status of individual applicants under the Convention. In instances of wrongful legislative measures and administrative practices the respondent State would be placed under the duty to forbid legislative or administrative acts which may encourage or allow or tolerate systematic practices of ill-treatment (in breach of Article 3 of the Convention). Thus, in the context of cases of legislative measures and administrative practices the issue of the exhaustion of local remedies should preferably be approached on the basis of duties rather than interests.

The Commission may at times go further than upholding contentions of administrative practices in breach of the Convention. In the *Cyprus* v. *Turkey* case, for example, the applicant government complained of large-scale violations of human rights by Turkish authorities in Cyprus, while the respondent government raised an objection of non-exhaustion of local remedies (based mainly on Article 114 of the Turkish Constitution). The applicant retorted that the multiple complaints in the case related to 'an "administrative practice" in the sense of the Commission's case-law', forming part of a government policy which rendered domestic remedies ineffective in the circumstances. In its admissibility decision of 26 May 1975 the Commission found that it had *not* been established that remedies available in domestic courts in Turkey or before Turkish military courts in Cyprus were practicable and normally functioning. As they could not be considered as effective and sufficient within the meaning of Article 26 of the Convention, the Commission concluded that the complaints could *not* be rejected for non-exhaustion of local remedies. In so deciding, the Commission regarded the case not as one of 'administrative practice', as suggested by the applicant government, but expressly as one relating to 'a military action by a foreign power' and to 'the period immediately following it'.[144]

The waiver of the local remedies rule by the Commission in cases of wrongful administrative practices (endorsed by the *Donnelly* decision)

should *not* be interpreted as a means of unduly strengthening the procedural status of individuals under the European Convention. There does not seem to be any strong reason for supposing that by invoking an alleged administrative practice the individuals concerned could pursue their case with considerably better prospects of success and circumvent procedural obstacles. Besides the fact that the admissibility decision rests with the Commission alone, even if the local remedies rule is dispensed with the applicants would still have to face the other grounds of inadmissibility of applications set forth in Article 27 of the Convention. It thus remains unlikely that a successful contention of administrative practice would *ipso facto* and automatically entirely clear the way for a subsequent consideration of the merits of the case.

Besides that, the local remedies rule in Article 26 of the Convention was never meant to be an *absolute* ground of inadmissibility of complaints, as is sometimes inaccurately assumed. A most important point, often overlooked and misinterpreted, was clarified by the Commission itself when, in the *Austria* v. *Italy* case, it stressed that, by formulating the local remedies rule in Article 26 by reference to general international law, '*the authors of the Convention intended to limit the material content of the rule' rather than to extend it.*[145] International law recognizes exceptions to the local remedies rule, notably, for example, when domestic remedies do not exist or are manifestly ineffective or inadequate for the object of the claim.

The Commission's exclusion of the local remedies rule in cases of substantiated administrative practices also meets the requirements of common sense. Without that exclusion, and in face of the usually slow process of domestic litigation, individuals would have little – if any – protection against certain practices amounting to systematic violations of human rights. Moreover, by granting remedies in the form of, for example, monetary compensation to the individual victims, a government could forestall indefinitely any inquiry upon the international plane into its larger policies.[146] If one considers that out of a total of 6,847 applications registered with the Commission until the end of 1974 only 127 were declared admissible,[147] and that of the overwhelming majority of rejected applications a considerable number was declared inadmissible for non-exhaustion of domestic remedies, one can hardly avoid the apprehension that unless the Commission sets standards for a more flexible application of the local remedies rule the very foundations of the European system of human

rights protection are likely to be undermined. In this way, the Commission's exclusion of the rule in cases of legislative measures and administrative practices may well render a valuable service to the cause of human rights in the European regional context.

The Commission's tendency to accord what appears to be an increasingly wider meaning to the notion of 'victim' (of legislative measures and administrative practices) – as seen in the *Kjeldsen* case – seems to be well in keeping with the parallel experience and developments in the United Nations. Pursuant to ECOSOC resolution 1503(XLVIII) of 1970, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities set forth in its resolution 1(XXIV), adopted on 13 August 1971, procedures on the admissibility of communications concerning human rights violations addressed to the UN Secretary-General. Those procedures not only expressly exclude the application of the local remedies rule where domestic remedies are 'ineffective or unreasonably prolonged',[148] but also provide *inter alia* that, in cases disclosing 'reasonable grounds to believe that they may reveal a consistent pattern of gross and reliably attested violations of human rights', admissible applications may originate not only from individuals who are 'reasonably presumed' to be victims of those violations but also from individuals and non-governmental organizations having 'direct and reliable knowledge of such violations'.[149]

Thus, by ascribing to the notion of 'victim' an increasingly broader interpretation and by excluding the application of the rule of exhaustion of local remedies in cases of substantiated legislative measures and administrative practices incompatible with the provisions of the Convention, the European Commission of Human Rights seems to be slowly but steadily moving into the right direction, towards an effective accomplishment of the ultimate goals of the European experiment on human rights protection.

5. Special issues

Subsequently to the Commission's admissibility decision of 1 October 1972 on the *Ireland* v. *United Kingdom* case and its admissibility decision of 5 April 1973 on the *Donnelly and Others* v. *United Kingdom* case, both already examined (cf. *supra*, pp. 191–3 and 197–200), the Commission elaborated on special issues of importance to the subject now under examination, in its handling of those two cases. One may largely distinguish two such issues, namely, the relationship between

administrative practices and the requirement of exhaustion of local remedies, and consideration of contentions of administrative practices and the adequacy of local remedies. At the close of this section it is thus convenient to examine the later views of the Commission on those particular issues, as raised in the *Ireland* inter-State and the *Donnelly* cases.

(a) The relationship between administrative practices and exhaustion of local remedies

As a preliminary to the question of the proper relationship between the concept of administrative practice and the requirement of exhaustion of local remedies, it may be asked why the Commission has combined 'legislative measures and administrative practices' from the early case-law (for example, the *First Cyprus* case) onwards. The Commission provided an answer in its *Report* on the *Ireland* v. *United Kingdom* case, adopted on 25 January 1976. The Commission stated that the reason for repeatedly combining the two notions 'for purposes of exemption from Article 26 is that when the practice itself is admitted, such cases amount to a challenge of "the law of the land" and thus the normal assumption that domestic remedies could be effective does not apply' (for example, difficulty of proof before national courts).[150]

Earlier, in the *First Greek* case (1969), the Commission laid down as constituent elements of an 'administrative practice', necessary to its existence, those of *repetition of acts* and *official tolerance*.[151] The Commission explained that 'administrative practice' was not 'administrative' in the sense of being a repetition of administrative decisions, but consisting rather of repeated factual events which were tolerated, i.e., passed unchecked.[152] This point was again made by the Commission in the *Ireland* v. *United Kingdom* case.[153] In the *First Greek* case, the Commission further traced the relationship between administrative practices and the local remedies rule by observing that the notion of administrative practice 'is closely linked with the principle of the exhaustion of domestic remedies. The rule in Article 26 is based on the assumption, borne out by Article 13, that for a breach of a Convention provision there is a remedy available in the domestic system of law and administration, even if the provision is not directly incorporated in domestic law, and that that remedy is effective.'[154] However, the Commission added, where there is:

a practice of non-observance or certain Convention provisions, the remedies prescribed will of necessity be side-stepped or rendered inadequate. Thus, if there was an administrative practice of torture or ill-treatment, judicial remedies prescribed would tend to be rendered ineffective by the difficulty of securing probative evidence, and administrative enquiries would either be not instituted, or, if they were, would be likely to be half-hearted and incomplete.[155]

The relationship between the notion of administrative practice and the local remedies rule was further developed by the Commission in its *Report* on the *Ireland* v. *United Kingdom* case. The applicant government argued that the respondent government could not rely on the objection of non-exhaustion of local remedies as, if an administrative practice of ill-treatment was established, it would tend to make judicial remedies ineffective and the local remedies rule inapplicable; furthermore, the fact that some claims had been settled and some people paid damages proved only that *some* people had been able to get damages, and a strong inference remained that a great many people had not been able to get damages.[156] On its part, the respondent government submitted (hearing of December 1973 on the merits) that effective remedies (civil remedies) existed and were being pursued before domestic courts.[157] The parties agreed that, in order to establish whether an administrative practice of ill-treatment existed, the Commission was to rely on the criteria it laid down in the *First Greek* case (*supra*, pp. 189–90), namely, the two requirements of 'repetition of acts' and 'official tolerance'.[158]

The issue of the effectiveness of remedies was much disputed by applicant and respondent governments, in connection with the proper meaning to be ascribed to the notion of 'administrative practices'.[159] In the Commission's view, the essential feature of the 'repetition of acts' as a constituent element of an administrative practice was that 'the acts complained of form a pattern or system in the sense that some link or connection exists in the circumstances surrounding the particular acts, e.g. time and place where the acts occur and the attitude of the persons involved, and that they are not simply a number of isolated acts'; and as for the element of 'official tolerance', the Commission continued, it might be found to exist 'on alternative levels: namely that of the direct superiors of those immediately responsible for the acts involved, or that of a higher authority'.[160] In this way, the Commission expressly dismissed the respondent government's argument that a State could only be responsible if 'official tolerance' was shown 'at the level of the State', and held that

the responsibility of a State under the Convention may arise for acts of all its organs, agents and servants (irrespective of their rank), imputed to the State.[161]

The Commission concluded that it was necessary to distinguish between

> an administrative practice tending to render domestic remedies ineffective, and a practice in breach of the Convention. Thus:
>
> (a) the role of an administrative practice is, for the Commission, procedural in that it involves the rule of exhaustion of domestic remedies and its applicability;
>
> (b) the role of a practice in breach of the Convention belongs essentially to the merits and where such a practice is found, involving acts in breach of Article 3, the violation of the Convention is that much more serious;
>
> (c) there can be circumstances where a practice in breach of the Convention constitutes also an administrative practice tending to render domestic remedies ineffective.[162]

(b) *Contentions of administrative practices and adequacy of local remedies*

The Commission's admissibility decision of 5 April 1973 on the *Donnelly and Others* v. *United Kingdom* case, already examined (cf. *supra*, pp. 197–200), did not present the Commission's final views on the issue of exhaustion of local remedies as raised in the case. The Commission elaborated on the matter in its subsequent decision of 15 December 1975 on the same case, in which, having considered the parties' submissions as to the local remedies requirement under Article 26 of the Convention,[163] it initially warned that, procedurally, the issue relating to exhaustion of local remedies, while joined to the merits, 'must still be considered as affecting the admissibility of the applications'.[164]

While the applicants complained of ill-treatment (in breach of Article 3 of the Convention) and of being victims of an administrative practice necessarily rendering local remedies ineffective or inadequate, the respondent argued that that was a case of an emergency situation and not of an administrative practice, and that the applicants should make use of the available remedies unless they were shown to be ineffective.[165] The Commission was thus confronted with the issue of the nature of the remedies available; these were action for damages under the common law,[166] claim against the State for compensation,[167] and complaints against members of the security forces.[168]

After considering that 'the possibility of obtaining compensation may, in normal circumstances, be an adequate and sufficient remedy in respect of a complaint of ill-treatment in violation of Article 3 of the Convention',[169] the Commission recalled the steps taken by the applicants to exhaust local remedies: each of them had in fact instituted civil proceedings in order to obtain damages; four of the actions had been settled on the agreed terms,[170] the applicants also receiving their legal costs; the actions by the three remaining applicants were at the time of the Commission's decision still pending.[171] The question then before the Commission was thus that of the effectiveness in practice of the machinery of compensation; having examined in detail the facts and circumstances of each applicant's case,[172] the Commission took the view that the applicants had failed to show that the machinery for compensation did not, or was unlikely to, work effectively in practice.[173]

The Commission remained however faced with the applicant's objection that compensation was not an adequate remedy, since it did not operate so as to prevent the administrative practice complained of.[174] The Commission, recalling the State's duty to provide individuals with effective remedies, drew the following distinction: where a State took reasonable steps to comply with its obligations under Article 3 of the Convention (even though a contravention had occurred), compensation constituted in general an adequate remedy, 'since it is likely to be the only means whereby redress can be given to the individual for the wrong he has suffered'; but where a State did not take reasonable steps to comply with its obligations under Article 3 of the Convention, compensation could not be deemed to have rectified the violation complained of. The Commission thus laid down the principle that 'compensation machinery can only be seen as an adequate remedy in a situation where the higher authorities have taken reasonable steps to comply with their obligations under Article 3 by preventing, as far as possible, the occurrence or repetition of the acts in question'.[175]

In the present case, however, the Commission, on the basis of the evidence examined, was of the opinion that that evidence did not disclose that the applicants had been victims of a policy or administrative practice of ill-treatment tolerated by the higher authorities, 'which could have had the effect of rendering compensation inadequate as a remedy for any wrong they suffered'; on the contrary, it disclosed that the higher authorities had not reacted with

indifference to their allegations, which had been reasonably investigated.[176] In fact, in the light of steps taken by the respondent government to fulfil its duty towards the applicants to prevent the occurrence or repetition of the acts complained of, the Commission considered that in the circumstances of the case 'the possibility of obtaining compensation through a civil action for damages constituted an adequate remedy for the specific violations of the Convention alleged by each of the applicants'; and the Commission had already found that it had not been established in any of the present cases that this remedy did not work effectively in practice.[177]

The legal consequences of the Commission's findings as to remedies were thus not hard to anticipate. As to the three applicants whose domestic civil proceedings were still pending, the Commission held that in so far as they claimed to have been victims of specific acts (as distinct from an administrative practice) in breach of Article 3, their applications were to be rejected under Article 27(3) for non-exhaustion of local remedies. As to the four applicants who had received reasonable compensation by using remedies available, they could no longer claim to be victims of any violation of the Convention, and their applications were thus inadmissible on the ground that they had accepted compensation by using available remedies and had renounced further use of local remedies.[178]

As in the *Ireland* inter-State case (*supra*, pp. 208–9), the Commission explained, in the *Donnelly* case, that theoretically the notion of administrative practice – in its component elements of repetition of acts and official tolerance – was closely linked with the requirement of exhaustion of local remedies, rendering remedies ineffective or inadequate where there was definitely a practice of non-observance of the Convention provisions. But where tolerance of ill-treatment had been shown to exist possibly only at the middle or lower level of the chain of command, and not by higher authorities, the Commission had to ascertain the effectiveness of remedies in practice in the light of steps taken by authorities to fulfil their duties *vis-à-vis* the individuals concerned and to prevent the occurrence or repetition of acts of ill-treatment. Thus, not every alleged practice in breach of the Convention would necessarily have the effect of rendering remedies ineffective or inadequate.[179]

In the *Donnelly* case the Commission had already found that the possibility of obtaining compensation in a civil action constituted an adequate and effective remedy for alleged breaches of Article 3 of the

Convention (cf. *supra*, pp. 209–11). Even though such findings did 'not exclude the possibility that at some place or level a practice in violation of the Convention existed', the Commission did 'not find it necessary to examine this question since in its view the same grounds of inadmissibility apply to this part of the application as apply to the applicants' allegations that they have each been the victim of specific acts in violation of Article 3'.[180] The Commission therefore unanimously took the view that that part of the applications 'should be rejected under Article 29 of the Convention since the grounds for the inadmissibility of the applicants' allegations that they have been victims of specific acts in violation of Article 3 are equally applicable in relation to their allegations that they have been victims of an administrative practice'.[181]

In view of the Commission's findings no precise relationship was drawn between the concept of administrative practice and the *adequacy* of local remedies in the *Donnelly* case. This would perhaps be possible if it had been established that an administrative practice of ill-treatment did in fact exist and called for a closer scrutiny on the part of the Commission for the purposes of application of the local remedies rule, which was not exactly the case. It remained, however, clear, both from the Commission's decision in the *Ireland* inter-State case (*supra*, pp. 208–9) and from its decision in the *Donnelly* case, that the notion of 'administrative practice' (constituted by repetition of acts and official tolerance) is, theoretically at least, closely related (procedurally) to the requirement of exhaustion of local remedies under the Convention.

Annex 146

B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Cambridge University Press, 2006)

GENERAL PRINCIPLES OF LAW

as applied by

INTERNATIONAL COURTS AND TRIBUNALS

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CHAPTER 1

TERRITORIAL APPLICATION OF THE PRINCIPLE

INASMUCH as the treatment of nationals, at the present stage of development of the international society, does not in principle fall within the purview of international law, except in virtue of treaty provisions,[1] the problem of the municipal application of the principle of self-preservation in international law becomes largely a question connected with aliens. No attempt is made here to undertake even a summary survey of the vast problem of the treatment of aliens. The object is merely to illustrate how, and to what extent, the overriding interest of the State may in certain cases affect their rights and interests.

In the first place, it will be seen that their admission and continued stay in a foreign country is contingent upon the superior interest of the State.

A. Exclusion and Expulsion of Aliens

An examination of cases decided by international courts and tribunals shows that the exclusion or expulsion of aliens by a State finds its juridical basis in the right and duty of the State to safeguard the nation's welfare and security.

Thus in the *Maal Case* (C. 1903),[2] the Umpire stated:—

"There is no question in the mind of the Umpire that the Government of Venezuela in a proper and lawful manner may exclude, or if need be, expel persons dangerous to the welfare of the country, and may exercise large discretionary powers in this regard. Countries differ in their methods and means by which these matters are accomplished, but the right is inherent in all sovereign powers and is one of the attributes of sovereignty, since *it exercises*

[1] *e.g.*, treaty provisions guaranteeing human rights or rights of minorities.

[2] Neth.-Ven. M.C.C. (1903), *Ven.Arb. 1903*, p. 914. The claimant, suspected of conspiracy with the revolutionaries against the government, was expelled. While under arrest, he was subjected to the indignity of being stripped of his clothing and thus made an object of laughter to bystanders.

The letter "C" before the date indicates that the latter refers to the *compromis*, as it has not been possible to ascertain the date of the decision.

it rightfully only in a proper defence of the country from some danger anticipated or actual." [3]

The significance of the right to exclude or expel aliens for reasons of public welfare or security lies in the fact that it cannot be assumed to have been implicitly surrendered by a general convention between two countries which provides that the citizens of each should have the liberty to travel or reside in the territory of the other.

The United States Domestic Commission in the American-Turkish Claims Settlement (1935) held in the *Lazar Rokash Case* (1937) [4] that:—

" The case of the expulsion of a native American, Max Scherpel, from the Free State of Hamburg in 1912 is of interest in connection with the construction of stipulations generally found in so-called commercial treaties relating to residence, conduct of business, and protection of rights of person and property of the nationals of the contracting parties. A question was raised whether Arts. VI and VIII of the Convention of Friendship, Commerce and Navigation concluded December 20, 1827, between the United States and the Hanseatic Republics,[5] stood in the way of the expulsion of this

[3] *Loc. cit.*, pp. 914–915. Italics added.
Damages were awarded for indignity suffered, because (and this confirms the thesis that such measures are conditional upon and circumscribed by the need for the protection of the community) " it was not for the protection of Venezuela that he was compelled to suffer this indignity to his person and his feeling " (p. 915).
See also Belg.-Ven. M.C.C. (1903): *Paquet Case*, *Ven.Arb. 1903*, p. 265 at p. 267: " That the right to expel foreigners or prohibit their entry into the national territory is generally recognised; that each State reserves to itself the exercise of this right with respect to the person of a foreigner if it considers him dangerous to public order or for considerations of a high political character, but that *its application cannot be invoked except to that end* " (italics added). Damages were awarded for arbitrariness in refusing to state reasons for the measure (p. 267).
See also *Ben Tillet Case* (1898), G. B./Belgium, 92 B.F.S.P., p. 78, Award at pp. 105–9. Expulsion for attempting to ferment a strike at Antwerp and to organise an international federation of dockers. Held: " A State has the undisputed right to forbid its territory to foreigners when their intrigues or presence appear to compromise its security " (at p. 105. Transl.).

[4] Nielsen's *Op. & Rep.*, p. 503. Alleged damage suffered through removal of claimant (American citizen) and members of his family from Jerusalem to Damascus in November, 1917, by the Turkish authorities. Claimant invoked, inter alia, Art. IV of the Treaty of 1830 (*q.v.*, *infra*, p. 34, note 6).

[5] Miller, 3 *Treaties*, 1933, p. 387. Art. VI: " It is, likewise, agreed, that it shall be wholly free for all merchants, commanders of ships, and other citizens of both Parties, to manage, themselves[,] their own business, in all the ports and places subject to the jurisdiction of each other, as well with respect to the consignment and sale of the goods and merchandise, by wholesale or retail, as with respect to the loading, unloading and sending off their ships, submitting themselves to the laws, decrees and usage there established, to which native

citizen. The Department of State observed in an instruction of April 9, 1912, to the American Consul-General at Hamburg: ' that a convention of this nature undoubtedly should not be considered as renouncing such an important attribute of sovereignty as the right of expulsion,' although the Department was of the opinion that the measure had been harshly exercised. It is believed that clearly the much less comprehensive stipulations of the Treaty of 1830 [6] between the United States and the Ottoman Empire did not stand in the way of the removal of persons from Jerusalem to Damascus for reasonable purposes, although it is conceivable that arbitrary interference with residence or vocations might result in violations of such stipulations. Furthermore, it is not believed that the so-called capitulary rights stipulated in meagre language in this article prohibited measures taken in time of war to safeguard the public interest, unless of course such measures were shown to be clearly arbitrary and violative of rights of jurisdiction such as are secured by the treaty." [7]

But it also follows from the above that specific treaties must be respected.[8]

As to what constitutes a menace to the welfare and security of the community, the Upper Silesian Arbitral Tribunal in the *Hochbaum Case* (1934) held:—

" Subject to specific treaty, it is the view of the State in question which alone decides whether its internal or external security is at stake. That view may change; it has undoubtedly undergone changes in recent decades in various States and in various circumstances. But in every case it is the consequence of one of the most important rights of the State. . . . The reasonableness of the decision is not subject to review by the Tribunal. If the authority in question is in a position to adduce reasons of a serious nature

citizens are subjected; they being, in all these cases, to be treated as citizens of the Republic in which they reside, or at least, to be placed on a footing with the citizens or subjects of the most favored nation."

Art. VIII: " Both the Contracting Parties promise and engage formally to give their special protection to the persons and property, of the citizens of each other, of all occupations, who may be in the territory subject to the jurisdiction of the one or the other, transient or dwelling therein. . . ."

[6] 3 *ibid.*, p. 541. Art. IV: " . . . Citizens of the U.S.A., quietly pursuing their commerce, and not being charged or convicted of any crime or offence, shall not be molested; and even when they may have committed some offence they shall not be arrested and put in prison, by the local authorities, but they shall be tried by their Minister or Consul, and punished according to their offence, following in this respect, the usage observed towards other Franks."

[7] *Loc. cit.*, p. 509. *Cf.* PCIJ: *The Wimbledon* (1923), Joint D.O. by Anzilotti and Huber, A. 1, p. 37 (quoted *supra*, p. 29).

[8] *Cf.* also U.S. Domestic Commission, Mexican Claims (1849): " *Expulsion Cases*," 4 *Int.Arb.* p. 3334.

justifying expulsion, then the Tribunal is not entitled to reject these reasons as unimportant or insufficient." [9]

In time of war or disturbances, a State may even expel aliens on reasonable suspicion, either from its own territory, for the protection of the safety of the community,[10] or from occupied territory for the protection of its forces of occupation.[11]

[9] 5 *Collection of Decisions* (1935), p. 140, at p. 162; *Annual Digest* (1933–1934), Case 134. Expulsion of a Pole from German Upper Silesia in 1933. It appeared that this Pole formerly belonged to an association called "The Society of the Friends of the Soviet Union." Claim disallowed. The right of residence of Poles in German Upper Silesia was regulated by Art. 43 of the Convention of Geneva, May 15, 1922, but Art. 44 provided that each State retained the right of expulsion for reasons of internal or external security or on account of police regulations. The Tribunal held that: "This amounts to a recognition without any qualification, of the fundamental right of every sovereign State to decide in its free discretion as to continued residence of aliens in its territory." See also Kaeckenbeeck, *The International Experiment of Upper Silesia*, 1942, pp. 207–212, also Appendix III, pp. 567–822, where the Geneva Convention is reproduced.

Ben Tillet Case (1898) 92 B.F.S.P., p. 78, at p. 105. "The State determines in the plenitude of its sovereignty, whether the facts warrant such a prohibition" (Transl.).

Cf. Span.-U.S. Cl.Com. (1871): *Casanova Case* (1882), 4 *Int.Arb.*, p. 3353.

In Belg.-Ven. M.C.C. (1903): *Paquet Case* (*Ven.Arb. 1903*, p. 265, at p. 267), the umpire merely said: "The general practice among governments is to give explanations to the government of the person expelled if it asks them." A refusal gives rise to a presumption of arbitrary conduct.

It does not seem that in substance, the *Boffolo Case*, decided by the Ital.-Ven. M.C.C. (1903) (*Ven.Arb. 1903*, p. 696) is materially in contradiction with the above cases. All that the umpire required was that "the country exercising the power must, when occasion demands, state the reason of such expulsion before an international tribunal, and an inefficient reason or none being advanced, accepts the consequences" (p. 705). An Italian was expelled. The umpire tried to conjecture the reasons of the measure but found all the possible excuses would be invalid by Venezuelan law. Damages were awarded apparently because: "The umpire is more disposed to believe that for public reasons satisfactory to itself the [Venezuelan] Government has chosen not to offer the basis of its action, rather preferring to submit to such judgment as to this Commission might seem meet in the case" (p. 705). The *ratio decidendi* is therefore the absence of any reasons being adduced.

Cf. contra Mex.-U.S. Cl.Com. (1868): *Zerman Case*, 4 *Int.Arb.*, p. 3348: "In the present instance there was no war, and reasons of safety could not be put forward as a ground for the expulsion of the claimant without charges preferred against him or trial; but if the Mexican Government had grounds for such expulsion it was at least under the obligation of proving charges before this commission."

[10] *Zerman Case, loc. cit.*: "The President of the Republic of Mexico had the right to expel a foreigner from its territory who might be considered dangerous, and that during war or disturbances it may be necessary to exercise this right even upon bare suspicion."

Mex.-U.S. Cl.Com. (1868): *De Rijon Case* (1876), 4 *Int.Arb.* pp. 3348–9. Expulsion of a Mexican from the zone of military operations during the American Civil War. "The right which General Herron claimed of turning anyone out of his lines when he thought proper to do so was the undoubted right of any officer in the position held by General Herron. . . . An officer in command in such a position is not always bound in time of war to give his precise reasons for such steps" (pp. 3348–49).

[11] P.C.A.: *Chevreau Case* (1931), France/Great Britain, 2 UNRIAA, p. 1113. During the first world war, British forces occupying Persia deported a French

To enemy nationals found within the national territory at the outbreak of war, a State may apply a great number of measures of self-protection and, in principle, it has the right to expel them all.[12]

In all the above cases, however, this right, discretionary though it is, must be exercised in good faith.[13] It must not be arbitrary,[14] nor accompanied by unnecessary indignity or hardship.[15]

B. Measures to Promote Public Welfare

" In application of a generally accepted principle, any person taking up residence or investing capital in a foreign country must assume the concomitant risks and must submit, under

citizen. There was considerable armed resistance in this district. " Under these circumstances the arbitrator deems that he cannot deny to the British forces operating in Persia the right to take the measures necessary to protect themselves against the activities of the civilian population which were of a kind harmful to their operations or favourable to the enemy, a right which in general, according to international law, belongs to belligerent forces occupying enemy territory. . . . The arbitrary arrest, detention or deportation of a foreigner may give rise to a claim in international law. But the claim is not justified if these measures have been taken in good faith and upon reasonable suspicion, especially if a zone of military operations is involved " (at p. 1123. Transl.).

[12] Fran.-Mex. Arbitration (C. 1839), decided by Queen Victoria (1844), 5 *Int. Arb.* p. 4865. On the wholesale expulsion of Frenchmen from Mexico on the outbreak of hostilities in 1838, the arbitrator was of opinion that no indemnity was due to France, the act " being justified by the state of hostilities between them " (p. 4866).

See 4 *Int.Arb.*, pp. 3334 *et seq.* for limitation of this right by treaties and customs.

Cf. also Mex.-U.S. G.C.C. (1923): *E. R. Kelly Case* (1930), *infra*, pp. 53 *et seq.*, for measures of self-protection applicable to enemy nationals.

[13] See *Chevreau Case* (1931), *supra*, p. 35, note 11 *in fine*.

[14] *Chevreau Case* (1931), *loc. cit.*, at p. 1123: " The arbitrary arrest, detention or deportation of a foreigner may give rise to a claim in international law " (Transl.).

Belg.-Ven. M.C.C. (1903): *Paquet Case*, *Ven.Arb. 1903*, p. 265. The umpire held that, the reasons for the expulsion having been asked for and refused, " the expulsion can be considered as an arbitrary act of such a nature as to entail reparation " (p. 267).

[15] It is true that the arbitrator in the *Ben Tillet Case* (1898) pointed out that " in recognising the right of the State to expel, one cannot at the same time deny it the means of making its injunctions effective " (*loc. cit.*, p. 105. Transl.). But, as the Neth.-Ven. M.C.C. (1903) said in the *Maal Case*, where damages were awarded because the claimant was stripped in public, " There was no possible occasion for the public stripping, or private stripping, in fact, of the claimant. It was not for the protection of Venezuela that he was compelled to suffer this indignity to his person and to his feelings " (*loc. cit.*, p. 915).

In case of detention, " the detained person must be treated in a manner appropriate to his station, and conforming in the standards habitually practised among civilised nations. If this rule is not observed, there is ground for a claim " (*Chevreau Case* (1931), *loc. cit.*, at p. 1123. Transl.).

reservation of any measures of discrimination against him as a foreigner, to all the laws of that country." [16]

One of the risks is that, at any moment, a public need may arise either for the ownership or user of the alien's property and his right will then have to give way to the needs of the community, in the same way as other members of the community may be deprived of their property in similar circumstances. "The law of nations demands respect for private property, but it recognises the right of the State to derogate from this principle, when its superior interest so requires. Thus it allows expropriation for reasons of public utility in time of peace and requisition in time of war." [17]

I. EXPROPRIATION

Expropriation of private property, whether national or foreign, for reasons of public utility was recognised by the Permanent Court of International Justice [18] and the subject received detailed examination from the Permanent Court of Arbitration in the *Norwegian Claims Case* (1922).[19] The right was described by the latter as:—

[16] *Standard Oil Co. Case* (1926), Reparation Commission/U.S.A., 2 UNRIAA, p. 777 (*vide* "*The Deutsche Amerikanische Petroleum Gesellschaft Oil Tankers*" *Case*), at p. 794. Requisition by Germany of vessels belonging to a German company, for delivery to the Reparation Commission under the Treaty of Versailles. Standard Oil Co. claimed beneficial ownership over the vessels and contended that they should not be delivered. Claim disallowed.

[17] Portugo-German Arbitration (1919): *Award II* (1930), 2 UNRIAA, p. 1035, at p. 1039 (Transl.). Some of the cases decided concerned requisition by Germany of property belonging to Portuguese nationals in Belgium while Portugal was still neutral.

A passage extremely similar to that quoted in the text appears in Rumano-German Arbitration (1919): *David Goldenberg & Sons Case* (1928), 2 UNRIAA, p. 901, at p. 909. Requisition by Germany, in 1915, of 30 tons of tin, in occupied Belgium, belonging to the claimants (neutral). Payment of compensation in 1921 in paper marks represented only one sixth of the real value. Claim for balance allowed.

[18] *German Interests Case* (Merits) (1926), Germany *v.* Poland, A. 7, p. 22. On the subject of expropriation of foreign property, see further Schwarzenberger, "The Protection of British Property Abroad," 5 C.L.P. (1952) p. 295, and the present writer's "The Anglo-Iranian Dispute," 5 *World Affairs* (N.S.) (1951) p. 387.

[19] Norway/U.S.A., 2 H.C.R., p. 40. The court held: "This is a case of expropriation" (p. 77). "This is not a case of 'requisition of neutral property' in the special meaning of that term in the laws and customs of war" (p. 72). Having been exercised by a belligerent for the need of national defence, this taking of property falls no doubt within the "general" notion of requisition (*cf. infra*, pp. 40 *et seq.*). The measure may also be considered as an exercise of the right of angary, at least as regards those contracts which conferred upon the purchaser real rights in the vessels under construction (*cf. infra*, pp. 42 *et seq.*). This is only a further instance showing the intimate relation between, and the basic identity of, the rights of expropriation, requisition and angary.

" the power of a sovereign State to expropriate, take or authorise the taking of any property within its jurisdiction which may be required for the ' public good ' or for the ' general welfare '." [20]

The right to expropriate, therefore, finds its juridical basis in the requirements of the " public good " or the " general welfare " of the community.

In case of a dispute, according to the Permanent Court of Arbitration, an international tribunal is competent to, and should, decide whether the " ' taking ' is justified by public needs." [21] The logical consequence of this is that any taking not so justified must be regarded as an unlawful act. It also follows logically that, if an expropriation has not been intended to be a definite assumption of ownership but merely a temporary measure to meet some passing requirement, the continued retention of the property, when the need has ceased, constitutes an unlawful act. The decisions of international tribunals in the *Walter F. Smith Case* (1929),[22] and in the *Norwegian Claims Case* (1922),[23] which respectively upheld these conclusions are clear examples showing that the right of the State to expropriate is not only founded on, but also strictly circumscribed by, the public interest.

[20] *Loc. cit.*, p. 66.
[21] *Loc. cit.*, p. 66.
[22] See *infra*, p. 39.
[23] *Loc. cit.*, at p. 63: " The Tribunal is of opinion that, whatever may be said in favour of the taking for title of the claimants' property during the war, there was no sufficient reason for keeping these ships after the signature of the Versailles Treaty in June, 1919. The reasons which have been given afford no legal interest which this International Tribunal could recognise as being superior to the rights of private foreign citizens in their own property," and it spoke of the " unlawful retaining of the title and use of the ships after all emergency ceased " (p. 75). This apparently applies only to those cases where expropriation for use " was possible without destroying the property, according to the contract, state of completion of ships, etc." (*ibid.*). Some of the contracts were taken for good and Norwegian property destroyed when they were first requisitioned on October 6, 1917. The duality of the position is shown by the two systems of computation of compensation envisaged by the Tribunal (*ibid.*).

Cf. Germ.-U.S. M.C.C. (1922): *Opinion Construing the Phrase " Naval and Military Works or Materials " as Applied to Hull Losses and also dealing with Requisitioned Dutch ships* (1924), *Dec. and Op.*, p. 75, at pp. 93–4: " They [the requisitioned ships] were lawfully in its possession . . . during an emergency the duration of which the United States alone could determine "; " Return them, at a time to be determined by it [the requisitioning State]." See *infra*, p. 45.

Cf. also the American reservation to the award in the *Norwegian Claims Case* (1922), letter of the Secretary of State to the Norwegian Minister at Washington, February 26, 1923: " The requisitioning State is free to determine the extent and duration of its own emergency " (*loc. cit.*, p. 81).

See *infra*, pp. 43 *et seq.*

What constitutes a public need [24] is obviously not a static notion, but one which evolves according to the practice of nations. The building of highways [25] and railroads,[26] of military barracks and public cemeteries,[27] the fulfilment of an international obligation,[28] the secularisation of religious property,[29] the mobilisation of commercial and industrial resources for the prosecution of a war [30] are only some of the instances which international tribunals have accepted as clear cases of genuine public need.[31] In such cases, they do not inquire into the intrinsic merits of the needs, as international law is not concerned with the internal administration of the State.

But international law, like law in general, must look at the facts [32]: *non ex nomine sed ex re.*

Thus, in the *Walter F. Smith Case* (1929), the Arbitrator did not hesitate to point out that:—

" The expropriation proceedings were not, in good faith, for the purpose of public utility. . . . While the proceedings were municipal in form, the properties seized were turned over immediately to the defendant company, ostensibly for public purposes, but, in fact, to be used by the defendant for purposes of amusement and private profit, without any reference to public utility." [33]

It may, therefore, be said that the public welfare of the community is considered by international law to be of such overriding importance that it is allowed to derogate from the

[24] Although admittedly of a different character and related to the interpretation of a specific treaty, the judgment of the P.C.I.J. in the *German Interests Case* (Merits) (1926) A. 7, relating to what constitutes the " needs " of an industrial enterprise (pp. 49 *et seq.*) is highly instructive, *e.g.*, the needs must be genuine and not fictitious or imaginary; they may be temporary or future, etc.

[25] Spanish Zone of Morocco Claims (1923): Claim No. 21, *Holliday* (*Ouad Hélu*) (1924) 2 UNRIAA, p. 615, at pp. 679–80.

[26] *Id.*: Claim No. 15, *Forde* (*Chemin de Fer Larache-Alcazar*) (1924) 2 *ibid.*, p. 615, at pp. 679–80.

[27] *Id.*: Claim No. 6, *Rzini* (*Ras-El-Karaber*) (1924) 2 *ibid.*, p. 615, at pp. 664 *et seq.*

[28] *Standard Oil Co. Case* (1926), *loc. cit.* See *supra*, p. 37, note 16.

[29] P.C.A.: *Expropriated Religious Properties Case* (1920) France, G.B., Spain, Portugal, 2 H.C.R., p. 1.

[30] *Norwegian Claims Case* (1922) *loc. cit.*, at pp. 46, 72.

[31] On nationalisation or socialisation as an object of expropriation, see the present writer's " The Anglo-Iranian Dispute," 5 *World Affairs* (N.S.) (1951), p. 387, at p. 391.

[32] PCIJ : *German Interests Case* (Merits) (1926), A. 7, p. 22: " The legal designation applied by one or other of the interested parties to the act in dispute is irrelevant if the measure in fact affects German nationals in a manner contrary to the principles enunciated above."

[33] U.S.A./Cuba, 2 UNRIAA, p. 913, at pp. 917–8. Seizure held unlawful.

principle of respect of private rights. Such derogation is, however, conditional upon the presence of a genuine public need, and is governed by the principle of good faith.[34]

II. REQUISITION

"Military requisition is a form *sui generis* of expropriation for reasons of public utility. The latter is a permitted derogation from the principle of the respect for private property. The same applies to requisition." [35] What has been said of expropriation applies, therefore, *mutatis mutandis*, to requisition and vice versa.

Requisition has been defined as follows:—

"Requisition is the manifestation of the unilateral will of the authorities exercising their powers of employing the resources found within the country for purposes of national defence. It finds sufficient justification in the necessity created by the war." [36]

Requisition is, therefore, distinguishable from other forms of expropriation by the kind of national need which it is called upon to serve—the requirements of national defence created by a state of war. War is, however, not to be interpreted in a formal sense. As was stated by the Umpire in the *Georges Pinson Case* (1928),

"I believe that the right of requisition ought to be conceded to every government, even where the insurgents have not previously been recognised as belligerents, on condition that adequate compensation is paid." [37]

Owing to the pressing and vital character of the military needs of a nation at war, it is only true to say that States have in practice been allowed to appropriate almost any form of

[34] On the question of compensation and the practical consequence of the distinction whether the taking is lawful or not, see *infra*, pp. 47 *et seq.*

[35] Rum.-Germ. Arb. (1919): *David Goldenberg & Sons Case* (1928) 2 UNRIAA, p. 901, at p. 909. (Transl.)

[36] Greco-Turk. M.A.T.: *Polyxène Plessa Case* (1928), 8 T.A.M. p. 224, at p. 230. (Transl.) *Cf. Finnish Vessels Case* (1934) 3 UNRIAA, p. 1479, at pp. 1530, 1542.

[37] Fran.-Mex. Cl.Com. (1924), *Jurisprudence*, p. 1, at p. 137, note 2. (Transl.). Requisition and destruction of property in time of revolution. Test case for a number of others. The view of A. Rougier in his *Les Guerres civiles et le Droit des Gens*, 1903, p. 476, to the contrary was expressly rejected by the Umpire.

private property situated in territory subject to their authority that might be useful for the conduct of military operations or for the maintenance of their armed forces. Sometimes, therefore, requisition is hardly distinguishable from the unlawful taking of property, except by reference to the use to which the appropriated articles have been put.[38]

By specific treaties, however, States may voluntarily curtail their wide discretionary power of requisition.[39] The Hague Regulations concerning the Laws and Customs of War on Land constitute a notable example in that inter alia they limit the power of requisition in hostile territory to the necessities (*besoins*) of the army of occupation.[40] Although such treaties are restrictively interpreted, there can be no doubt that violations of specific provisions constitute unlawful acts.[41] The very

[38] *Cf. e.g.*, Portugo-German Arbitration (1919): *Award II* (1930), Group A, Claim 22, 2 UNRIAA, p. 1035, at pp. 1046–7. Furniture belonging to a Portuguese (neutral) taken by German troops in occupied Belgium. "There could have been either requisition effected without the usual delivery of receipts, or acts of pillage. . . . In case of doubt, the arbitrators consider that they should calculate the damages as if there had been a requisition" (at p. 1046. Transl.).

Cf. also Mex.-U.S. Cl.Com. (1868): *Thomas C. Baker Case*, 4 *Int.Arb.*, p. 3668.

[39] *e.g.*, Treaty between Spain and the U.S.A., 1795, Art. VIII (Miller, 2 *Treaties*, 1931, p. 323); Franco-Mexican Treaty of Friendship, Commerce and Navigation, Nov. 27, 1886, Art. 7 (1) (2(15) Martens, N.R.G. (1879–90), pp. 840 *et seq.*); Treaty between Great Britain and Nicaragua, 1905. (*Handbook of Commercial Treaties*, 1931, p. 475.)

[40] Art. 52. See also Art. 53 and also Arts. 46, 47, 54, 56. *Cf.* Draft of International Declaration concerning the Laws and Customs of War adopted by the Conference of Brussels, Aug. 22, 1874, Arts. 6–8.

[41] Fran.-Mex. Cl.Com. (1924): *Pinson Case* (1928). The umpire conceded to States the right of requisition not only in international wars but also in unrecognised civil wars. But prima facie he did not consider a treaty exempting the citizens of the other contracting party from requisitions of war as applicable in case of a civil war, although he recognised that such an interpretation was perfectly reasonable. If it were to apply the requisition will be an unlawful act (*loc. cit.*, p. 137 *in fine* and note 2).

For the practical consequences in the distinction between a lawful and an unlawful taking of private property, see *infra*, pp. 50 *et seq.*

In regard to the legal effect of a violation of Art. 52 of the Hague Regulations, contradictory decisions seem to have been rendered by different M.A.T. In chronological order:—Brit.-Germ. M.A.T.: *Tesdorpf & Co. Case* (1923), 3 T.A.M., p. 22. Requisition of coffee belonging to British subject in warehouse, Antwerp, 1916. Coffee sent to Germany for distribution to army. Though recognising that the limits of Art. 52 of the Hague Regulations had been exceeded (p. 27), stressing inter alia the military character of the requisition (p. 26) and the nature of the goods, which, being goods that could not be used without being consumed, implied an immediate appropriation (p. 26), the M.A.T. refused to consider that the requisition was void and of no effect or that ownership of the property had not been transferred to Germany (p. 28).

Id.: *Ralli Brothers' Case* (1923, 1924) 4 T.A.M., p. 41. Cotton, hide, and linseed seized at Antwerp and sent to War Raw Material Dept., Germany. Held act contrary to Art. 52, but there was immediate appropriation. Act not devoid of legal effect.

Belgo-Germ. M.A.T.: *Zurstrassen & Cie. Case* (1924) 4 T.A.M., p. 326. Wool

existence of all these restrictions, however, confirms rather than disproves the original right of the State to requisition private property for military purposes.

Mention may be conveniently made here of a special form of requisition, the *jus angariae*, which the Greco-Bulgarian Mixed Arbitral Tribunal in the *Arakas* (*The Georgios*) *Case* (1927) [42] held to be a universally recognised doctrine sanctioned

seized in Poland and sent to Germany. Held act contrary to Art. 52 and, as an exceptional war measure, null on account of Treaty of Versailles, annex to Art. 297, § I (2) (pp. 328–9). Ownership not transferred to Germany (p. 329).

Fran.-Germ. M.A.T.: *Gros Roman & Cie.* (1924) 4 T.A.M., p. 753. Muslin-de-laine seized at Antwerp and sent to Germany. Act null. Ownership not transferred. Grounds same as above. This decision expressly mentioned the *Ralli Brothers' Case* (p. 756) and, therefore, must be considered to have knowingly differed from it.

On the whole, it would seem more consonant with general principles to deny to an unlawful act the effect of transferring ownership (*l'effet translatif de propriété*). A careful reading of the decision in the *Tesdorpf & Co. Case* (1923) suggests that the Brit.-Germ. M.A.T. did not in principle disagree with such a solution. " The Tribunal are not of opinion that in the absence of an express provision avoiding unlawful acts, such a sanction [*i.e.*, *nullity*] is to be excluded altogether. This is a point which must be decided according to the general rules and the spirit of international law and having regard to the actual circumstances of each case " (*loc. cit.*, p. 27). The Tribunal seemed to have given a rather subtle interpretation to Arts. 52, 53 of the Hague Regulations, distinguishing from the rest certain requisitions which had for their object consumption goods susceptible of being used by the army. In these cases, there was held to be an " immediate appropriation." If by this the Tribunal meant that there was an immediate transfer of ownership, then it would be quite logical to hold that the subsequent abuse, consisting in removing the validly requisitioned goods from the occupied territory to be used by units stationed outside the occupied territory, constituted an independent contravention of the Hague Regulations, no longer affecting the question of ownership over these goods, but falling only under Art. 3 of the Convention proper. The following passage of the decision seems to lend some additional colour to this interpretation of the award: " Considering that the requisition took place in fact for needs of the army and with regard to stores of food which were warehoused in an important commercial seaport, the Tribunal cannot come to the conclusion that the mere fact of the allocation of the coffee for the use of other parts of the German army than that part which occupied Belgium, is sufficient to deprive the requisition of the character and effects which as such it has according to international law and the very nature of the things seized " (*loc. cit.*, pp. 27–8). *A contrario* it seems that where, by their nature, the goods are not susceptible of direct use by the army and where the requisition is not of a military character, the seizure would be manifestly and *ab initio* contrary to the Hague Regulations, and thus devoid of all legal effect.

[42] 7 T.A.M., p. 39. This case, decided on January 31, 1927, is wrongly placed under the heading *Vlassios D. Katrantsios c. État bulgare* (July 23, 1926) in the T.A.M. The *Georgios*, a neutral vessel flying the Samiote flag was seized by the Bulgarian army occupying the port of Eregli (*Heraclée*) in December, 1912, during the first Balkan War. A cargo of wood was requisitioned and the vessel was subsequently sunk by order of the Bulgarian military authorities. Held: " The Case of *The Georgios* constitutes an application of the right of angary " (p. 46, Transl.).

Cf. the Greco-Germ. M.A.T.: *S.A. hellénique maritime* (*The Kerveros*) *Case* (1926) 7 T.A.M., p. 33. Held: embargo on a Greek ship in a German port while Greece was still neutral was an unlawful act. But it must be

by positive law.[43] The Tribunal seemed to conceive angary as the right of a belligerent State, for military purposes, to requisition neutral vessels and their cargo, or rolling stock belonging to neutral countries,[44] found within the limits of its authority, either for use or, if need be, for destruction.[45] It added that the right should be restricted solely to "cases of serious necessity,"[46] and that its exercise involved the inescapable duty of paying adequate compensation to the owners.[47]

By conceding to States the right of requisition and angary, international law allows a nation's military needs to take precedence over private property rights situated in territory subject to its authority. Apart from specific treaty restrictions upon its exercise, the existence of this right of requisition and angary is strictly conditional upon, and circumscribed by, the presence of such military needs. How they may best be met is, of necessity, a matter to be decided by the State alone.

A special problem arises in connection with property which a State, in requisitioning, does not intend to appropriate definitively. In such a case international tribunals are in agreement that, since requisition is justified only by the superior need of the community, the property requisitioned should be restored immediately after such need has ceased to exist. There is, however, no unanimity of opinion as to whether an international tribunal is competent to determine the duration of these public needs of a State. The German-U.S. Mixed Claims Commission (1922) was definitely of the opinion that the State was alone competent to decide.[48] It is believed, however, that, while this

pointed out that in this case the ship which was under a German crew was ordered out of a Dutch port by a German coastguard vessel to return to Germany where it was seized.

[43] *Loc. cit.*, pp. 45, 46.

[44] Hague Convention II, 1899, Regulations, Art. 54; Hague Convention IV, 1907, Regulations, Art 19.

[45] *Loc. cit.*, pp. 45–6.

[46] *Loc. cit.*, p. 46. The Tribunal did not indicate, however, in this case any special necessity beyond military needs, and the exercise was considered rightful. *Cf. The Kronprins Gustav Adolf Case* (1932) 2 UNRIAA, p. 1239, at p. 1257: "The word 'angary' refers to the requisition and use of goods and to the justification of such a measure by the emergency which makes it necessary."

[47] *Loc. cit.*, p. 46. *Cf.* Bullock, "Angary," 3 B.Y.I.L. (1922–23), p. 99. See also Le Clère, *Les mesures coercitives sur les navires de commerce étrangers: Angarie, Embargo, Arrêt de Prince*, Paris, 1949.

[48] *Opinion Construing the Phrase "Naval and Military Works or Materials" as applied to Hull Losses and also Dealing with Requisitioned Dutch Ships* (1924), *Dec. & Op.*, p. 75, at pp. 93–4. See *supra*, p. 38, note 23.

is correct in principle, international tribunals are competent to intervene in case of evident arbitrariness—discrimination [49] or abuse.

The United States-Venezuelan Claims Commission (1885) held in the *Willet Case*:—

"Admitting fully the doctrine that the safety of the State is the supreme law, and that the property and person of the citizen [50] are subject to be taken for the public service whenever the exigency is sufficient to justify it, of which the State itself, by the necessity of the case, must be the only judge, yet we cannot perceive that there was any necessary connection between the seizure of the warehouse for purposes of defence and the consequent pillage and destruction of the property which ensued.

"Besides, while the seizure of the building was lawful in the first instance for the purpose of repelling an attack or guarding the arsenal, which was in the near neighbourhood, no reason has been assigned for its continued use and occupation as barracks long after the emergency had ceased to operate." [51]

The decision of the Permanent Court of Arbitration in the *Norwegian Claims Case* (1922) contained a very similar passage.[52]

Again the question whether property should be requisitioned definitively or only temporarily seems to be left to the exclusive judgment of the State. This, as well as the nature of the right over requisitioned property, may be gathered from the following passage in a decision of the German-U.S. Mixed Claims Commission (1922) in the cases of the *S.S. Merak* and *Texel* (1924), Dutch vessels requisitioned by the United States:—

[49] The *ratio decidendi* of the *Norwegian Claims Case* (1922) lies indeed in discrimination against friendly aliens, for it was held by the P.C.A.: "The United States are responsible for having thus made a discriminating use of the power of eminent domain towards citizens of a friendly nation, and they are liable for the damaging action of their officials and agents towards these citizens of the Kingdom of Norway" (2 H.C.R., p. 40, at p. 74).

[50] The case in fact concerned an alien.

[51] 4 *Int.Arb.*, p. 3743. at p. 3743. U.S. citizen, domiciled in Venezuela, had his warehouse occupied for many years after it had first been used as a kind of fort by the Government troops against the revolutionaries, everything of value in the building being in the meantime either destroyed or consumed.

[52] 2 H.C.R., p. 40, at p. 63. See *supra*, p. 38, note 23. It may be pointed out that in this case the P.C.A. considered that the U.S. had by its own acts shown that the emergency had at a certain moment ceased. "As early as February, 1919, the Emergency Fleet Corporation was giving back to their former owners some of the ships which had been needed during the war, but for which there was no further use" (p. 63). See also *The Edna* (1934) 3 UNRIAA, p. 1592, at pp. 1601 *et seq.*

" The right of the United States to possess and use them against all the world was absolute and superior to any possible contingent rights or interests of those Dutch nationals who owned them at the time they were requisitioned . . . As the United States had the absolute right against the whole world to possess these ships and use them as it saw fit, conditioned only upon the duty to make adequate compensation for their use and to return them, at a time to be determined by it or in the alternative to make adequate compensation, to the Dutch nationals who owned them at the time they were requisitioned, certain it is that this amounted to a special or qualified property in the ships tantamount to absolute ownership thereof for the time being. The possession of the United States was analogous to that of a grantee having an estate defeasible upon the happening of some event completely within his control." [53]

It also follows from the above that the risks, to which the property, even when temporarily requisitioned, may be exposed, lie with the requisitioning State.[54] Should the property perish while under requisition, the obligation of the State towards the owners, if it has not already been performed, is not thereby dissolved. In fact, frequent cases occur in which property is " requisitioned to be destroyed," a case which is to be distinguished from destruction incidental to military operations.

[53] *Opinion construing the Phrase " Naval and Military Works or Materials " as applied to Hull Losses and also Dealing with Requisitioned Dutch ships* (1924), *Dec. & Op.*, p. 75, at pp. 93–4.

The freedom of choice may be restricted in certain cases by conventional or customary international law. *Cf.* Hague Regulations, Art. 53, II. It may also be impaired by other considerations. For instance, it seems reasonable to consider that the P.C.A., in the *Norwegian Claims Case* (1922), regarded the freedom of choice of the U.S. as having been prejudiced by the fact that the progress payments made by the purchasers were not refunded by the U.S. when it requisitioned the contracts. " The necessary consequence," said the court, " is that the Corporation took over the rights and duties of the shipbuilders towards the shipowners " (2 H.C.R., p. 40, at p. 56). The duties of the shipbuilders can be no other than those of building and delivering the ships to their owners.

[54] The purpose of the decision was in fact to show that the U.S. had a claim against Germany for the unlawful destruction of these vessels.

See also *Cession of Vessels and Tugs for Navigation on the Danube* (1921) 1 UNRIAA, p. 97, at pp. 107–8: " In cases where a belligerent State has employed private property for military purposes under arrangements whereby the State undertakes to return the property to its owner, the appropriation of the property by the Enemy State would not place the burden of the loss upon the private owner, but would place it upon the owner's State which would be under an obligation to make compensation to the owner."

Mex.-U.S. Cl.Com. (1868): *Putegnat's Heirs Case* (1871) 4 *Int.Arb.*, p. 3718, pp. 3719–20: " The enemy destroyed the property indeed, but only after the government had taken it for public use, by being used by the government, and because it was so used."

The theoretical distinction was clearly drawn by the Mexican-U.S. Claims Commission (1868) in the *Putegnat's Heirs Case* (1871):—

"I conceive that the Government of Mexico is not liable for property destroyed by the enemy during the siege of a town without any complicity on its part; nor for property necessarily and incidentally destroyed by the government in its fire upon an enemy. To make the government responsible, the property must be taken by its authority to be used against the enemy (to assist an attack or make good a defence, for instance) or destroyed or carried away to prevent the enemy from using it. This is what Vattel calls taking deliberately or by way of precaution . . . Property taken or destroyed for the public use lawfully by the civil or military authorities must be paid for by the government . . . It is the seizure of private property for the public use and its loss or destruction while so employed, whether by the enemy or the government, that entitles the owner to payment. Even if it be morally certain that the enemy would himself take the property and use it, depriving the owner of it for ever, still its destruction by the government entitles the party to compensation . . . We must hold, even in such a case, that the public has received the value of the property, by embarrassing its enemy by its destruction, and is bound to make just compensation. It can never be just that the loss should fall exclusively on one man where the property has been lawfully used or destroyed for the benefit of all." [55]

This leads us conveniently to the problem of compensation.

[55] *Loc. cit.*, at pp. 3719–20. Mexican general turned claimant's store-house into fortification and forbade the removal of property to safety.

See also Brit.-U.S. Cl.Com. (1871): *John Turner Case*, 4 *Int.Arb.*, p. 3684. Destruction of house to prevent accumulated medical supplies from falling into hands of advancing enemy. Fran.-U.S. Cl.Com. (1880): *Bertrand Case*, 4 *ibid.*, p. 3705. Destruction of cotton to prevent it falling into the hands of the enemy. *Id.*: *Labrot Case*, 4 *ibid.*, p. 3706. Trees cut to give free range to guns defending position during American Civil War. Brit.-U.S. Cl.Com. (1871): *The Labuan Case*, 4 *ibid.*, p. 3791. Detention of ships in port for reasons of military security also considered as a taking of private property for public use. In all the above cases, damages were awarded.

Cf. also Brit.-U.S. Cl.Com. (1871), *McDonald Case* (4 *ibid.*, p. 3683), with the other claims for cotton destroyed during the American Civil War presented to the same Commission (4 *ibid.*, pp. 3679–83). It would seem therefrom that within one's own lines the notion of taking private property for public use covers some of the cases that would be considered as military necessity, *e.g.*, destruction to prevent enemy capture, in enemy territory.

Cf. Belgo-Hung. M.A.T.: *Sucreric de Roustchouk Case* (1925) 5 T.A.M., p. 772. The destruction of vessels on the Danube to anticipate crossing by Serb troops was not considered as destruction following requisition, but purely as a military measure, having a strategic or tactical aim and nature. The use of one of the vessels after it had been refloated was considered as a measure of requisition requiring compensation. The case also illustrates the intimate connection between the benefit received and the compensation to be paid.

III. COMPENSATION

Both as regards expropriation and requisition, the payment of compensation to the individuals who have been deprived of their property is now considered indispensable.[56] The duty to pay compensation has either been based upon respect for private property,[57] or upon the enrichment of the community at the expense of isolated individuals, or classes of individuals, by a definite act of appropriation without any fault on the part of the individual.[58] There is much to be said in favour of the

[56] *e.g.*, U.S.-Ven. M.C.C. (1903): *Upton Case*, *Ven.Arb. 1903*, p. 172, at p. 174: "The right of the State, under the stress of necessity, to appropriate private property for public use is unquestioned, but always with the corresponding obligation to make just compensation to the owner thereof." See also p. 173. Panamanian-U.S. G.C.C. (1926): *De Sabla Case* (1933), Hunt's *Report*, 379, at p. 447: "It is axiomatic that acts of a government in depriving an alien of his property without compensation impose international responsibility."

The Brit.-U.S. Cl.Arb. (1910): *Eastern Extension Australasia and China Telegraph Co., Ltd. Case* (1923) (Nielsen's *Report*, p. 40, at p. 76) considered that the right of expropriation, requisition or angary "is in reality only itself acquired in consideration of the payment of compensation, and has no existence as a right apart from the obligation to make compensation."

The following cases considered a requisition not followed by complete compensation as an unlawful act:—

Greco-Germ. M.A.T.: *Karmatzucas Case* (1926), 7 T.A.M., p. 17. Requisition in Rumania by Germany of wheat belonging to claimant (neutral). Receipt given, but only part payment made. Held illegal on the basis of Hague Regulations, Art. 52. *Id*: *Kotzias Case* (1929), 9 *ibid.*, p. 701. *Id. Evghenides Case* (1929), 9 *ibid.*, p. 692. In this case, Hague Regulations, Art. 52 was in fact inapplicable, because the so-called "requisition" took place in the belligerent's own territory. But the M.A.T. simply followed the decision in the *Karmatzucas Case* (1926). Rum.-Germ. Arbitration (1919): *David Goldenberg & Sons Case* (1928), 2 UNRIAA, p. 901, at p. 909. Portugo-Germ. Arbitration (1919): *Award II* (1930), 2 *ibid.*, p. 1035, at p. 1039.

[57] *e.g.*, P.C.A.: *Norwegian Claims Case* (1922), 2 H.C.R., p. 40, at p. 69: "Whether the action of the United States was lawful or not, just compensation is due to the claimants under the municipal law of the United States, as well as under international law, based upon the respect for private property." Rum.-Germ. Arbitration (1919): *David Goldenberg & Sons Case* (1928), *loc. cit.*, at p. 909. Portugo-Germ. Arbitration (1919): *Award* II (1930), *loc. cit.*, at p. 1039.

It is true that the P.C.I.J. staunchly defended the principle of "respect for vested rights" (*e.g.*, A. 7, pp. 21, 22; A. 9, p. 27), but it also admitted that expropriation for reasons of public utility was a permitted derogation from the principle (A. 7, p. 22). It is doubtful whether the P.C.I.J. can be regarded as having subscribed to this opinion.

[58] Mex.-U.S. Cl.Com. (1868): *Putegnat's Heirs Case* (1871), already quoted *in extenso*, above (p. 46) is a good example of this theory, the salient points of which may be recalled: "Property taken or destroyed for the public use lawfully by the civil or military authorities must be paid for by the government. . . . The public has received the value of the property . . . and is bound to make just compensation. It can never be just that the loss should fall exclusively on one man where the property has been lawfully used or destroyed for the benefit of all." (4 *Int.Arb.*, p. 3718, at pp. 3719–3720.) Cited by U.S.-Ven. M.C.C. (1903): *American Electric and Manufacturing Co Case*, *Ven.Arb. 1903*, p. 35, at p. 36. U.S.A.: Spanish Treaty Claims Commission, established under Act of March 2, 1901, 24 *Spanish Treaty*

second solution. In the difficult problem of fixing the amount of compensation, this view may yet be of help in discovering a satisfactory solution. Indeed the second view seems to be more in conformity with the basic conception of expropriation and of requisition as the taking of private property for public use, and also with the principles of political economy. For it should be remembered that, whilst an individual should be compensated for his property which has been used for the general welfare, as a member of the community, he may at the same time have to pay for property that other members have similarly been deprived of. In such cases, there may well be a set-off of the mutual debts. If this is true, it becomes easy to explain why the rate of compensation may decrease as the circle of persons affected widens. The justice of this decrease has often been felt, but has rarely been articulately expressed. Thus when the *Rapporteur* on the Spanish Zone of Morocco Claims (1923) said that " an alien may not be deprived of his property without just compensation," he added: " This is true particularly when the restriction imposed upon the free exercise of the right of property is the result of a measure directed only at specific persons, and not at all owners of property similarly situated." [59] If compensation is based on respect for private property, it does not seem logical to introduce such refinements. Indeed, the theory of compensation based on enrichment is much more flexible. It permits the taking into consideration of equities in favour not only of the individual, but also of the community. The Permanent Court of International Justice has said that in case of expropriation a " fair compensation " (" *une indemnité équitable* ") should be paid.[60] True equity, said the Umpire of the Franco-Mexican Mixed Claims Commission (1924), consists

Claims Commission (1910), p. 150: " The Commission made an allowance in every case where property was used or consumed by the Spanish forces for their benefit, the theory being that whenever it appeared that the Spanish forces had been advantaged by the use or consumption of private property it should be paid for." ICJ: *Anglo-Iranian Oil Co. Case* (Jd.) (1952), D.O. of Levi Carneiro, *ICJ Reports, 1952*, p. 93, at p. 162: " Where damage has been suffered by a member of the community in the interests of the latter, it would be unjust that that member alone should bear the full burden of the sacrifice."

See also Mex.-U.S. Cl.Com. (1868): *Thomas C. Baker Case*, 4 *Int.Arb.*, p. 3668. Belgo.-Hung. M.A.T.: *Sucrerie de Roustchouk Case*, (1925), *loc. cit., supra*, p. 46, note 55 *in fine*.

[59] *Rapport III* (1924), 2 UNRIAA, p. 615, at p. 647. Transl.

[60] *Chorzów Factory Case* (Indemnity: Merits) (1928) A. 17, p. 46.

in holding in the best equilibrium the considerations of equity invoked by both parties.[61]

IV. CONCLUSIONS

In the preceding pages, one aspect of the application in international law of the general principle *Salus Populi Suprema Lex* has been briefly examined. In application of this general principle, international law, in common with the public law of all nations, allows the interest of the State, for the promotion of the communal welfare, to take precedence over the proprietary rights of private individuals situated in territory subject to its authority. International law recognises the superiority of the collective interest, when it gives expropriation the status of a legal right, albeit a right conditional upon the payment of compensation and strictly circumscribed by the collective needs which alone justify it. This right, like every other right of the State must be exercised by its competent organs in accordance with the requirements of good faith and, in particular, there must be no undue discrimination against aliens.[62] Moreover, when exercising such a right, it is incumbent upon the State, as much as possible, to safeguard the rights and interests of the individual,[63] to respect educational institutions,[64] places and objects of worship,[65] and to conform to the dictates

[61] *Pinson Case* (1928), *Jurisprudence*, p. 1, at p. 133.

[62] *Supra*, pp. 39 *et seq.*, 44 *et seq.* See *Standard Oil Co. Case* (1926) quoted *supra*, pp. 36–7.

[63] In the Spanish Zone of Morocco Claims (1923): Claim 21: *Holliday* (*Ouad Hélu*) *Case* (1924), the land was expropriated for the construction of a highway and the claimant's survey was erroneous in that its figures were less than the actual area involved. The *Rapporteur* declared: "*In a case of expropriation, where the authorities should have prepared the surveys*, an error committed by the owner during the establishment of a private survey should not cause him any disadvantage" (2 UNRIAA, p. 615, at p. 692. Italics added. Transl.). The objection of *ultra petita* was set aside.

PCA: *Norwegian Claims Case* (1922), 2 H. C. R., p. 39, at p. 72: "The just compensation to which they are entitled includes not only the items which have been duly proved, but also those which could have been proved and estimated if the officials of the belligerent State had, in the interest of both parties, paid or offered payment, or at least required contradictory expert evaluation and inventory, of the neutral property taken."

[64] PCA: *Expropriated Religious Property Case* (1920), 2 H.C.R., p. 1. Among the French claims, in one case where the land of a girls' school was involved, the PCA decided that the land should not pass to Portugal till the school had finished its use of the land (p. 5).

Cf. Hague Regulations, Art. 56.

[65] *Expropriated Religious Property Case* (1920). The court ordered the Chapel of Picoas, together with all the objects and ornaments for the practice of worship, to be restored to the claimant (*loc. cit.*, p. 5).

Cf. Hague Regulations, Art. 56; Hague Convention XI of 1907, Art. 4.

of humanity.[66] This right may also be restricted by specific rules of international treaty or customary law, which must of course be respected.[67]

The recognition that public needs constitute a legal right is of no mere academic interest; for it entails legal consequences of practical importance. As the Permanent Court of International Justice pointed out in the *Chorzów Factory Case* (Merits) (1928), a clear distinction should be drawn between expropriation and the unlawful taking of private property.[68] While the taking of private property for public use requires only the payment of "fair compensation" ("*indemnité équitable*") to make it lawful,[69] an unjustified taking of the private property of an alien is an internationally illegal act.

If the taking is unlawful, the State may, in the first place, be called upon to restore the property and at the same time to repair any damage not covered by the restitution.[70] If this is

[66] Mex.-U.S. G.C.C. (1923): *Bond Coleman Case* (1928). A boat chartered to take a wounded man to a town where he could receive proper medical treatment was seized by a Mexican general for troop transportation. "At a time when the dictates of humanity should have prompted assistance to the claimant, measures taken for his relief were frustrated. No imperative necessity for taking the boat has been shown." (*Op. of Com. 1929*, p. 56, at pp. 60–61). Seizure held a wrongful act and compensation awarded. Had public needs imperatively required it, the boat, it seems, might yet have been lawfully taken. But a State must not act in disregard of humanitarian considerations.

Cf. Preamble to Hague Conventions II and IV of 1899 and 1907 respectively.

[67] *Supra*, pp. 41 *et seq.* See also Spanish Zone of Morocco Claims (1923): Claim 51: *British Government (Aduana Vieja) Case* (1924). Spanish troops wanted to quarter in a British consular residence in Morocco and, finding it too dilapidated, destroyed it. Recalling the inviolability of consular residence in a country submitted to capitulations, the *Rapporteur* declared that the quartering of troops in the building was in the first instance illegal (2 UNRIAA, p. 615, at pp. 725–726).

[68] A. 17, pp. 46 *et seq.*

[69] It seems that, unless the national standard of compensation be higher (*Cf. Norwegian Claims Case* (1922), at p. 74: "Just compensation, as it is understood in the United States, should be liberally awarded"), the amount of compensation does not exceed the value of the property at the moment of dispossession plus interest to the day of payment (*Cf.* PCIJ: *Chorzów Factory Case* (Merits) (1928), A. 17, p. 47). *Lucrum cessans* is not compensated (*Cf. infra*, p. 51, note 71). The umpire of the Fran.-Mex. Cl.Com. (1924) even refused to allow interest "on the value of the requisitioned articles either from the date of requisition, or from that of the official notification of the claim to the government of the debtor State" (*Pinson Case* (1928), *Jurisprudence*, p. 1, at pp. 137–138). International Tribunals may, however, also take into account other equities, *e.g.*, Rum.-Germ. Arbitration (1919): *David Goldenberg & Sons Case* (1928), 2 UNRIAA, p. 901, at p. 910.

On the theoretical basis of compensation, see *supra*, pp. 47 *et seq.*

[70] *Chorzów Factory Case* (Merits) (1928), A. 17, p. 47. *Cf. Walter Fletcher Smith Case* (1929), 2 UNRIAA, p. 913, at p. 918: "The Arbitrator believes that it would be not inappropriate to find that, according to law, the property should be restored to the claimant." *Cf. supra*, p. 41, note 41, with regard to requisition in violation of Art. 52 of the Hague Regulations.

not possible, reparation would then have to be made in money, which, in this eventuality, would include any ascertainable *lucrum cessans* of the individual so injured by the unlawful act.[71]

C. Measures to Ensure Public Safety

The *Rapporteur* on the Spanish Zone of Morocco Claims (1923) conceived "the maintenance of internal peace and social order" to be the prime object and duty of every State.[72] The State cannot, therefore, be reasonably denied the means of realising this object and fulfilling its duty.

The undisputed principle of the absolute and exclusive jurisdiction of a sovereign State within its national territory requires no recapitulation here.[73] The substantive question is to what extent a State may take exceptional measures affecting the rights and interests of aliens when the safety of the community is endangered.

A general answer may be found in the decision of the Mexican-U.S. General Claims Commission (1923) in the *Dickson Car Wheel Co. Case* (1931):—

"States have always resorted to extraordinary measures to save themselves from imminent dangers, and the injuries to foreigners resulting from these measures do not generally afford a basis for claims . . . The foreigner, residing in a country which, by reason of natural, social or international calamities is obliged to adopt those measures, must suffer the natural detriment to his affairs without any remedy."[74]

[71] *Chorzów Factory Case* (Merits) (1928), A. 17, p. 47. See *infra*, pp. 233 *et seq.*: The Principle of Integral Reparation. See, however, on the other hand, Spanish Zone of Morocco Claims (1923): Claim No. 6: *Rzini* (*Ras-El-Karaber*) *Case* (1924), 2 UNRIAA, p. 615, at pp. 664 *et seq.* The *Rapporteur* held that, the land having been taken for public utility, only the price of the land at the time of dispossession plus normal interest should be paid. He would not take into account any particularly high price which the land might have fetched since the day of expropriation to the day of the decision (pp. 665–6).

[72] *Rapport III* (1924) 2 UNRIAA, p. 615, at p. 642. See also PCA: *Palmas Case* (1928), U.S./Neth., 2 H.C.R., p. 84, at p. 93.

[73] See, *e.g.*, *Palmas Case* (1928), *loc. cit.*, p. 92; PCIJ: *The Lotus Case* (1927), A. 10, pp. 44, 69, 94.

[74] *Op. of Com. 1931*, p. 175, at pp. 192–193. Claims for railway wheels sold to Mexican railroads before latter taken over by Mexican Government as an emergency measure. As an example, the Commission said, "Moratoriums imposed upon National Banks are measures of this character, and there is no precedent showing that international indemnities have been awarded on this ground." (p. 192.)

Irrespective of the source of danger, therefore, a State may take all necessary steps to ensure the safety and welfare of the community.

I. ADMINISTRATIVE MEASURES

If necessary, a State may "prevent the passage of persons either for travel or business" in territory under its control, "suspend traffic upon any line of transportation,"[75] prohibit navigation on its own rivers, even though permission to navigate them has previously been given.[76] It may close its harbours and ports, even though there exists a treaty granting aliens the right of call,[77] or a concession conferring special rights of user.[78] It may impose a moratorium on its banks,[79]

[75] Germ.-Ven. M.C.C. (1903): *Great Venezuelan Railroad Case*, *Ven.Arb. 1903*, p. 632, at p. 636.

[76] Germ.-Ven. M.C.C. (1903): *Faber Case*, *Ven.Arb. 1903*, p. 600, at pp. 626 and 630. Claims on behalf of German nationals in Colombia, who had a commercial interest in navigating the Catatumbo and the Zulia rivers.

U.S.-Ven. M.C.C. (1903): *Orinoco Steamship Co. Case* (1904), *Ven.Arb. 1903*, p. 72 *et seq.*; 1 H.C.R., p. 240, at pp. 272–3: "The right to open and close, as a sovereign on its own territory, certain harbours, ports and rivers in order to prevent the trespassing of fiscal laws is not and could not be denied to the Venezuelan Government, much less this right can be denied when used in defence not only of some fiscal rights, but in defence of the very existence of the Government; . . . The temporary closing of the Orinoco River (the so-called 'blockade') in reality was only a prohibition to navigate that river in order to prevent communication with the revolutionists in Ciudad Bolivar and on the shores of the river, this lawful act by itself could never give a right to claims for damages to the ships that used to navigate the river." In this case there had previously been an express written permission to navigate the river, which the claimants alleged to be a granted "monopoly." Case was first decided by the above mentioned Claims Commission; was subsequently submitted again to the P.C.A. at the instance of the U.S. and by means of a special agreement of 1909 (1 H.C.R. at pp. 226 *et seq.*). While some counts of the original award were reversed for disregard of the *compromis*, others were allowed to stand. The part of the award from which the above passage was extracted was in no way affected.

[77] "*Blockade*" *of Portendic Case* (1843), *supra*, p. 30. Note particularly that the *Meta* and the *Marmion* were not awarded damages. See Report of the British Commissioner of Liquidation, 34 B.F.S.P. 1088, at pp. 1101–2: "According to the terms of the royal award, the fact of the blockade does not constitute a ground for compensation. . . . The inference is irresistible, that in the opinion of the Royal Arbitrator, the blockade was under the circumstances, justifiable." See also Ital.-Ven. M.C.C. (1903): *Poggioli Case*, *Ven.Arb. 1903*, p. 847, at p. 870.

[78] Fran.-Ven. M.C.C. (1902): *Compagnie générale de l'Orénoque Case* (1905), Ralston's *Report*, p. 244, at p. 360, quoted *infra*, p. 55.

Ital.-Ven. M.C.C. (1903): *Martini Case*, *Ven.Arb. 1903*, p. 819, at p. 843: "This closure, while entirely legal and within the power of the Government as against the world at large . . ."

[79] Mex.-U.S. G.C.C. (1923): *Dickson Car Wheel Co. Case* (1931), *loc. cit.*, p. 192. *Supra*, p. 51, note 74.

or prohibit the exportation of certain articles, notwithstanding a treaty provision securing liberty to trade.[80]

On the principle of *Salus populi suprema lex esto*, the Mixed Courts of Egypt, in 1921, recognised the right of the Commander-in-Chief of the British Forces in Egypt, as representing the protecting power, to proclaim a "political state of siege ('*état de siège politique*')," concentrating in the hands of the military authorities the powers of State, and allowing them to take measures not only of police and order, but also measures extending to economic, legal and social fields, thereby affecting the interests and rights of aliens normally enjoying extraterritoriality.[81] A political state of siege was considered to be "a measure of an internal character concerning public order and social peace, adopted on account of necessity and not in view of a foreign war."[82]

In case of war, however, there is a natural presumption of national emergency. In particular, a state of war brings about a special relationship between the belligerent State and enemy nationals, and permits the former to take all necessary measures in relation to the latter so as to prevent them from engaging in any activity harmful to its welfare or security. The position was discussed at length by the Mexican-United States General Claims Commission (1923), in the *Kelly Case* (1930)[83]:—

"During the last century there has been a world wide effort to mitigate the horrors of war. The principle has been acknowledged more and more that the unarmed citizens should be spared in person, property and honour, as much as the exigencies of war will permit."[84]

"There are well defined rules of international law for the safeguarding of rights of non-combatants. But there are, of course, many ways in which non-combatants may, without being entitled to

[80] Brit.-U.S. Cl.Com. (1871): *The Daring*, *The Templar*, *The Patmos* ("*Calcutta Saltpetre Cases*"). Prohibition of export of saltpetre described by counsel for Great Britain as a measure of self-defence; especially when war threatened between the two countries. Claims dismissed (4 *Int.Arb.*, p. 4379, at p. 4383).

[81] *Ismail Pasha Sedky* v. *Sidarous Bichara* (1921) 11 T.M.E. (1920–1), pp. 162–3.

[82] *Loc. cit.*, p. 163, c. 2. Transl.

[83] *Op. of Com. 1931*, p. 82. Removal of a U.S. citizen from a responsible position in the Mexican railroads when the U.S., without actual declaration of war, landed forces at Vera Cruz in 1914 and extensive hostilities took place. The Commission, without actually deciding whether these hostilities constituted a state of war, assimilated U.S. nationals to enemy aliens.

[84] *Loc. cit.*, p. 90.

compensation, suffer losses incident to the proper conduct of hostile operations. And a government has recourse to a great many measures of self-protection distinct from actual military operations such as the segregation or internment of enemy nationals, the elimination of such persons from any position in which they might be a source of danger, and their exclusion from prescribed locations." [85]

" As is shown by precedents that have been cited and others that might be mentioned, there is a wide range of defensive measures in time of hostilities. Undoubtedly, the justification of such measures must be found in the nature of the emergency in each given case and of the methods employed to meet the situation." [86]

" Payment must be made for property appropriated for use by belligerent forces. Unnecessary destruction is forbidden. Compensation is due for the benefits resulting from ownership or user. In dealing with the precise question under consideration by such analogous reasoning as we consider it to be proper to employ, we must take account of things which in the light of international practice have been regarded as proper, strictly defensive measures employed in the interest of public safety. Generally speaking, international law does not require that even nationals of neutral countries be compensated for losses resulting from such measures." [87]

It may, therefore, be said that whenever the safety of the State is threatened, whatever may be the cause, it has a right to take the requisite measures, in territory subject to its authority, in order to ensure the safety of the community.

The opportuneness of these measures is not subject to review by an international tribunal. In the words of the Umpire in the *Faber Case* (C. 1903):—

" What is necessary to peace, safety, and convenience of her own citizens she must judge, and it seems to the Umpire quite clear that in any case calling for an exercise of that judgment her decision is final." [88]

[85] *Loc. cit.*, p. 85.
[86] *Loc. cit.*, p. 91.
[87] *Loc. cit.*, pp. 92–3; claim disallowed.
See Rum.-Germ. M.A.T.: *Rosenstein Case* (Merits) (1930), 10 T.A.M., p. 122, at p. 127: " Undoubtedly, we have, in principle, to admit the right of a Sovereign State, for reasons of public interest, to withdraw public works from a contractor who, as the result of a declaration of war, has become the subject of an enemy State and, as such, not only suspect, but also liable to be interned at any time " (Transl.). No indemnity was held to be due.
[88] *Ven.Arb. 1903*, p. 600, at p. 626, reiterated at p. 630. See also Ital. Ven. M.C.C. (1903): *Poggioli Case*, *Ven.Arb. 1903*, p. 847, at p. 870: " The Umpire has nothing whatever to do with the reasons inducing the government to close

It seems sufficient for the State to show that there existed in fact "a case for the exercise of this discretion," [89] in other words, that the safety of the community was threatened.

With regard to the question how far these exceptional measures may be compatible with a State's legal undertakings, a distinction has to be drawn between contracts under municipal law and treaties under international law. The former cannot limit the State's right to resort to exceptional measures for its safety. The State may elect to pay compensation instead of performing its obligations under a contract, whenever its interest of self-preservation so requires. Thus the Franco-Venezuelan Mixed Claims Commission (1902) declared in the case of the *Compagnie générale de l'Orénoque* (1905):—

"As the Government of Venezuela, whose duty of self-preservation rose superior to any question of contract, it had the power to abrogate the contract in whole or in part. It exercised that power and cancelled the provision of unrestricted assignment. It considered the peril superior to the obligation and substituted therefor the duty of compensation." [90]

With regard to treaties, it is necessary to bear in mind the following reservation contained in the joint dissenting opinion by Judges Anzilotti and Huber in *The Wimbledon Case* (1923), which appears to be corroborated by decisions of other international tribunals:—

"In this respect, it must be remembered that international conventions and more particularly those relating to commerce and communications are generally concluded having regard to normal peace conditions. If, as the result of a war, a neutral or belligerent State is faced with the necessity of taking extraordinary measures

the port." PCIJ: *Oscar Chinn Case* (1934), U.K./Belgium, A/B. 63. Speaking of the economic crisis in Belgian Congo, the P.C.I.J. said: "The Belgian Government was the sole judge of this critical situation and of the remedies that it called for—subject of course to its duty of respecting its international obligations" (p. 79).

[89] *Faber Case*, *loc. cit.*, pp. 626, 630.

[90] Ralston's *Report*, p. 244, at p. 360. The contract-concession originally permitted unrestricted assignment. When in 1890, the claimant company succeeded in interesting an English company in taking over the concession, the Venezuelan Government absolutely refused to permit the transfer, on account of a very serious and threatening dispute between Great Britain and Venezuela over part of the territory covered by the concession.

Cf. also Ital.-Ven. M.C.C. (1903): *Martini Case*, *Ven.Arb. 1903*, p. 819, at p. 843. Fran.-Ven. M.C.C. (1902): *Pieri Dominique & Co. Case* (1905), Ralston's *Report*, p. 185, at p. 205 (*f*).

temporarily affecting the application of such conventions in order to protect its neutrality or for the purposes of national defence, it is entitled to do so even if no express reservations are made in the convention. This right possessed by all nations, which is based on generally accepted usage, cannot lose its *raison d'être* simply because it may in some cases have been abused. . . .

" The right of a State to adopt the course which it considers best suited to the exigencies of its security and to the maintenance of its integrity, is so essential a right that, in case of doubt, treaty stipulations cannot be interpreted as limiting it, even though these stipulations do not conflict with such an interpretation." [91]

But as Judges Anzilotti and Huber themselves acknowledged:—

" The foregoing considerations could not be effective against a definite provision expressly referring to the circumstances arising out of a war." [92]

Any violation of such a provision would undoubtedly be an unlawful act.

Express treaty provisions apart, the only legal limitation on the discretion of the State appears to be the principle of good faith. The measures taken should be reasonable and must not be arbitrary,[93] oppressive, or maintained for longer than necessary.[94] Indeed, as the Mexican-United States General Claims Commission (1923) observed in the *E. R. Kelly Case* (1930):—

" Undoubtedly the justification of such measures must be found in the nature of the emergency in each given case and of the methods to meet the situation." [95]

In determining what is meet and proper in a given case, it is necessary to

[91] PCIJ: A. 1, pp. 36–7. See " *Blockade* " *of Portendic Case* (1843), *supra*, pp. 30, 52.

[92] *Loc. cit.*, p. 37. See also PCIJ: *Oscar Chinn Case* (1934), A/B. 63, p. 79.

[93] PCIJ: *The Wimbledon* (1923), D.O. by Anzilotti and Huber, A. 1, pp. 40–1: " For these reasons, we are of opinion that the only question to be decided is whether the application to the Kiel Canal of the neutrality regulations adopted by Germany was an arbitrary act calculated unnecessarily to impede traffic."

[94] *Carlos Butterfield Case* (1890) U.S./Den., 2 *Int.Arb.*, p. 1185. In dismissing the claim, the Arbitrator, speaking of the Danish measures for protecting her neutrality, said: " The Arbitrator is of opinion that these measures were reasonable, and in no sense oppressive " and " the precautionary measures were not maintained longer than was necessary " (p. 1206).

[95] *Op. of Com. 1931*, p. 82, at p. 91.

" take account of things which in the light of international practice have been regarded as proper, strictly defensive measures employed in the interest of public safety." [96]

This practice may, and indeed does, vary with time and circumstances.[97]

Generally speaking, measures taken in time of peace or in time of war to ensure the safety of the community give rise to no compensation, even if the interests of friendly aliens are thereby directly affected,[98] and this is so, *a fortiori*, when the damage has resulted from measures primarily affecting the State's own nationals.[99, 1] Exceptions to this general rule, it seems, are confined to three instances:—

1. Where a contract with individuals has to be disregarded.[2]

2. Where private property has been taken for public use.[3]

[96] *Ibid.*, at p. 92–3.

[97] *Cf.* Mixed Courts of Egypt: *Ismail Pasha Sedky* v. *Sidarous Bichara* (1921) 11 T.M.E. (1920–21), p. 162, at p. 163, c. 2: " It is sufficient to recall in this connection that the Great War has profoundly upset a great number of principles of public and private law, however intangible [*sic*! *infrangible*?] they may have been considered up to the present. Similarly, and as an inevitable consequence, it has affected the traditional principles which, during a state of siege, limited the powers of the military authorities to mere measures of police and order. It has extended them to the economic, juridical and social fields, as is shown by the numerous measures dictated by the exceptional circumstances of the moment and enacted more or less everywhere to avert all kinds of difficulties " (Transl.).

[98] Mex.-U.S. G.C.C. (1923): *Dickson Car Wheel Co. Case* (1931), *Op. of Com. 1931*, p. 175, at pp. 192–3; *Id.*: *Kelly Case* (1930) *ibid.*, p. 82, at pp. 92 *et seq.*; and other cases mentioned in the present section.

[99] *Dickson Car Wheel Co. Case* (1931), *loc. cit.*; at pp. 188 *et seq.* See also Mex.-U.S. Cl.Com. (1868): *Siempre Viva Silver Mining Co. Case* (1874) 4 *Int.Arb.* p. 3784; *Id.*: *John Cole Case* (1876) 4 *ibid.*, at p. 3785. An alien cannot complain if his interests are affected because nationals have been called up for national service. *Cf. contra* Greco-Germ. M.A.T.: *Evghenides Case* (1929) 9 T.A.M., p. 692.

[1] In the light of the above, the decision of the Mex.-U.S. Special Cl.Com. (1923) in the *Santa Isabel Cases* (1926) (*Op. of Com. 1926–31*, p. 1, at pp. 11–12) becomes easily understandable and also serves to illustrate the above proposition. While an amnesty to malefactors guilty of crimes against aliens is usually regarded as a failure of justice involving the responsibility of the State, the Commission in this case considered the action of the Mexican Government " a supreme effort for achieving, by any means whatsoever, the pacification of the country," and refused to hold it to be an act of leniency entailing the responsibility of Mexico.

[2] *Supra*, p. 55.

[3] *Supra*, pp. 36–51.

3. Generally where there has been a tangible enrichment of the State to the detriment of individuals without any fault on their part.[4]

II. FORCIBLE MEASURES

So far only administrative measures have been mentioned. There can be no doubt, however, that a State may also use force of arms to ensure the safety and welfare of the community, when circumstances so require. In the words of the Arbitrator in *The Montijo Case* (1875):—

"The first duty of every government is to make itself respected both at home and abroad."[5]

Force may thus be used to compel obedience to the law. As the sole Arbitrator said in the *James Pugh Case* (1933):—

"The right of the individual must ever be maintained, but the right of society is superior. A fundamental right of society is the right to law and order and the further right to compel obedience thereto by the individual. . . . Obedience to law is not a matter of individual choice, but is a matter of compulsion. Such being the necessary situation in organised society, the obedience must be compelled by the use of force when that becomes necessary."[6]

If an individual should resist the arm of the law, the State is not responsible for the consequences of the use of necessary

[4] *Kelly Case* (1930), *loc. cit.*, at p. 92: "Compensation is due for the benefits resulting from ownership or user."

However, in such cases, it is essential to determine the person to whose detriment in fact and in law the benefit has been obtained. If a person has supplied materials to a railroad company and the line is taken over and operated by the State in an emergency, the user of these materials is not to his detriment but to that of the Company, since he no longer has a right over them, but has only a contractual right against the railroad company. See *Dickson Car Wheel Co. Case* (1931), *loc. cit.*, pp. 185–6; *cf.* pp. 191–2.

[5] U.S.A./Colombia, 2 *Int.Arb.*, p. 1421, at p. 1444. Seizure of ships by revolutionaries. It may be mentioned, however, that the Umpire in this case established an absolute responsibility for the protection of aliens, while modern international jurisprudence is content with *diligentia quam in suis*. See Spanish Zone of Morocco Claims (1923): *Rapport III* (1924), 2 UNRIAA, p. 615, at pp. 643 *et seq.*; *infra*, pp. 220 *et seq.*

[6] *U.K. (for Irish Free State)* v. *Panama*, 3 UNRIAA, p. 1439, at pp. 1447–8. Pugh, a citizen of the Irish Free State, met his death as a result of clubbing by the Panamanian police. "What the record discloses to us is the unfortunate and accidental death of Pugh brought on by himself by reason of his resistance to arrest, his striking the police and the consequent lawful use of their clubs on him, without any intent, actual or constructive, of killing him but for the sole purpose of lawfully compelling his submission and of defending themselves" (p. 1451). Claim disallowed.

and reasonable force to vindicate its lawful authority.[7] Moreover, even where there is no fault on the part of the victim, a State is not responsible for injuries, even when fatal, caused to aliens incidentally in the enforcement of its laws by the use of arms, provided that such use is in accordance with the local law.[8] In every case, however, the use of force must be justified by necessity and the amount of force and the manner in which it is employed must be reasonable.[9] Furthermore, what is necessary and reasonable, although largely dependent

[7] See *Pugh Case* (1933), *supra*, p. 58.

See also Peruv.-U.S. Cl.Com. (1863): *Brand Case*, 2 *Int.Arb.*, p. 1625, at p. 1625: "Mr. Brand received his injuries in consequence of the violent armed opposition to legal authority by the resistance offered on the deck of the *Ganges*. . . . If he had been shot dead by one of the soldiers under the circumstances the Government of Peru would not have been accountable."

Cf. also *The I'm Alone* (1933, 1935), Canada/U.S., Joint Interim Report of the Commissioners (1933) 3 UNRIAA, p. 1609, at p. 1615: "On the assumptions stated in the question [*i.e.*, the right of hot pursuit existed in the circumstances], the United States might, consistently with the Convention, use necessary and reasonable force for the purpose of effecting the objects of boarding, searching, seizing and bringing into port the suspected vessel; and if sinking should occur incidentally, as a result of the exercise of necessary and reasonable force for such purpose, the pursuing vessel might be entirely blameless." *In casu*, the admittedly intentional sinking of the Canadian schooner by the U.S. was considered unjustified.

[8] Brit.-U.S. Cl.Arb. (1910): *Cadenhead Case* (1914) Nielsen's *Report*, p. 505. Tribunal disallowed a claim for accidental killing of a British subject by a United States soldier firing at a military prisoner escaping from a Michigan prison. The soldier was found to have acted in conformity with military orders and regulations. The Tribunal, however, recommended an *ex gratia* payment of compensation. *Cf. infra*, p. 64.

[9] *Cf. La Masica Case* (1916) *G.B.* v. *Honduras*, 121 B.F.S.P. (1925), p. 784, at pp. 792–793: "If the attitude of the negroes [British subjects] and their refusal to come down from the engine to be arrested cannot justify the public force [of Honduras] having discharged their rifles at them, the same cannot be said with respect to the action taken in the case of Joseph Holland because, as it is admitted by the two high parties that there was an affray and that the negroes refused to come down from the engine, the employment of force to compel them to do so was justified within certain limits, and there is no reason to think that these limits were exceeded in the case of Holland." Honduras held liable for the death of the negroes, but not for the injuries inflicted upon Holland.

In the *Pugh Case* (1933), the Arbitrator examined at length whether the circumstances justified the Panamanian police in using their clubs on Pugh and whether in so doing they committed any excess (*loc. cit.*, pp. 1447 *et seq.*).

Mex.-U.S. G.C.C. (1923): *Mallén Case* (1927), *Op. of Com. 1927*, p. 254. The U.S. was held liable for injuries inflicted by a deputy constable who, partly to satisfy a private vengeance, in effecting an arrest of doubtful legality, acted in a savage, brutal and humiliating manner (*cf. ibid.*, pp. 259, 260). As the U.S. Commissioner said in his concurring opinion: "The award of the Commission must be based on the character of the injuries inflicted upon the consul as a result of *force and violence not necessary to effect his arrest*" (p. 266).

Cf. also *Id.*: *Koch Case* (1928) *Op. of Com. 1929*, p. 118, at p. 119.

upon the circumstances of each case, is to be determined in accordance with international standards.[10]

The same principle also applies when a State is obliged to have recourse to arms for the suppression of organised resistance to its authority inside its territory or for the defence of the community against foreign invasion. Thus the *Rapporteur* on the Spanish Zone of Morocco Claims (1923) stated:—

"It has been said[11] that the State may not be held responsible for the fact that a revolution breaks out in its territory, or that the

[10] "Indemnities have been awarded in cases in which it has been considered that soldiers or police officials acted improperly in attempting to make arrests, when persons have failed to respond to a summons to halt. Domestic laws throughout the world seem none too certain with respect to the action of officers relative to such matters. It seems reasonable to suppose that such is the fact because it is considered inadvisable or impracticable to frame legislation tending on the one hand to tie too rigidly the hands of officials, or on the other hand, to give them too great latitude, and that therefore considerable discretion is left to them" (Mex.-U.S. G.C.C. (1923): *Kling Case* (1930), *Op. of Com. 1931*, p. 36, at p. 41). This shows the difficulty in formulating any hard and fast rules. The Arbitrator in the *Pugh Case* (1933) stated: "We reiterate that it is impossible to set forth the situations which demand and justify the use of a club by a policeman. Rather can we arrive at a conclusion by a study of a particular case" (*loc. cit.*, p. 1448). In the *Kling Case* (1930), the Mex.-U.S. G.C.C. (1923), *per* the American Commissioner, held Mexico liable for "indiscreet, unnecessary and unwarranted" use of firearms by Mexican soldiers when a party of Americans of the Texas Co. of Mexico, S.A., returning from a nearby town to the camp of their company, fired their revolvers into the air for fun. In the *Garcia and Garza Case* (1926), the Commission recognised that there existed an "international standard concerning the taking of human life." And it declared: "If this international standard of appraising human life exists, it is the duty not only of municipal authorities but of international tribunals as well to obviate any reckless use of firearms" (*Op. of Com. 1927*, p. 163, at p. 166). With particular reference to the use of firearms in the enforcement of law along an international border, the Commission formulated the following rule: "In order to consider shooting on the border by armed officials of either government (soldiers, river guards, custom guards) justified, a combination of four requirements would seem to be necessary: (a) the act of firing, always dangerous in itself, should not be indulged in unless the delinquency is sufficiently well stated; (b) it should not be indulged in unless the importance of preventing or repressing the delinquency by firing is in reasonable proportion to the danger arising from it to the lives of the culprits and other persons in their neighbourhood; (c) it should not be indulged in whenever other practicable ways of preventing or repressing the delinquency might be available; (d) it should be done with sufficient precaution not to create unnecessary danger, unless it be the official's intention to hit, wound, or kill" (p. 167; see also *Id.*: *Falcón Case* (1926), *Op. of Com. 1927* p. 140). *Cf.* these four requirements with the conditions governing Self-Defence and Reprisals, *infra*, pp. 94 *et seq.*, 98 *et seq.*

[11] *Rapport III* (1924), 2 UNRIAA, p. 615, at p. 642: "It seems beyond dispute that the State is not responsible for the occurrence of a riot, revolt, civil war or international war, nor for the fact that these happenings cause damage in its territory. It might be more or less possible to prove mistakes on the part of the government, but, in the absence of specific agreements or treaty provisions, the necessary investigation to this end is not permissible. These events must be considered as cases of *vis major*. The principle of the independence of States excludes the possibility of their domestic or foreign policy being made, in case of doubt, the subject of international judicial enquiry" (Transl.).

State is involved in a war. From this premise, it follows logically that a State can also not be held responsible for the consequences of its effort to re-establish order or to combat the enemy by the force of arms. In acting thus, the State is only fulfilling a primordial duty. In this matter, it seems that there exists a quite generally recognised rule: The State is not even responsible for damage caused by the military operations of its own forces." [12]

And in the *Luzon Sugar Refining Co. Case* (1925), which involved a claim for damages suffered in 1899 during the American campaign against the Philippine insurrectionists, it was held that:

" The foreign residents, whose property unhappily chanced to stand in the fields of those operations, have no ground of complaint against the United States which had no choice but to conduct them where the enemy was to be found." [13]

" The rule that neutral property in belligerent territory is liable to the fortunes of war equally with that of subjects of the State applies in the case of civil as well as international war." [14]

Under traditional international law, all damages incidental to military operations is considered as mere *casus fortuitus* for which neither of the belligerents is responsible.[15] Military necessity, whatever its cause or origin, absolves the State from liability for damage resulting therefrom. As, however, the *Rapporteur* on the Spanish Zone of Morocco Claims (1923) pointed out, the absence of liability for the State for damage caused through military operations proceeds juridically from the premise that, as a rule, international tribunals lack jurisdiction to determine responsibility for the existence of a state of war, whether civil or international.[16] But when an international tribunal is expressly empowered to establish this responsibility, there is juridically no obstacle to holding the State liable for the damage caused by its unlawful military

[12] *Rapport III* (1924), *ibid.*, at p. 645. (Transl.)
[13] Brit.-U.S. Cl.Arb. (1910), Nielsen's *Report*, p. 586, at p. 586. See also U.S.-Ven. M.C.C. (1903): *American Electric and Manufacturing Co. Case*, *Ven.Arb. 1903*, p. 35, at p. 36.
[14] U.S.-Ven. M.C.C. (1903): *Volkmar Case*, *Ven.Arb. 1903*, p. 258, at p. 259. See also *Rosa Gelbtrunk Case* (1902), U.S.F.R. (1902), p. 876, at p. 879.
[15] See also Mex.-U.S. Cl.Com. (1868): *Shuttuck Case*, 4 *Int.Arb.*, p. 3668. Brit.-U.S. Cl.Arb. (1910): *Hardman Case* (1913), Nielsen's *Report*, p. 465 (see *infra*, p. 64).
[16] *Supra*, p. 60, particularly note 11.

operations.[17] Indeed, in the Portugo-German Arbitration of 1919, certain German military incursions in 1914 into Portuguese possessions in Africa were found to be unlawful and Germany was held liable for all the proximate consequences of these acts,[18] according to principles governing unlawful acts in general.[19] However this may be, it seems certain that there is, at all events, exemption from responsibility in the case of military operations undertaken by the State to quell internal disorder [20] or to resist external aggression.[21]

[17] *Cf.* Fran.-Germ. M.A.T.: *Franz Case* (1922), 1 T.A.M., p. 781, at p. 785; *Id.*: *Hourcade Case* (1922), *ibid.*, p. 786, at p. 788: "By the terms of Art. 231 of the Treaty (of Versailles), Germany has admitted responsibility for the war and its consequences; . . . it follows that if, according to German municipal law, the war may be invoked as a case of *vis major*, not only by private individuals but also by those States which have taken part in it—a question which it is unnecessary to decide in the present case—the German Government can, in no way, benefit from such a defence in its disputes with allied nationals; . . . it is indeed an undisputed and indisputable principle that no one can invoke, in his own defence, the existence of a fact for which he is himself alone responsible" (Transl.).

Cf. also the I.M.T. at Nuremberg (1945) which, empowered to try individuals accused inter alia of crimes against peace, had to investigate the legality of the wars in which the European Axis Countries were engaged. It found that the German military operations against Poland, Denmark, Norway, Belgium, The Netherlands, Luxembourg, Yugoslavia, Greece, the U.S.S.R., and the U.S. to be aggressive wars (1 *I.M.T.* (*Nuremburg*), pp. 198–216).

[18] Portugo-Germ.Arb. (1919): *Maziua Case* (1928), (1930), 2 UNRIAA, p. 1011. On August 24, 1914, the German garrison at the small frontier post of Sasabara, German East Africa, erroneously believing that Portugal was at war with Germany, attacked the Portuguese garrison across the border at Maziua. On learning of the mistake, the Governor of German East Africa apologized to the Portuguese authorities and offered to restore the arms and munitions captured. Germany admitted responsibility for this unjustified attack (p. 1015). Damages allowed included compensation for injuries to persons and damage to property, both private and public (p. 1018).

Portugo-Germ.Arb. (1919): *Angola Case* (1928), (1930), 2 *ibid.*, p. 1011. A German official and two German officers having been killed in the Portuguese garrison post of Naulilaa, Germany, allegedly in reprisal therefor, sent military expeditions into Angola at several points in November-December, 1914, (p. 1014. The UNRIAA erroneously reports 1915, *cf.* 8 T.A.M., p. 409, at p. 410). Portugal was not held legally responsible for the unfortunate incident at Naulilaa (pp. 1019 *et seq.*), and the German attacks were held unlawful (pp. 1025 *et seq.*). For the computation of the damages which amounted to 47 million gold marks covering both the *Maziua* and the *Angola Cases*, see pp. 1029 *et seq.*; pp. 1068 *et seq.*

[19] See *infra*, pp. 241 *et seq.*

[20] *e.g.*, Neth.-Ven. M.C.C. (1903): *Bembelista Case*, *Ven.Arb. 1903*, p. 900, at pp. 900–1: "His injuries were received in the course of battle and in the rightful and successful endeavour of the Government to repossess itself of one of its important towns and ports. The Government owed a duty to the claimant and to all the inhabitants of Puerto Cabello to become the government in fact of the town in question. And as their repossession of it was resisted by the troops then in charge it became the due course of war to take and carry the intrenchments of the town. It was the misfortune of the claimant that his building was so near to one of the principal intrenchments, where there was the most serious resistance, and the injuries occasioned his property were one of the ordinary incidents of battle."

[21] Mex. U.S. Cl.Com. (1868): *Blumenkron Case*, 4 *Int.Arb.*, p. 3669, at p. 3669: "Neither can the Mexican Government be expected to compensate foreigners

The uncompensated sacrifices demanded of individuals in such circumstances find their juridical justification in the superior interest of the State in ensuring the security and peace of the community.

" The interest of a government, like that of an individual, lies in its preservation . . . To say that a government is . . . responsible for the acts it commits in an attempt . . . to maintain its own existence . . . is a proposition difficult to maintain." [22]

However, as the *Rapporteur* on the Spanish Zone of Morocco Claims (1923) observed, when speaking of the rule that a State is not responsible for damages caused by military operations of its own troops:—

" It is not possible to include within this rule all measures having some connection with military operations, nor is it possible to include therein all acts committed by the troops." [23]

In fact, military operations should be conducted in accordance with the rules and customs of warfare. Acts which are contrary to these rules, although they may be justifiable and advantageous from the military point of view, are considered as unlawful [24] or even criminal.[25] In referring to the Hague Convention IV of 1907 concerning the Laws and Customs of War on Land, the *Rapporteur* said:—

" The principle which it establishes deserves to be retained even in military operations falling outside the scope of a war properly

for damages done to their real property by reason of actual hostilities for the purpose of delivering the country from a foreign enemy."

[22] Ital.-Ven. M.C.C. (1903): *Sambiaggio Case*, *Ven.Arb. 1903*, p. 666, at p. 680. Claims arising out of damage caused by revolution.

[23] *Rapport III* (1924), 2 UNRIAA, p. 615, at p. 645. (Transl.)

[24] See Greco-Germ. M.A.T.: *Coenca Brothers Case* (1927) 7 T.A.M., p. 683, at p. 687. Aerial bombardment without warning held unlawful, being contrary to generally accepted principles of warfare, even though from the military point of view such bombardment should be carried out by surprise.

Cf. also U.S.-Ven. M.C.C. (1903): *American Electric and Manufacturing Co. Case*, *Ven.Arb. 1903*, p. 35, at p. 36: " The general principles of international law which established the non-responsibility of the Government for damages suffered by neutral property owing to imperious necessities of military operations within the radius of said operations, or as a consequence of the damages of a battle, incidentally caused by the *means of destruction* employed in the war *which are not disapproved by the law of nations*, are well known " (Italics added).

[25] The Charter of the International Military Tribunal (Nuremberg), Art. 6 II (b), defines " War Crimes " *stricto sensu* as " violations of the laws or customs of war." The Charter of the International Military Tribunal for the Far East calls them " Conventional War Crimes " (Art. 5 II (b)).

so-called. This being admitted, it must also be remembered that the said Convention . . . makes considerable allowance for military necessity." [26]

A belligerent is liable for damages caused in violation of the rules and customs of warfare [27] and individuals committing the offence may be prosecuted as war criminals.[28] The absence of responsibility of the State is confined to " damages suffered . . . owing to imperious necessities of military operations within the radius of said operations, or as a consequence of the damages of a battle, incidentally caused by the means of destruction employed in the war which are not disapproved by the law of nations." [29] Even in such an event, meritorious cases may create a moral duty on the part of the State to grant an *ex gratia* indemnity.[30]

[26] *Rapport III* (1924) 2 UNRIAA, p. 615, at p. 645. (Transl.)

[27] Hague Convention IV, 1907, Art. 3. The Fran.-Mex. Cl.Com. (1924) (*Caire Case* (1929) *Jurisprudence*, p. 207, at p. 219) was of the opinion that, *de lege lata*, Art. 3 of the Hague Convention IV, 1907, was not applicable *in a general manner* to *all* the acts of the troops of a State (the English summary of the case in *Annual Digest* (1929–30), Case No. 91, at p. 148, goes further than the original French version of the decision would seem to warrant). However, the decision appears, erroneously it is believed, to consider that Art. 3 establishes an objective responsibility (p. 219, particularly note 1). This is due, in turn, to what is regarded as the Commission's erroneous conception of the notion of imputability in international law, hence its exaggerated notion of objective responsibility. See *infra*, pp. 204 *et seq.* Art. 3, it is submitted, is merely declaratory of the ordinary principles of State responsibility for the acts of its agents.

[28] International penal law is still in the embryonic stage. The Charters of the International Military Tribunals (Nuremberg, Art. 6 II (b); Far East, Art. 5 II (b)) define as war crimes all " violations of the laws and customs of war." The Judgment of Nuremberg (1946), while accepting as law the general definition of the Charter, referred more specifically to Arts. 46, 50, 52 and 56 of the Hague Regulations of 1907, and Arts. 2, 3, 4, 46 and 51 of the Geneva Convention of 1929 regarding the treatment of prisoners of war. It held: " That violations of these provisions constituted crimes for which the guilty individuals were punishable is too well settled to admit of argument " (1 *I.M.T. (Nuremberg)*, p. 171, at p. 253). The Tribunal also convicted Dönitz on the count of " war crimes " for violations of the Naval Protocol of 1936 (p. 311 *et seq.*). In this matter, it seems preferable to establish, if possible, an international military criminal code distinct from, and more restrictive than, the rules intended to govern what is in fact the " civil " responsibility of States. *Cf.* Schwarzenberger: " The Problem of an International Criminal Law," 3 C.L.P. (1950) p. 263.

[29] U.S.-Ven. M.C.C. (1903): *American Electric and Manufacturing Co. Case*, *Ven.Arb. 1903*, p. 35, at p. 36.

[30] Brit.-U.S. Cl.Arb. (1910): *Hardman Case* (1913), Nielsen's *Report*, pp. 495, 497: " Notwithstanding the principle generally recognised in international law that necessary acts of war do not imply the belligerent's legal obligation to compensate, there is, nevertheless, a certain humanitary conduct generally followed by nations to compensate the private war losses as a matter purely of grace and favour, when in their own judgment they feel able to do so, and when the sufferer appears to be specially worthy of interest. Although there is no

" ' Military necessity, as understood by modern civilised nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

" ' Military necessity admits of all direct destruction of life or limb of *armed* enemies, and of other persons whose destruction is incidentally *unavoidable* in the armed contests of the war.' " [31]

The British-United States Claims Arbitral Tribunal (1910) also gave the following definition of military necessity:—

" In law, an act of war is an act of defence or attack against the enemy and a necessity of war is an act which is made necessary by the defence or attack and assumes the character of *vis major*." [32]

" The determination of these necessities ought to be left in a large measure to the very persons who are called upon to act in difficult situations, as well as to their military commanders. A non-military tribunal, and above all an international tribunal, could not intervene in this field save in case of manifest abuse of this freedom of judgment." [33]

While a large discretion is thus left to the State, this must not be abused. Indeed, destruction not justified by military

legal obligation to act in that way, there may be a moral duty which cannot be covered by law, because it is grounded only on an inmost sense of human assistance, and because its fulfilment depends on the economical and political condition of a nation, each nation being its own judge in that respect."

This moral obligation can naturally be transformed into a legal obligation by an agreement between the countries concerned in regard to damages suffered by their nationals as a result of military operations conducted by the other. P.C.A.: *Russian Indemnity Case* (1912) Russia/Turkey, 1 H.C.R. p. 297, at p. 319. See further, *infra*, p. 164, note 4.

[31] Fran.-Ven. M.C.C. (1902): *Brun Case* (1905) Ralston's *Report*, p. 5, at p. 27, quoting *Instructions for the Government of Armies of the U.S. in the Field*, April 24, 1863, paras. 14–15.

[32] *Hardman Case* (1913), *loc. cit.*, at p. 497. Destruction of claimant's personal property through houses being set on fire by American military authorities to prevent the spread of yellow fever threatening the health of American forces who were fighting the Spaniards in Cuba. The British contention was that the act was not a necessity of war, but a measure for better securing the comfort and health of the U.S. troops and therefore the claimant (British) was entitled to compensation. Held: " In the present case, the necessity of war was the occupation of Siboney, and that occupation . . . involved the necessity . . . of taking the said sanitary measures. . . . The presence of the U.S. troops at Siboney was a necessity of war and the destruction required for their safety was consequently a necessity of war " (p. 497).

The *Rapporteur* on the Spanish Zone of Morocco Claims (1923) conceived the notion of military operations, for the consequence of which a State is not responsible, to mean only acts having a tactical object. See Claim No. 44: *Rzini (Dar Ben Karrish, Harvest) Case* (1924), 2 UNRIAA, p. 615, at pp. 716–7. *Cf. supra*, p. 46, note 55.

[33] Spanish Zone of Morocco Claims (1923): *Rapport III* (1924), 2 UNRIAA, p. 615, at p. 645. (Transl.).

necessity or wanton devastation has long been condemned by international tribunals [34] and is now even regarded as a war crime.[35] In all events, a duty always falls upon States, when conducting military operations to take every care to safeguard the interests of private individuals [36] and of cultural or humanitarian institutions.[37]

[34] Mex.-U.S. Cl.Com. (1868): *Johnston Case* (1874), 4 *Int.Arb.*, p. 3673, at p. 3673: "As the defendants have not proved that the requirements of war rendered that damage necessary, it must therefore be considered to have been unnecessary; and that therefore the claimants are, on account of that damage, entitled to compensation." *Id.*: *Brooks Case*, 4 *Int.Arb.*, p. 3672. Opinion of U.S. Commissioner: "I do not know anything more criminal or more stupid than the wanton destruction of the labours of the farmer by the military who possess the district where he resides" (pp. 3672–73). $4,000 awarded as damages. Fran.-Ven. M.C.C. (1903): *Brun Case* (1905), Ralston's *Report*, p. 5, and precedents cited therein at p. 26.

[35] See Charter of the International Military Tribunal (Nuremberg), Art. 6 II (*b*). By Resolution 95 (I) of December 11, 1946, the General Assembly of the United Nations unanimously "affirms the principles of international law recognised by Charter of the Nürnberg Tribunal and the judgment of the Tribunal."

[36] Spanish Zone of Morocco Claims (1923): Claim 25: *Rzini (Beni-Madan, Cattle) Case* (1924), 2 UNRIAA, p. 615, at pp. 696–97. In a drive against hostile tribes, Spanish authorities seized and slaughtered 190 head of cattle and sheep belonging to the claimant. *Rapporteur* said: "The responsibility of the Spanish authorities must in this case be admitted . . . because without prejudicing the military operation, it would have been possible, once the animals had been seized, to separate those belonging to peaceful natives from those belonging to the hostile tribe against which the raid was directed. But all the cattle were indiscriminately killed. Whilst the raid, as such, has been recognised as falling within the notion of military operations, . . . it is nonetheless true that the failure to take all measures for safeguarding the interests of peaceful owners and the immediate slaughter of all the captured cattle could not be justified by any military necessity" (p. 696. Transl.).

Greco-Germ. M.A.T.: *Coenca Brothers Case* (1927), 7 T.A.M., p. 683, at p. 687: "It is one of the generally recognised principles of the law of nations that belligerents should respect, as much as possible, the civil population and property belonging to civilians" (Transl.). *Id.*: *Kiriadolou Case* (1930), 10 *ibid.*, p. 100, at p. 103.

Fran.-Ven. M.C.C. (1903): *Brun Case* (1905), Ralston's *Report*, p. 5. See authorities cited at pp. 26 *et seq.* Also Headnote to the decision subsequently prepared by the Umpire: "A city not in revolt, but temporarily occupied by insurgent forces, is entitled to receive from the Government the *utmost care and protection* not inconsistent with the retaking of the town from the insurgent forces, and is subject only to the *inevitable* contingencies attending such an undertaking" (p. 5. Original italics.).

[37] Fran.-Ven. M.C.C. (1903): *Brun Case* (1905), Ralston's *Report*, p. 5, at p. 27: "Even in bombardments it is now deemed necessary to avoid as far as possible injuries to churches, museums, and hospitals, and not to direct the artillery upon the quarter inhabited by civilians, unless it is impossible to avoid them while firing at the fortifications and military buildings."

See Hague Regulations, Art. 27. Hague Convention IX of 1907, Art. 5. See also Hague Convention Concerning the Laws and Customs of War on Land, Preamble: "Until a more complete code of the laws of war can be issued, the High Contracting Parties think it expedient to declare that in cases not included in the Regulations adopted by them, populations and belligerents *remain* under the protection and the rules of the principles of the law of nations, as they result from the usages established between civilised nations, from the *laws of humanity, and the requirements of the public conscience.*" (Italics added.)

D. Conclusions

In the above survey, a single theme seems to emerge from the decisions of various international courts and tribunals. Within the territorial limits of the State's authority, the interest of the community is superior to that of individuals whether national or alien. For the welfare and safety of the community, a State may adopt a variety of measures appropriate to the needs and circumstances of the case, even though such measures may amount to an encroachment upon private rights which ordinarily must be respected. If the State, by any of these measures, should procure a material enrichment of the community at the expense of isolated individuals, or groups of individuals, there is a duty to compensate.[38] Incidental damage to the rights and interests of individuals, however, gives rise to no compensation, although, morally, compensation may be justifiable in certain cases.[39]

By reason of the fundamental importance of national self-preservation, it seems that a State is presumed not to have undertaken obligations towards private individuals in derogation of this vital interest. An organ of the State which acts otherwise is considered to have violated the fundamental law of the State and its act is consequently void.[40] Other obligations towards individuals may also be abrogated by the State whenever the national interest of self-preservation so demands.[41]

With regard to international obligations, the right of the State to adopt measures necessary to ensure the welfare and security of the community in exceptional circumstances cannot be considered as being impaired by general provisions contained in treaties entered into with reference to normal circumstances.[42] But, as States may even renounce their political existence,[43] international tribunals are agreed that a specific treaty provision, intended by the parties to apply even in exceptional circumstances, must always be respected.[44]

Since the State's power to resort to such extraordinary

[38] *Supra*, pp. 47–9, 57–8.
[39] *Supra*, pp. 59, note 8; 64.
[40] *Supra*, pp. 30–1.
[41] *Supra*, p. 55.
[42] *Supra*, pp. 29–30, 33–4, 52–3, 55–6.
[43] *Supra*, p. 29, note 2.
[44] *Supra*, pp. 34, 41, 50, 56, 63–4.

measures is justified only by the necessity of self-preservation, the legality of the measures taken, as regards their nature, extent and duration, is strictly circumscribed by the needs of each particular case.[45] The determination of the existence of the need and the methods best calculated to meet the contingency are, however, left to the discretion of the State.[46] International tribunals only require the State to prove the existence of a contingency warranting the exercise of this discretion. They will, however, intervene in cases of abuse.[47]

In reviewing such measures international tribunals will be guided by current international practice. This practice naturally varies according to time, place, and circumstance; and, with the prevailing trend of greater social integration, the sphere of State activity is constantly being enlarged.[48]

In every case, the State must, however, so far as circumstances permit, take every care to safeguard the interests of private individuals, to respect the human personality and to protect the spiritual values of humanity.[49]

[45] *Supra*, pp. 33, note 3; 38–40, 43–6, 49, 54, 56–7, 59–60, 65–6.
[46] *Supra*, pp. 34–5, 39, 43, 45, 54–5, 65.
[47] *Supra*, pp. 32, note 2; 33, note 3; 36, 38, 39, 44, 46, 59–60, 66.
[48] *Supra*, pp. 39, 57, particularly note 97.
[49] *Supra*, pp. 36, 49–50, 66.

Annex 147

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nationals. While in this and other ways expanding the scope of international law, they are also and as such part of the system of international law.

2. HISTORICAL PERSPECTIVES

(A) THE EQUIVOCAL EXPERIENCE OF THE LEAGUE OF NATIONS

The appearance of human rights in the sphere of international law and organizations is often traced to the era of the League Covenant of 1919[3] and associated minorities treaties and mandates.[4] The minorities treaties, in particular, constituted an important stage in the recognition of human rights standards.

But neither the mandates system nor the minorities regimes were representative: both only applied by way of exception and only to designated territories or groups. The Covenant did not contain a minorities clause, let alone any general statement of rights. Amongst the proposals discarded was this Japanese amendment:

> The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord as soon as possible to all aliens [who are] nationals of states members of the League equal and just treatment in every respect making no distinction either in law or fact on account of their race or nationality.[5]

The idea of universal human rights had to await the Allied wartime planners: a draft bill of rights was prepared as early as December 1942.[6] But the idea of universal human rights was at the same time a reaction against special rights for particular groups, and it was agreed after 1945 that the inter-war minorities treaties had lapsed.[7]

[3] An important precursor was the anti-slavery movement: Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (1999); Miers, *Slavery in the Twentieth Century* (2003) 1–46; Weissbrodt, 'Slavery' (2007) *MPEPIL*; Martinez, *The Slave Trade and the Origins of International Human Rights Law* (2012). Key steps towards a comprehensive international legal prohibition of slavery included the Slavery Convention, 25 September 1926, 60 LNTS 254, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 21 March 1950, 96 UNTS 271, and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 7 September 1956, 266 UNTS 3. The struggle against 'modern' forms of servitude continues: e.g. Rassam (1999) 39 *Va JIL* 303; Miers (2003). See also chapter 13.

[4] On the minorities system: McKean, *Equality and Discrimination under International Law* (1983) 14–26; Thornberry, *International Law and the Rights of Minorities* (1991) 38–52. On mandates: Wright, *Mandates under the League* (1930); Knop, *Diversity and Self-Determination in International Law* (2002) 198–200; Parlett (2011) 287–91.

[5] Miller, 2 *The Drafting of the League Covenant* (1928) 229, 323–5.

[6] Russell & Muther, *A History of the United Nations Charter* (1958) 323–9, 777–89.

[7] Commission of Human Rights, Study of the Legal Validity of the Undertakings Concerning Minorities, E/CN.4/367, 7 April 1950, 70–1. This is the only occasion a whole group of treaties was held to have lapsed on grounds of *rebus sic stantibus*. For criticism of the study: Parlett (2011) 286–7. But the Court refused to hold that the mandates had lapsed: *International Status of South West Africa*, ICJ Reports 1950 p 128, 132–6.

(B) THE INTERNATIONAL LABOUR ORGANIZATION (ILO)

Although its work is rather specialized, the ILO, created in 1919, has done a great deal towards giving practical expression to some important human rights and towards establishing standards of treatment. Its agenda has included forced labour, freedom of association, discrimination in employment, equal pay, social security, and the right to work.[8] The ILO's Constitution has a tripartite structure, with separate representation of employers and workers, as well as governments, in the Governing Body and the General Conference. In addition, there are provisions for union and employer organizations to make representations and complaints. This procedure was augmented in 1951 when the ILO Governing Body established a fact-finding and conciliation commission on freedom of association.[9]

(C) THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948[10]

In 1948, the General Assembly adopted a Universal Declaration of Human Rights which has been notably influential.[11] The Declaration is not a treaty, but many of its provisions reflect general principles of law or elementary considerations of humanity, and the Declaration identified the catalogue of rights whose protection would come to be the aim of later instruments. Overall the indirect legal effect of the Declaration should not be underestimated. It has been invoked, for example, by the European Court of Human Rights as an aid to interpretation of the European Convention on

[8] See Jenks, *Social Justice in the Law of Nations* (1970); McNair, *The Expansion of International Law* (1962) 29–52; Wolf, in Meron (ed), 2 *Human Rights in International Law* (1984) 273; Swepston, in Symonides (ed), *Human Rights* (2003) 91–109; Rodgers, Swepston, Lee & van Daele (eds), *The International Labour Organization and the Quest for Social Justice, 1919–2009* (2009); Servais, *International Labour Law* (2nd edn, 2009); van Daele (ed), *ILO Histories* (2010).

[9] Other key developments included the creation of the International Institute for Labour Studies in 1960, an amendment to the Constitution in June 1986 affecting core aspects of the ILO's function and structure (not yet in force), the adoption of the Active Partnership Policy in 1993 to strengthen the ILO's field structure, and the establishment of the independent World Commission on the Social Dimension of Globalization in 2002. See www.ilo.org/public/english/support/lib/resource/subject/history.htm. On the impact of the 1998 ILO Declaration on Fundamental Principles and Rights at Work: Alston (2004) 15 *EJIL* 457.

[10] GA Res 217(III), 10 December 1948; Alfredsson & Eide (eds), *The Universal Declaration of Human Rights* (1999); Jaichand & Suksi (eds), *Sixty Years of the Universal Declaration of Human Rights in Europe* (2009); Baderin & Ssenyonjo (eds), *International Human Rights Law* (2010).

[11] For domestic recourse to the UDHR: e.g. *In re Flesche* (1949) 16 ILR 266, 269; *Duggan v Tapley* (1951) 18 ILR 336, 342; *Robinson v Secretary-General of the UN* (1952) 19 ILR 494, 496; *Extradition of Greek National (Germany)* (1955) 22 ILR 520, 524; *American European Beth-El Mission v Minister of Social Welfare* (1967) 47 ILR 205, 207–8; *Iranian Naturalization* (1968) 60 ILR 204, 207; *Waddington v Miah* [1974] 1 WLR 683, 694; *M v UN and Belgium* (1969) 69 ILR 139, 142–3; *Police v Labat* (1970) 70 ILR 191, 203; *Basic Right to Marry* (1971) 72 ILR 295, 298; *Charan Lal Sahu v Union of India* (1989) 118 ILR 451. Further: Hannum (1995–96) 25 *Ga JICL* 287.

Human Rights (ECHR),[12] and by the International Court in relation to the detention of hostages 'in conditions of hardship'.[13]

The Declaration is a good example of an informal prescription given legal significance by actions of authoritative decision-makers, and thus it has been used as an agreed point of reference in the Helsinki Final Act, the second of the 'non-binding' instruments which have been of considerable importance in practice.[14]

(D) THE HELSINKI FINAL ACT, 1975

On 1 August 1975 the Final Act of the Conference on Security and Co-operation in Europe was adopted in Helsinki.[15] It contains a declaration of principles under the heading 'Questions Relating to Security in Europe'. The Final Act was signed by the representatives of 35 states, including the US and the USSR.

The Declaration is not in treaty form and was not intended to be legally binding.[16] At the same time it signified the acceptance by participating states of certain principles, including human rights standards. This significance was recognized by the International Court in *Nicaragua v US*.[17] That was a special context, but the Helsinki process was a significant element in the gradual move to acceptance, on the one hand, of the political status quo in Europe and, on the other hand, of the salience of human rights standards for Eastern Europe. As such it was a precursor to the changes of 1989.[18]

(E) SUBSEQUENT DECLARATIONS

Subsequent important declarations on human rights include the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993, which led to the establishment of the Office of the High Commissioner for Human Rights,[19] the Beijing Declaration and Programme for Action adopted by the Fourth World Conference on Women on 15 September 1995,[20] and the UN Millennium Summit Declaration adopted on 8 September 2000,[21] among many others.

[12] 4 November 1950, ETS 5: e.g. *Golder* (1975) 57 ILR 200, 216–17.

[13] *United States Diplomatic and Consular Staff in Tehran (US v Iran)*, ICJ Reports 1980 p 3, 42.

[14] Some US writers have laid emphasis on the Universal Declaration as custom, given the weaknesses and lacunae in subsequent US human rights treaty practice: e.g. Sohn (1977) 12 *Texas ILJ* 129, 133; Lillich (1995–96) 25 *Ga JICL* 1; Hannum (1995–96) 25 *Ga JICL* 287.

[15] 1 August 1975, 14 ILM 1292.

[16] *US Digest* (1975) 325–7.

[17] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US)*, ICJ Reports 1986 p 14, 100; also 133.

[18] E.g. van der Stoel (1995) 6 *Helsinki Monitor* 23; Brett (1996) 18 *HRQ* 668.

[19] GA Res 48/141, 20 December 1993.

[20] Endorsed by GA Res 50/203, 23 February 1996.

[21] GA Res 55/2, 8 September 2000.

3. SOURCES OF HUMAN RIGHTS STANDARDS

(A) MULTILATERAL CONVENTIONS

The corpus of human rights standards derives from an accumulation of multilateral standard-setting conventions. These fall into four general categories: first, the two comprehensive International Covenants adopted in 1966;[22] secondly, regional conventions; thirdly, conventions dealing with specific wrongs: for example, genocide, racial discrimination, torture, and disappearances; and fourthly, conventions related to the protection of particular categories of people: for example, refugees, women, children, migrant workers, and people with disabilities. These conventions form a dense, overlapping pattern of prescriptions, the more so as most states are parties to most of the general treaties; likewise the regional treaties are widely ratified within their regions. To a great degree, human rights law involves the interpretation and application of these and other treaty texts; only subsidiarily does it involve questions of substantive customary international law.

(i) The International Covenants of 1966

The Universal Declaration of Human Rights was widely regarded as a first step toward the preparation of a Covenant in treaty form. After extensive work in the Commission on Human Rights and the Third Committee of the General Assembly, the latter in 1966 adopted two Covenants and a Protocol: the International Covenant on Economic, Social, and Cultural Rights (ICESCR; 160 parties to date); the International Covenant on Civil and Political Rights (ICCPR; 167 parties to date);[23] and an Optional Protocol to the latter (114 parties to date) relating to the processing of individual communications. In 1989 a Second Protocol to the ICCPR was adopted, aiming at the abolition of the death penalty (73 parties to date),[24] and in 2008 an Optional Protocol to the ICESCR relating to the processing of individual communications (five parties to date; not yet in force).[25]

The Covenants, which came into force in 1976, have legal effect as treaties for the parties to them and constitute a detailed juridification of human rights. The ICESCR contains various articles in which the parties 'recognize' such rights as the right to work, to social security, and to an adequate standard of living.[26] This type of obligation

[22] GA Res 2200A(XXI), 16 December 1966; respectively 993 UNTS 3 and 999 UNTS 171.

[23] Ibid. See Schwelb, in Eide & Schou (eds), *International Protection of Human Rights* (1968) 103; Meron, *Human Rights Law-Making in the United Nations* (1986) 83–127; Craven, *The International Covenant on Economic, Social and Cultural Rights* (1995); Joseph, Schultz & Castan, *International Covenant on Civil and Political Rights* (2nd edn, 2004); Nowak, *UN Covenant on Civil and Political Rights* (2nd edn, 2005).

[24] GA Res 44/128, 15 December 1989; 1642 UNTS 414.

[25] GA Res 63/117, 10 December 2008.

[26] See Eide, Krause & Rosas (eds) *Economic, Social and Cultural Rights* (2nd edn, 2001); Ssenyonjo (ed), *Economic, Social and Cultural Rights* (2011). On the basis of Arts 11–12 of the Covenant, CESCR has held that there is a human right to water: General Comment 15 (2002) E/C.12/2002/11; for a critique see Tully (2005) 23 *NQHR* 43.

is programmatic and promotional, except in the case of the provisions relating to trade unions (Article 8). Each party 'undertakes to take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures' (Article 2(1)). The rights recognized are to be exercised under a guarantee of non-discrimination, but there is a qualification in the case of the economic rights 'recognized' in that 'developing countries... may determine to what extent they would guarantee' such rights to non-nationals. The machinery for supervision consists of an obligation to submit reports on measures adopted, for transmission to the Economic and Social Council. Since 1986 an expert Committee on Economic, Social and Cultural Rights (CESCR) has assisted in supervising compliance.[27]

The ICCPR is more specific in its delineation of rights, stronger in its statement of the obligation to respect those rights, and better provided with means of review and supervision.[28] Its provisions clearly owe much to the ECHR and the experience based upon it. Article 2(1) contains a firm general stipulation: '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'.[29] The rights are reasonably well defined and relate to classical issues including liberty and security of the person, equality before the law, fair trial, etc. Parties must submit to the Human Rights Committee (HRC) reports on measures adopted to give effect to the Covenant.[30] There is also a procedure for parties to the Covenant to complain of non-compliance, subject to a bilateral attempt at adjustment and prior exhaustion of domestic remedies, provided that such complaints are only admissible if both states have recognized the Committee's competence to receive complaints (Article 41).[31]

In addition, the Optional Protocol to this Covenant provides for applications to the HRC from individuals subject to its jurisdiction who claim to have suffered violations of the Covenant, and who have exhausted all available domestic remedies.[32] The respondent state submits to the HRC 'written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that state'. The HRC forwards what are referred to as 'views' to the state party concerned and to the

[27] See Alston, in Alston (1992) 473; Craven (1995) 30–105; Craven, in Eide, Krause & Rosas (2nd edn, 2001) 455.

[28] Generally: Rodley, in Krause & Scheinin (eds), *International Protection of Human Rights* (2009) ch 6.

[29] The firmness of the stipulation is placed in question by para 2, which makes it apparent that states may become parties on the basis of a *promise* to bring their legislation into line with the obligations of the Covenant: see Robertson (1968–69) 43 *BY* 21, 25. But see the clear view of the HRC in General Comment 31 (2004) HRI/GEN/1/Rev.7, 192, §5, according to which the obligation to respect and to ensure has 'immediate effect'.

[30] Generally: Tyagi (2011); also Cohn (1991) 13 *HRQ* 295.

[31] The interstate complaint procedure has never been used: Tyagi (2011) 325–85.

[32] De Zayas, Möller & Opsahl (1985) 28 *GYIL* 9; Ghandhi, *The Human Rights Committee and the Right of Individual Communication* (1998); Tyagi (2011) 386–630.

individual. The HRC's 'views' are not per se binding,[33] but they are published and are often influential in bringing about internal legislative or administrative changes.[34] By December 2011 the HRC had registered 2,115 communications, 826 of which had been concluded by adopting 'views' under Article 5(4) of the Protocol.[35]

The work of the CESCR and HRC has been supplemented by interpretive statements known as 'General Comments', for example the HRC's General Comment 12 on the right to self-determination.[36] These comments serve to clarify the application of specific provisions and issues relating to the Covenants, and as such are of significant normative value within the human rights system.[37] Other human rights treaty bodies also follow this practice.

(ii) Regional conventions

In addition to the multilateral human rights conventions, various regional conventions recognize a range of civil, political, social, economic, and cultural rights, and establish regional frameworks for their protection.[38] The first of the comprehensive regional human rights conventions was the ECHR of 1950.[39] It was followed by the American Convention on Human Rights of 1969,[40] and the African Charter on Human and Peoples' Rights of 1981.[41]

Another regional human rights convention is the Arab Charter on Human Rights adopted by the League of Arab States on 22 May 2004.[42] The Arab Charter is a revision of a 1994 Charter which never came into force.[43] There is no binding human rights convention covering the Asia-Pacific region, and there is debate over whether the notion of 'universal human rights' conflicts with 'Asian values', said to focus more on the collective good and civic order than on individual rights.[44]

[33] See CCPR, General Comment 33 (2008) CCPR/C/GC/33, §§11–15; cf *Tangiora v Wellington District Legal Services Committee* (1999) 24 ILR 570, 575.

[34] E.g. *Lovelace v Canada* (1981) 68 ILR 17; *Toonen v Australia* (1994) 112 ILR 328. Further: Tyagi (2011) 626–9.

[35] Information provided by the Petitions and Inquiries Section of the Office of the High Commissioner for Human Rights, 1 December 2011 (email correspondence on file with the editor).

[36] CCPR, General Comment 12: Article 1 (1984) HRI/GEN/1/Rev.7, 134.

[37] Further: Tyagi (2011) 7.

[38] Generally: Shelton (ed), *Regional Protection of Human Rights* (2008).

[39] 4 November 1950, ETS 5. All Council of Europe member states are parties to the ECHR (47 in total), and new members are expected to ratify the convention as soon as possible: Parliamentary Assembly Resolution 1031 (1994).

[40] 22 November 1969, OAS Treaty Series 36 (currently 25 parties).

[41] 17 June 1981, 1520 UNTS 323 (currently 53 ratifications). There is also a Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, 26 May 1995 (1996) 3 IHRR 212. Only Belarus, Kyrgyzstan, Tajikistan, and the Russian Federation have ratified it. The envisaged Human Rights Commission has not been created.

[42] (2005) 12 IHRR 893.

[43] El Din Hassan, in Symonides (2003) 239; Rishmawi (2005) 5 *HRLR* 661; Rishmawi (2010) 10 *HRLR* 169.

[44] See Smith, *Textbook on International Human Rights* (4th edn, 2010) 90–2. On the Asian values debate: e.g. Davis (1998) 11 *Harv HRJ* 111; Donnelly, in Bauer & Bell (eds), *The East Asian Challenge for Human Rights* (1999) 60; Avonius & Kingsbury (eds), *Human Rights in Asia* (2008).

(iii) Conventions dealing with specific rights

Besides the treaties of general application, the international human rights framework also includes treaties that address specific wrongs. The first of these was arguably the 1948 Genocide Convention, which defines genocide and confirms it as a crime under international law which states parties undertake to prevent and punish, whether committed in peacetime or in time of war. It is distinguishable from other human rights instruments in that it does not set out specific rights for individuals but operates primarily through criminalizing involvement in genocide.[45]

Other examples in the category of specific conventions include the treaties against racial discrimination and apartheid,[46] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[47] and the International Convention for the Protection of All Persons from Enforced Disappearance.[48] The implementation of each treaty is monitored by committees specifically established for that purpose.

(iv) Conventions protecting particular categories or groups

The fourth category of multilateral human rights treaties is directed at protecting certain specific groups. The 1951 Convention Relating to the Status of Refugees sets out a detailed regime for treatment of refugees, as defined in Article 1 of the Convention.[49] A 1967 Protocol extended its coverage, removing geographical and temporal limitations in the definition.[50] Refugee law is generally seen as separate from (although related to) general human rights law, and the system is administered by the UN High Commissioner for Refugees.[51]

[45] Genocide Convention, 9 December 1948, 78 UNTS 277; Parlett (2011) 313.

[46] ICERD, GA Res 2106(XX), 21 December 1965, 660 UNTS 195 (currently 175 parties); International Convention on the Suppression and Punishment of the Crime of Apartheid, GA Res 3068(XXVIII), 1015 UNTS 243 (currently 107 parties); International Convention Against Apartheid in Sports, GA Res 40/64, 10 December 1985, 1500 UNTS 161 (currently 60 parties). Generally: Lerner, *The UN Convention on the Elimination of All Forms of Racial Discrimination* (2nd edn, 1980); McKean (1983); Banton, *International Action against Racial Discrimination* (1996); Moeckli, in Moeckli, Shah & Sivakumaran (2010) 189.

[47] GA Res 39/46, 10 December 1984, 1465 UNTS 85 (currently 149 parties). An Optional Protocol has also been adopted, establishing a preventive system of regular visits to places of detention: GA Res 57/199, 18 December 2002 (61 parties). Further: Burgers & Danelius, *The UN Convention against Torture—A Handbook* (1988); Nowak & McArthur, *The United Nations Convention Against Torture* (2008); Rodley, *The Treatment of Prisoners under International Law* (3rd edn, 2009).

[48] GA Res 61/177, 20 December 2006 (currently 30 parties). See Anderson (2006) 7 *Melb JIL* 245; Rodley (3rd edn, 2009) 329–78.

[49] 28 July 1951, 189 UNTS 137 (currently 144 parties).

[50] GA Res 2198(XXI), 16 December 1966; 660 UNTS 267 (currently 146 parties).

[51] Further: Hathaway, *The Rights of Refugees under International Law* (2005); Goodwin-Gill & McAdam, *The Refugee in International Law* (3rd edn, 2007).

Other groups protected under specific treaties include children,[52] women,[53] migrant workers and their families,[54] and people with disabilities.[55] As above, the implementation of each of these treaties is monitored by committees specifically established for that purpose.

(B) CUSTOMARY INTERNATIONAL LAW

It is now generally accepted that the fundamental principles of human rights form part of customary international law, although not everyone would agree on the identity or content of the fundamental principles. In 1970 the International Court in the *Barcelona Traction* case saw as included in the category of 'obligations *erga omnes*' the following: 'the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination'.[56] This relative indeterminacy is echoed in later declarations, some of them influential in promoting the 'cause' of human rights.[57]

The role of the 'customary international law of human rights' is recognized in the *Third Restatement* in the following terms:

A State violates international law if, as a matter of State policy, it practices, encourages, or condones

(1) genocide

(2) slavery or slave trade,

(3) the murder or causing the disappearance of individuals,

(4) torture or other cruel, inhuman or degrading treatment or punishment,

(5) prolonged arbitrary detention,

[52] UN Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3 (currently 193 parties). Further: Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (1999); Fottrell (ed), *Revisiting Children's Rights* (2000); Price Cohen, *Jurisprudence on the Rights of the Child* (2005); Invernizzi & Williams (eds), *The Human Rights of Children* (2011).

[53] Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS 13 (currently 187 parties); Convention on the Political Rights of Women, 31 March 1953, 193 UNTS 135 (currently 122 parties). Generally: Cook (ed), *Human Rights of Women* (1994); Chinkin & Charlesworth, *Boundaries of International Law* (2000); Brems, in Lyons & Mayall (eds), *International Human Rights in the 21st Century* (2003) 100; Knop (ed), *Gender and Human Rights* (2004); Lockwood (ed), *Women's Rights* (2006).

[54] International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, 2220 UNTS 3 (currently 45 parties). Further: Cholewinski, *Migrant Workers in International Human Rights Law* (1997); de Guchteneire, Pécoud & Cholewinski (eds), *Migration and Human Rights* (2009).

[55] Convention on the Rights of Persons with Disabilities, 13 December 2006, 2515 UNTS 3 (currently 106 parties), with Optional Protocol. Further: Kanter (2007) 34 *Syracuse JILC* 287; Kayess & French (2008) 8 *HRLR* 1; Arnardóttir & Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities* (2009).

[56] *Barcelona Traction, Light and Power Company Ltd (Belgium v Spain)*, ICJ Reports 1970 p 3, 32.

[57] E.g. Helsinki Final Act, Declaration of Principles Guiding Relations between Participating States, 1 August 1975, 14 ILM 1292.

(6) systematic racial discrimination, or

(7) a consistent pattern of gross violations of internationally recognized human rights.[58]

In the *Wall* opinion, the International Court found that the construction of the wall by Israel, the occupying power, in the Occupied Palestinian Territory, and the associated regime, were 'contrary to international law'.[59] In resolving certain questions raised by Israel, the Court had recourse to aspects of customary international law concerning the substance of international humanitarian law.[60] It also relied upon considerations of general international law in determining that the 1966 Covenants apply both to individuals present within a state's territory and to individuals outside that territory but subject to that state's jurisdiction.[61]

(C) SUMMARY

As to the substance of human rights themselves, a wide range of rights is recognized in the core instruments, along with an ever-expanding group of emerging or claimed 'rights' with unclear or contested legal status.[62] Key human rights protected in two or more major instruments are tabled below (see Table 29.1 on p. 644). The groupings are indicative only, as the language and specific formulation of each right differs between texts.

This table suggests that there may be something approaching a 'common core' of human rights at the universal and regional levels. But it also suggests that any such common core is partial and imperfect—and it hides altogether the many differences in the articulation of the various rights in the various treaties. The fact remains that governments have chosen to develop and articulate human rights principles at the international level largely by means of multilateral treaties, individually negotiated. It is those treaties which for most practical purposes constitute the international law of human rights.[63]

[58] 2 *Restatement Third* §702. Also: Meron, *Human Rights and Humanitarian Norms as Customary International Law* (1989).

[59] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Reports 2004 p 136, 200.

[60] Ibid, 172–7.

[61] Ibid, 177–81.

[62] There is concern about the rapid proliferation of interests claimed as human rights, e.g. the assertion of a 'right' to tourism, or disarmament. The international legal system lacks any clear process or criteria for qualifying claims as deserving of legal recognition, and there is a trend for new rights to be 'conjured up' simply by virtue of their being framed in the language of rights: Alston (1984) 78 *AJIL* 607, 607. Further: Kennedy (2002) 15 *Harv HRJ* 101; Kennedy, *The Dark Side of Virtue* (2004) 3–35.

[63] See Raz, in Besson & Tasioulas (eds), *The Philosophy of International Law* (2010) 321–37; Griffin, ibid, 339–55; Skorupski, ibid, 357–73.

Table 29.1 Key human rights protected

	ICCPR	ICESCR	ECHR*	ACHR	African Charter
Self-determination	Art 1	Art 1	-	-	Art 20
Equality & non-discrimination	Arts 2(1), 3, 14(1), 26	Arts 2(2), 3	Art 14	Arts 1, 24	Arts 2, 3, 19
Right to life	Art 6	-	Art 2	Art 4	Art 4
Freedom from torture & other inhuman treatment	Art 7	-	Art 3	Art 5	Art 5
Freedom from slavery	Art 8	-	Art 4	Art 6	Art 5
Liberty & security of person	Art 9	-	Art 5	Art 7	Art 6
Freedom of assembly & association	Arts 21, 22	-	Art 11	Arts 15, 16	Arts 10, 11
Freedom of movement	Art 12	-	OP4, Art 2	Art 22	Art 12
Due process	Arts 9–11, 14–16	-	Arts 6, 7; OP4, Art 1	Arts 3, 8, 9, 24	Arts 3, 7
Freedom of expression	Art 19	-	Art 10	Art 13	Art 9
Freedom of thought, conscience, & religion	Art 18	-	Art 9	Arts 12, 13	Art 8
Free elections/participation in government	Art 25	-	OP1, Art 3	Art 23	Art 13
Rights of the family	Art 23	Art 10	Arts 8, 12	Art 17	Art 18
Right to work	-	Arts 6, 7	-	-	Art 15
Right to education	-	Art 13	OP1, Art 2	-	Art 17
Right to health	-	Art 12	-	-	Art 16
Cultural rights	Art 27	Art 15	-	-	Art 17(2)

* OP1, OP4: First and Fourth Optional Protocols to ECHR.

4. NON-DISCRIMINATION AND COLLECTIVE RIGHTS

The UN Charter contains various references to 'human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'. These general and to some extent promotional provisions have constituted the background to the appearance of a substantial body of multilateral conventions and practice by UN organs. By 1966, at the latest, it was possible to conclude that in terms of the Charter the principle of respect for and protection of human rights on a non-discriminatory basis had become recognized as a legal standard.[64]

[64] *South West Africa (Ethiopia v South Africa; Liberia v South Africa)*, Second Phase, ICJ Reports 1966 p 6, 300 (Judge Tanaka, diss); *Legal Consequences for States of the Continued Presence of South Africa in*

There is no great gulf between the legal and human rights of groups, on the one hand, and individuals, on the other. Guarantees and standards governing treatment of individuals tend, by emphasizing equality, to protect groups as well, for example, in regard to racial discrimination. In turn, protection of groups naturally encompasses protection of individual members of those groups; some rights attaching to individuals *qua* group members are only exercisable in community with other members of the group.[65]

(A) NON-DISCRIMINATION

International law contains a legal principle of non-discrimination on grounds of race, articulated in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[66] This principle is based, in part, upon the UN Charter, especially Articles 55 and 56; the practice of organs of the UN (e.g. General Assembly resolutions condemning apartheid); the Universal Declaration of Human Rights; the International Covenants on Human Rights; and the regional human rights conventions.[67] In 1970 the International Court in *Barcelona Traction* referred to obligations *erga omnes* as specifically including 'protection from slavery and racial discrimination'.[68] There is also a legal principle of non-discrimination in matters of sex, based upon the same set of multilateral instruments,[69] together with the widely ratified Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted in 1979.[70]

The principle of equality before the law allows for factual differences, such as age, and is not based on mechanical conceptions of equality.[71] But any distinction drawn must have an objective justification; the means adopted to establish different treatment must be proportionate to the justification for differentiation; and there is a

Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), ICJ Reports 1971 p 16, 57.

[65] ICCPR, Art 27. On collective rights generally: Dinstein (1976) 25 *ICLQ* 102; Crawford (ed), *The Rights of Peoples* (1988); Lerner, *Group Rights and Discrimination in International Law* (1991); Rodley (1995) 47 *HRQ* 48; Lyons & Mayall (2003); Weller (ed), *Universal Minority Rights* (2007).

[66] GA Res 2106(XX), 21 December 1965, 660 UNTS 195 (175 parties to date). See Lerner (2nd edn, 1980).

[67] E.g. *South West Africa,* Second Phase, ICJ Reports 1966 p 6, 286–301 (Judge Tanaka, diss); *European Roma Rights v Immigration Officer* [2005] 2 AC 1. Further: McKean (1983); Banton (1996); Moeckli, *Human Rights and Non-Discrimination in the 'War on Terror'* (2008); Moeckli, in Moeckli, Shah & Sivakumaran (2010) 189.

[68] ICJ Reports 1970 p 3, 32.

[69] On sexual equality: McDougal, Lasswell & Chen (1975) 69 *AJIL* 497; McKean (1983) 166–93; Meron (1986) 53–82; CCPR, General Comment 28: Article 3 (2000) HRI/GEN/1/Rev.7, 178; Landau & Beigbeder, *From ILO Standards to EU Law* (2008).

[70] GA Res 34/180, 18 December 1979, 1249 UNTS 13 (currently 187 parties).

[71] See *Minority Schools in Albania* (1935) PCIJ Ser A/B No 64; *Association Protestante* (1966) 47 ILR 198; *American European Beth-El Mission v Minister of Social Welfare* (1967) 47 ILR 205; *Gerhardy v Brown* [1985] HCA 11, §§25–6 (Brennan J); CCPR, General Comment 18: Non-discrimination (1989) HRI/GEN/1/Rev.7, 146, §§8–10; *Maya Indigenous Communities of the Toledo District v Belize* (2004) 135 ILR 1, 67.

burden of proof on the party seeking to invoke an exception to the equality principle.[72] ICERD Article 1(4) is of particular interest, making it clear that differential treatment in the form of special measures necessary to secure the advancement of certain disadvantaged groups is not racial discrimination in the sense of the Convention.[73] The Committee on the Elimination of Racial Discrimination clarified the meaning of 'special measures' in its General Recommendation XXXII.[74]

The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, adopted by the UN General Assembly on 25 November 1981, completes the picture.[75]

In a significant determination in 2001 the European Court of Human Rights held that discriminatory treatment as such could be categorized as degrading treatment within the terms of Article 3 ECHR.[76]

(B) SELF-DETERMINATION[77]

The idea of collective or group rights became prominent in connection with the principle of self-determination, progenitor of the category of so-called 'peoples' rights'.[78] Self-determination is articulated variously as political principle, legal principle, and legal right.[79] It has been understood as the right of peoples under colonial, foreign, or alien domination to self-government,[80] whether through formation of a new state, association in a federal state, or autonomy or assimilation in a unitary (non-federal) state.[81] In different contexts, however, self-determination can mean different things,

[72] *Belgian Linguistics* (1968) 45 ILR 114; *National Union of Belgian Police* (1975) 57 ILR 262, 265, 281, 287; *Abdulaziz, Cabales and Balkandali* (1985) 81 ILR 139, 171; *Juridical Condition and Rights of Undocumented Migrants*, IACtHR OC-18/03, 17 September 2003, §§82–96; *Burden v UK* [2008] ECtHR 13378/05, §60; *Kiyutin v Russia* [2011] ECtHR 2700/10, §62. Further: CCPR, General Comment 18, §13; CERD, General Recommendation XIV: Article 1(1) (1993) HRI/GEN/1/Rev.7, 206, §2.

[73] In some cases, the provision of special measures is obligatory: see Art 2(2). Cf *South West Africa*, Second Phase, ICJ Reports 1966 p 6, 306–10 (Judge Tanaka, diss).

[74] (2009) CERD/C/GC/32. Further: Brownlie, in Crawford (1988) 1, 6–11; Alfredsson, in Weller (ed), *The Rights of Minorities* (2005) 141, 148–50 (in the context of Art 4 of the European Framework Convention for the Protection of National Minorities, 10 November 1994, CETS 157).

[75] GA Res 36/55, 25 November 1981. For comment: Sullivan (1988) 82 *AJIL* 487.

[76] *Cyprus v Turkey* (2001) 120 ILR 10, 91–3. Also: *East African Asians* (1973) 3 EHRR 76.

[77] See Cristescu, *The Right to Self-Determination* (1981); Higgins, *Problems and Process* (1994) 111–28; Cassese, *Self-Determination of Peoples* (1995); Franck, *Fairness in International Law and Institutions* (1995) 140–69; Quane (1998) 47 *ICLQ* 537; McCorquodale (ed), *Self-Determination in International Law* (2000); Ghanea & Xanthaki (eds), *Minorities, Peoples and Self-Determination* (2005); Crawford, *Creation of States* (2nd edn, 2006) 108–28.

[78] Generally: Alston (ed), *Peoples' Rights* (2001). Also: Knop (2002) 29–49; Xanthaki, *Indigenous Rights and United Nations Standards* (2007) 143, 155–7.

[79] The shift from 'principle' to 'right' first appeared in the Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res 1514(XV), 14 December 1960: see Higgins (1994) 114.

[80] E.g. GA Res 1514(XV), 14 December 1960; GA Res 1541(XV), 15 December 1960; GA Res 2625(XXV), 24 October 1970. Also: *Namibia*, ICJ Reports 1971 p 16, 31; *Western Sahara*, ICJ Reports 1975 p 12, 68; *East Timor (Portugal v Australia)*, ICJ Reports 1995 p 90, 102; *Wall*, ICJ Reports 2004 p 136, 171–2.

[81] See GA Res 1541(XV), 15 December 1960; GA Res 2625(XXV), 24 October 1970. See further chapter 5.

and there is no universally accepted definition.[82] On a general level, it can be defined as 'the right of a community which has a distinct character to have this character reflected in the institutions under which it lives'.[83] The International Court has described self-determination as the 'need to pay regard to the freely expressed will of peoples',[84] but there has been wide disagreement over the meaning of 'peoples', not least in the context of indigenous and minority claims to self-determination.

Common Article 1(1) of the ICCPR and ICESCR upholds the right of 'all peoples' to self-determination, and Article 2 of the Arab Charter contains similar wording. The African Charter on Human and Peoples' Rights recognizes the 'unquestionable and inalienable right to self-determination' of all peoples (Article 20(1)). The advisory opinion of the Court in *Western Sahara* confirms 'the validity of the principle of self-determination' in the context of that dispute.[85] In the *Wall* opinion the Court recognized the principle of self-determination as one of the rules and principles relevant to the legality of the measure taken by Israel: the effect of the wall, in conjunction with the settlement policy, was to impair if not to preclude the exercise of the right of self-determination of the people of Palestine in relation to the territory of Palestine as a whole.[86]

The development of the principle of self-determination in practice has led to a pronounced distinction between the colonial and non-colonial context, reflecting a distinction between full ('external') self-determination and qualified ('internal') self-determination.[87] The question of internal self-determination, and the possibility of remedial secession, remain controversial.[88]

(c) RIGHTS OF MINORITIES[89]

The need to protect the rights of racial, linguistic, and religious minority groups within states has been recognized in a general way since the minorities treaties of the inter-war period,[90] but there is still no agreed definition of what constitutes a 'minority' in international law,[91] and the question of legal personality for minority groups as such

[82] E.g. Kirgis (1994) 88 *AJIL* 304.

[83] Brownlie, in Crawford (1988) 1, 5.

[84] *Western Sahara*, ICJ Reports 1975 p 12, 33.

[85] Ibid, 31–3.

[86] *Wall*, ICJ Reports 2004 p 136, 171–2. Also: *East Timor*, ICJ Reports 1995 p 90, 102.

[87] *Reference re Secession of Quebec* (1998) 115 ILR 536, 594–5. See Crawford (1998) 69 *BY* 115; Bayefsky (ed), *Self-Determination in International Law: Quebec and Lessons Learned* (2000); further chapter 5.

[88] Several governments before the Court in *Kosovo* invoked remedial self-determination: the Court did not reach the issue. See *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Opinion of 22 July 2010, §82; further chapter 5.

[89] Generally: Capotorti, Study of the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/384/Rev.1; Thornberry (1991); Skurbaty, *As If Peoples Mattered: Critical Appraisal of 'Peoples' and 'Minorities' from the International Human Rights Perspective and Beyond* (2000); Weller (2005); Weller (2007).

[90] Parlett (2011) 282–7; Eide, in Weller (2005) 25, 33–6.

[91] Packer, in Packer & Myntti (eds), *The Protection of Ethnic and Linguistic Minorities in Europe* (1993) 23; Hannum, in Weller (2007) 49.

is fraught.[92] States have traditionally been wary of recognizing the rights and status of minority groups within their territory, for fear of claims to secession. The HRC has affirmed that minority rights are different from the right to self-determination, and their enjoyment should not prejudice states' sovereignty and territorial integrity.[93]

The only multilateral treaty dealing specifically with minority rights is the European Framework Convention for the Protection of National Minorities, adopted by the Council of Europe in 1994.[94] The Convention articulates a comprehensive set of principles for the protection of national minorities and persons belonging to those minorities. It covers individual rights as well as provisions directed specifically at protecting the existence and identity of minority groups as such.[95] The decision to adopt the Convention, rather than a proposed additional protocol to the ECHR,[96] attracted criticism. The task of monitoring implementation of the treaty was thus assigned to an Advisory Committee of the Council of Europe, not the Strasbourg Court. In practice, however, the Advisory Committee has made a contribution to the development and enforcement of Convention rights, and states clearly treat the Convention as a legal commitment, despite the general, framework character of some of its provisions.[97]

The position under general international law is rather different. The key text is ICCPR Article 27 which protects the right of members of ethnic, religious, and linguistic minorities, in community with other members, to enjoy their own culture, profess and practise their own religion, and use their own language; this is poised between an individual and a collective rights guarantee, but emphasizes the individual.[98] The interpretative potential in Article 27 has been tested to an extent in individual complaints before the HRC.[99]

In 1992 the General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. The Declaration was intended to strengthen the implementation of human rights relating to minorities, based on the principles of non-exclusion, non-assimilation, and non-discrimination.[100]

[92] Meijknecht, *Towards International Personality* (2001).

[93] CCPR, General Comment 23: Article 27 (1994) HRI/GEN/1/Rev.7, 158. The distinction between minority rights and self-determination is also clear in the European Framework Convention, 10 November 1994, CETS 157, Art 21: see Hofmann, in Weller (2005) 1, 4.

[94] 10 November 1994, CETS 157 (currently 39 parties). There are also bilateral treaties addressing minority rights: see Bloed & van Dijk (eds), *Protection of Minority Rights Through Bilateral Treaties* (1999); and other relevant Council of Europe instruments, including the European Charter for Regional or Minority Languages, 5 November 1992, CETS 148 (currently 25 parties).

[95] E.g. certain linguistic rights (Arts 9–11), state obligations in respect of education (Arts 12–14), the prohibition of forced assimilation (Arts 5(2) and 16), and rights to cross-border contacts and co-operation (Art 17).

[96] See Res 1201 (1993) of the Parliamentary Assembly of the Council of Europe.

[97] Weller, in Weller (2005) 609.

[98] See Nowak (2nd edn, 2005) 635–67; CCPR, General Comment 23.

[99] E.g. *Lovelace v Canada* (1981) 68 ILR 17; *Kitok v Sweden* (1988) 96 ILR 637; *Ominayak and the Lubicon Lake Band v Canada* (1990) 96 ILR 667; *Länsman v Finland* (1996) 115 ILR 300.

[100] GA Res 47/135, 8 December 1992. See Phillips & Rosas (eds), *The UN Minority Rights Declaration* (1993); Eide, Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1998) E/CN.4/Sub.2/AC.5/1998/WP.1.

It elaborates on the principle of protection of identity under ICCPR Article 27, and moves towards promotion of identity.

(D) RIGHTS OF INDIGENOUS PEOPLES[101]

The UN Declaration on the Rights of Indigenous Peoples was adopted in 2007 by a large majority of the General Assembly.[102] The Declaration resulted from a drafting process that lasted more than 20 years, and was noteworthy for the level of participation of indigenous groups and their NGOs.[103] This also produced changes within the UN structure, with the creation of the UN Permanent Forum on Indigenous Issues as an advisory body to the Economic and Social Council;[104] the extension of the mandate of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples;[105] and the creation of the Expert Mechanism on the Rights of Indigenous Peoples, subsidiary to the Human Rights Council.[106]

Previously the only international instruments addressing indigenous rights as such[107] were two ILO Conventions with limited participation, characterized by markedly state-driven perspectives.[108] The Declaration represents a shift away from that approach, promoting a more inclusive and consultative relationship with indigenous peoples. Perhaps its most significant feature is the proclamation in Article 3 that indigenous peoples have the right to self-determination. Despite the wording of ICCPR/ICESCR Article 1, recognizing the right of *all peoples* to self-determination, for a long time states resisted recognizing indigenous claims.[109] The HRC refuses to entertain claims for violations of Article 1, taking the view that inherently collective

[101] Generally: Tennant (1994) 16 *HRQ* 1; Wiessner (1999) 12 *Harv HRJ* 57; Aikio & Scheinin (eds), *Operationalizing the Right of Indigenous Peoples to Self-Determination* (2000); Thornberry, *Indigenous Peoples and Human Rights* (2002); Anaya, *Indigenous Peoples in International Law* (2nd edn, 2004); Eide (2006) 37 *NYIL* 155; Xanthaki (2007); Daes (2008) 21 *Cam RIA* 7; Allen & Xanthaki (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (2011).

[102] GA Res 6/1295, 13 September 2007 (143–4 (Australia, Canada, New Zealand, US): 11 (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, Ukraine)). A number of these states have since endorsed the Declaration.

[103] Barsh (1996) 18 *HRQ* 782, 783–6; Eide (2006) 161–2.

[104] Economic and Social Council Res 2000/22, 28 July 2000. See Lindroth (2006) 42(222) *Polar Record* 239.

[105] Human Rights Council Res 6/12, 28 September 2007.

[106] Human Rights Council Res 6/36, 14 December 2007.

[107] Although in many cases indigenous groups constitute minorities within states, indigenous people have consistently differentiated themselves as 'peoples' rather than minorities. See *AD v Canada* (1984) 76 ILR 261, 264–5; see also Falk, in Crawford (1988) 17, 32; Thornberry (1989) 38 *ICLQ* 867, 868–9; Cassidy (2003) 51 *AJCL* 409. Analytically, however, one could be both.

[108] ILO Convention 107 Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries, 26 June 1957, 328 UNTS 247 is no longer open for ratification, and has effectively been replaced by ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries, 27 June 1989, 28 ILM 1382. See Xanthaki (2007) 49–101; Erueti, in Allen & Xanthaki (2011) 93–120.

[109] E.g. Barsh (1996) 796–800.

claims cannot be brought under the individual complaints procedure of the First Optional Protocol. The Committee has generally treated indigenous claims as coming within the minority rights protections of Article 27 instead.[110] The explicit recognition of indigenous peoples' right to self-determination in the Declaration is a significant change—though achieved on the 'understanding' that self-determination for this purpose does not equate to a right to secede, as distinct from negotiating the terms of indigenous engagement with the state.[111]

Besides self-determination, the Declaration also affirms a range of individual and group rights of importance to indigenous peoples, including equality and freedom from discrimination,[112] cultural identity and integrity,[113] participation in decision-making,[114] autonomy and self-government,[115] and traditional lands and natural resources.[116] The term 'indigenous peoples' is, however, left undefined.[117] As a General Assembly resolution, the Declaration does not impose obligations on states, but its symbolic weight should not be underestimated.[118]

(E) OTHER COLLECTIVE RIGHTS

The notion of rights being enjoyed by groups of persons collectively, rather than as individuals, remains controversial. A distinction should be made between rights attaching to individuals because of their status as members of a group, and rights attaching to the group as such, which individuals can in practice only enjoy in

[110] E.g. *Ominayak and the Lubicon Lake Band v Canada* (1990) 96 ILR 667; *Marshall v Canada* (1991) 96 ILR 707. For criticism: Tyagi (2011) 598–9.

[111] Eide (2006) 196–9, 211–12; Daes (2008) 15–18, 23–4; Quane, in Allen & Xanthaki (2011) 259, 264–9; cf ILA, Report of the 74th Conference (2010) 846–8.

[112] E.g. Arts 1–2. Also: CERD, General Recommendation XXIII: Indigenous Peoples (1997) A/52/18, Annex V (confirming that racial discrimination against indigenous peoples falls within the scope of ICERD).

[113] E.g. Arts 11–16, 24–5, 31. See ILA, Report of the 74th Conference (2010) 857–60; Stamatopoulou, in Allen & Xanthaki (2011) 387. On recognition of traditional laws: ALRC, Report 31, *Recognition of Aboriginal Customary Laws* (1986).

[114] Over 20 provisions in the Declaration articulate different facets of the right to participate in decision-making, setting a high standard beyond mere consultation: see UN Expert Mechanism on the Rights of Indigenous Peoples, Progress Report on the Study on Indigenous Peoples and the Right to Participate in Decision-Making (2010) A/HRC/EMRIP/2010/2. It is notable that the right of political participation is expressed as a collective right, cf the views of the HRC in respect of ICCPR, Art 25: *Marshall v Canada* (1991) 96 ILR 707; *Diergaardt v Namibia* (2000) CCPR/C/69/D/760/1997, §10.8 (but see sep op Scheinin).

[115] Art 4. See ILA, Report of the 74th Conference (2010) 850–7.

[116] E.g. Arts 26–30, 32. Rights over land and natural resources are fundamental to indigenous claims to self-determination: e.g. ILA, Report of the 74th Conference (2010) 863–70; Gilbert & Doyle, in Allen & Xanthaki (2011) 289; Errico, in Allen & Xanthaki (2011), 329.

[117] On the definitional problem and its evasion: e.g. Thornberry (2002) 33–60; Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, José Martínez-Cobo, *Study on the Problem of Discrimination Against Indigenous Populations* (1987); Daes (2008) 8–10.

[118] Barelli (2009) 58 *ICLQ* 957; Coulter (2008) 45 *Idaho LR* 539. Note also Art 46, requiring indigenous rights to be interpreted consistently with respect for the rights of others.

community with others. The instruments on minority and indigenous rights contain examples of both.

Beyond the specific rights of minorities and indigenous peoples, international law recognizes some other collective rights, in particular, a people's right to freely dispose of its natural wealth and resources and not to be deprived of its own means of subsistence (ICCPR/ICESCR Article 1(2)). Examples of other putative collective rights include the right to development,[119] and the right to culture;[120] by now, however, we are approaching the useful limits of law if not of language.

5. SCOPE OF HUMAN RIGHTS STANDARDS: SOME GENERAL ISSUES

(A) TERRITORIAL AND PERSONAL SCOPE OF HUMAN RIGHTS TREATIES

International human rights instruments typically do not define the precise territorial and personal scope of the human rights protections they contain. ECHR Article 1 provides that the parties shall secure the rights and freedoms defined in Section 1 of the Convention 'to everyone within their jurisdiction'. A similar reference to 'jurisdiction' appears in Article 1 of the American Convention on Human Rights. The African Charter is silent on the issue. Other instruments refer to territorial jurisdiction but with no mention of the personal scope of the rights they protect. The question is whether states parties to human rights treaties are bound to apply their protections extra-territorially, including to non-nationals. This arises particularly in the context of armed conflict and belligerent occupation.[121]

The European Court of Human Rights has had to consider the scope of ECHR Article 1 on a number of occasions. Before 2001, it was reasonably settled that 'jurisdiction' in Article 1 is primarily territorial,[122] but that in some cases, acts of states parties performed or producing effects outside their territories might also constitute an exercise of jurisdiction.[123] In particular, a line of cases involving the Turkish occupation of northern Cyprus had established that where a state party exercises effective

[119] Declaration on the Right to Development, GA Res 41/128, 4 December 1986; further: Rosas, in Eide, Krause & Rosas (2nd edn, 2001) 119–30; Andreassen & Marks (eds), *Development as a Human Right* (2nd edn, 2010).

[120] Art 15 ICESCR; see O'Keefe (1998) 47 *ICLQ* 904, esp 917–18; Stavenhagen, in Eide, Krause & Rosas (2nd edn, 2001) 86; cf Eide, in Eide, Krause & Rosas (2nd edn, 2001) 289.

[121] Generally: Coomans & Kamminga (eds), *Extraterritorial Application of Human Rights Treaties* (2004); Dennis (2005) 99 *AJIL* 119; Wilde (2007) 40 *Is LR* 503; Milanović (2008) 8 *HRLR* 411; Gondek, *The Reach of Human Rights in a Globalising World* (2009); Milanović, *Extraterritorial Application of Human Rights Treaties* (2011).

[122] *Soering v UK* (1989) 98 ILR 270, 300.

[123] See the review of the case-law in *Al-Skeini v UK* [2011] ECtHR 55721/07, §§130–42.

control of an area outside its national territory as a consequence of military action, the fact of that control triggers the Article 1 obligation to secure Convention rights and freedoms there.[124] Another recognized exception to territoriality is the personal model of extraterritorial jurisdiction, arising when state agents exercise authority and control over individuals outside the national territory.[125]

Banković v Belgium[126] arose out of the airstrike under NATO auspices on the Radio Televizija Srbije building in Belgrade during the Kosovo crisis in 1999. The victims or their representatives brought claims against 17 respondent states, members of NATO, and parties to the ECHR. The Court found that the case fell beyond the scope of Article 1 and was inadmissible.[127] The victims and the applicants were located in the territory of the Federal Republic of Yugoslavia (FRY), outside the territorial jurisdiction of any of the respondent states.[128] In this way the Court appeared to limit the Convention's extraterritorial application to those areas within the regional legal space (*espace juridique*) of the Convention, the territories of the members of the Council of Europe.[129]

Banković has been a source of some confusion in the case-law,[130] notably in the context of the invasion and occupation of Iraq in 2003. In *Al-Skeini v UK* relatives of six Iraqi civilians killed in incidents involving British soldiers in south-east Iraq alleged that the British authorities had failed adequately to investigate the deaths, which occurred during the period in which the UK was an occupying power in that region.[131] The House of Lords held there was 'jurisdiction' only in the case of one person, held in a detention facility,[132] but the ECtHR found that there was a sufficient jurisdictional link for Article 1 purposes in all six cases.[133] It ultimately found a violation of the procedural duty to investigate the deaths, pursuant to Article 2, in five cases.[134]

The Court emphasized that determining whether or not Article 1 is satisfied was a matter of considering the circumstances of each case.[135] It did not make a finding as to

[124] See *Loizidou v Turkey* (1995) 103 ILR 622 (preliminary objections); *Loizidou v Turkey* (1996) 108 ILR 443; *Cyprus v Turkey* (2001) 120 ILR 10.

[125] On the different models of extraterritorial jurisdiction generally: Milanović (2011) 118–228.

[126] (2001) 123 ILR 94.

[127] Ibid, 109–10.

[128] Ibid, 113–14.

[129] Ibid, 115–16. On the concept of *espace juridique*: Wilde [2005] *EHRLR* 115; Wilde (2007) 40 *Is LR* 503; Thienel (2008) 6 *JICJ* 115.

[130] For analysis: e.g. Roxstrom, Gibney & Einarsen (2005) 23 *Boston UILJ* 55; Milanović (2008) 8 *HRLR* 411; Altiparmak (2004) 9 *JCSL* 213. For criticism of the UK courts' interpretation of *Banković*: e.g. Williams (2005) 23 *Wisconsin ILJ* 687; Thienel (2008).

[131] *Al-Skeini v UK* [2011] ECtHR 55721/07.

[132] See *Al-Skeini v Secretary of State for Defence* [2007] 3 WLR 33.

[133] *Al-Skeini v UK* [2011] ECtHR 55721/07, §§149–50.

[134] Ibid, §§168–77.

[135] E.g. ibid, concurring opinion of Judge Bonello (advocating a functional test of jurisdiction under Art 1, rather than territorial); *Al-Skeini v Secretary of State for Defence* [2007] 3 WLR 33, §§67–84 (Lord Rodger, on the difficulty in reconciling *Banković* with *Issa v Turkey* (2005) 41 EHRR 567, 588, where the Court

whether or not the UK had 'effective control' of the area in question. Instead, it based its decision on a fresh articulation of the 'state agent authority' exception to territoriality recognized in previous cases: the exercise by state agents of physical power and control over the person in question.[136] It was relevant that the applicants' relatives were killed in the course of security operations while the UK was responsible for the exercise of some of the public powers in that region;[137] this distinguishes *Al-Skeini* from *Banković*. But if *Al-Skeini* cannot be said to overrule *Banković*, it qualifies it in certain respects. First, jurisdiction under Article 1 is not necessarily restricted to the regional *espace juridique* of the Convention.[138] Second, the state exercising jurisdiction has an obligation to secure the rights and freedoms that are relevant to that individual's particular situation; in that sense, the rights and obligations in the Convention *can* be 'divided and tailored'.[139]

The HRC has observed that ICCPR Article 2(1) requires states parties to ensure and respect the Covenant rights of 'anyone within their power or effective control, even if not situated within the territory of the state party', and that this requirement is not limited to citizens; it also includes situations where the state is acting outside its own territory and situations of armed conflict.[140]

The International Court has also considered the issue. It concluded in the *Wall* opinion that Israel was bound to apply the provisions of human rights instruments to which it was a party in the Occupied Palestinian Territory, observing that its position was consistent with that of the HRC.[141] The Court reiterated its finding that international human rights instruments are applicable 'in respect of acts done by a State in the exercise of its jurisdiction outside its own territory, particularly in occupied territories' in respect of Uganda's occupation of the Congolese province of Ituri.[142]

(B) HUMAN RIGHTS AND HUMANITARIAN LAW

This jurisdictional finding adds importance to the relationship between international human rights and humanitarian law.[143] The conventional view saw the two regimes

held that 'the Convention cannot be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State, which it could not perpetrate on its own territory').

[136] *Al-Skeini v UK* [2011] ECtHR 55721/07, §§133–7, 149.

[137] Ibid, §§143–9.

[138] Ibid, §142; cf *Banković v Belgium* (2001) 123 ILR 94, 115–16.

[139] *Al-Skeini v UK* [2011] ECtHR 55721/07, §137; cf *Banković v Belgium* (2001) 123 ILR 94, 114. Also: *Al-Jedda v UK* [2011] ECtHR 27021/08; *Al-Saadoon & Mufdhi v UK* [2009] ECtHR 61498/08.

[140] CCPR, General Comment 31 (2004) HRI/GEN/1/Rev.7, 192, §§10–11. Also: *López Burgos v Uruguay* (1981) 68 ILR 29; *Celiberti de Casariego v Uruguay* (1981) 68 ILR 41; and compare Dennis & Surena [2008] EHRLR 714 with Rodley [2009] EHRLR 628.

[141] *Wall*, ICJ Reports 2004 p 136, 177–81.

[142] *Armed Activities on the Territory of the Congo (DRC v Uganda)*, ICJ Reports 2005 p 168, 242–3.

[143] Generally: Provost, *International Human Rights and Humanitarian Law* (2002); Arnold & Quénivet (eds), *International Humanitarian Law and Human Rights Law* (2008); Ben-Naftali (ed), *International Humanitarian Law and International Human Rights Law* (2011); Escorihuela (2011) 19 *MSU JIL* 299.

as mutually exclusive, the former applicable in peacetime, the latter in time of armed conflict. This strict dualism is no longer observed: the two fields are now generally understood to be complementary, not alternative.[144] In short, human rights standards may also be applicable during armed conflict.[145]

The International Court has described the basic standards of humanitarian law as 'elementary considerations of humanity, even more exacting in peace than in war',[146] and has held the rules of Common Article 3 of the four Geneva Conventions of 12 August 1949 to be a 'minimum yardstick' of treatment in all international and non-international armed conflicts.[147] In *Nuclear Weapons*, the Court stated that in principle human rights obligations do not cease in times of armed conflict (unless derogations are permitted by the relevant treaty), but that international humanitarian law may operate as a *lex specialis* excluding more general human rights standards.[148] In other contexts, for example belligerent occupation, it may even be that international human rights law constitutes the more specialized standard.[149]

Despite the shift towards a more nuanced understanding of the relationship, uncertainty remains in respect of various issues including norm conflicts,[150] fragmentation,[151] and whether humanitarian law provides a lower level of protection than human rights law.[152] The classification of the so-called 'war on terror' as an armed conflict[153] also raised human rights concerns. Critics have questioned whether the campaign against al-Qaeda meets the threshold humanitarian law test for the existence of a state of armed conflict, particularly those aspects which have been carried out beyond the active combat zones of Iraq and Afghanistan. Designating the campaign as an armed conflict subject to international humanitarian law, instead of ordinary human rights and criminal law, has facilitated certain operations that would violate international law in the absence of an armed conflict.[154]

[144] Ben-Naftali, in Ben-Naftali (2011) 3, 4–5.

[145] See Parlett (2011) 193–6. International human rights law and the law of armed conflict have been described as 'inextricably entangled': Stigall, Blakesley & Jenks (2009) 30 *U Penn JIL* 1367, 1369.

[146] *Corfu Channel*, ICJ Reports 1949 p 4, 22.

[147] *Nicaragua*, ICJ Reports 1986 p 14, 114.

[148] *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports 1996 p 226, 239–40; reiterated in *Wall*, ICJ Reports 2004 p 136, 178; *DRC v Uganda*, ICJ Reports 2005 p 168, 242–5. For a critical view on the use of the *lex specialis* principle to define the relationship between human rights and humanitarian law: Milanović, in Ben-Naftali (2011) 95; Prud'homme (2007) 40 *Is LR* 356.

[149] Parlett (2011) 195.

[150] E.g. ibid, 195–6; Milanović, in Ben-Naftali (2011) 95.

[151] ILC Study Group, Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law, ILC *Ybk* 2006/II(2); Escorihuela (2011) 19 *MSU JIL* 299.

[152] Orakhelashvili (2008) 19 *EJIL* 168.

[153] Initially, the Bush administration took the position that its campaign against terrorism was beyond the reach of the Geneva Conventions, as it was not an armed conflict with another state, but that it was international in scope and therefore escaped domestic disciplines. Since *Hamdan v Rumsfeld*, 548 US 557 (2006), the official position has been that it is an armed conflict not of an international character, to which the minimum requirements of Common Art 3 of the Geneva Conventions apply.

[154] E.g. targeted killings of suspected terrorists. See Alston, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Study on Targeted Killings (2010) A/HRC/13/24/Add.6;

(C) HUMAN RIGHTS IN THE PRIVATE DOMAIN: ISSUES OF 'HORIZONTAL APPLICATION'[155]

To what extent do human rights obligations extend to provide protection against private conduct? Where states are under a positive obligation to protect individuals within their jurisdiction, human rights will indirectly apply to private conduct, with the state acting in a measure as guarantor.[156] However, there is ongoing debate over whether international human rights law can also produce a 'horizontal' effect, or whether states have a monopoly of human rights responsibility. On one view the implications of a guarantee of human rights must extend to private action, and the absence of any institutional expression of that idea is a merely temporary defect. According to another view, it is national not international law which (leaving international crimes to one side) necessarily creates individual responsibility: the focus of the international human rights system remains on states as obligors. In recent years there has been something of an 'end-run' around this theoretical impasse through the development of practices of corporate social responsibility.[157] Steps were taken to develop a draft Declaration on Human Social Responsibilities,[158] and Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.[159] In 2005 John Ruggie was appointed Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, and he reported to the Human Rights Council in 2008.[160]

Supporters of these developments see them as filling a gap in global standards, serving to balance the power wielded by transnational corporations and other private entities.[161] Critics warn that expanding responsibility for human rights violations may help states evade their own responsibility,[162] and (more subtly) that holding transnational

Melzer, *Targeted Killing in International Law* (2008) 37–43, 262–8, 394–419; Duffy, *The War on Terror and the Framework of International Law* (2005) 339–44; O'Connell (2008) 13 *JCSL* 393; Shany, in Ben-Naftali (2011) 13; Sassòli, in Ben-Naftali (2011) 34. Similar problems have arisen in the Occupied Palestinian Territory, where tensions arising from the continued Israeli occupation are treated by the Israeli government and Supreme Court as an international armed conflict: *Public Committee Against Torture in Israel v State of Israel* (1999) 133 ILR 283; Ben-Naftali & Michaeli (2003) 36 *Cornell ILJ* 233; Kretzmer (2005) 16 *EJIL* 171; Milanović (2007) 89 *IRRC* 373; Melzer (2008) 27–36.

[155] Generally: Charney [1983] *Duke LJ* 748; Ratner (2001) 111 *Yale LJ* 443; Alston (ed), *Non-State Actors and Human Rights* (2005); Clapham, *Human Rights Obligations of Non-State Actors* (2006); Zerk, *Multinationals and Corporate Social Responsibility* (2006); Knox (2008) 102 *AJIL* 1.

[156] E.g. CESCR, General Comments 15 (2002) E/C.12/2002/11, §§23–4 and 18 (2005) E/C.12/GC/18, §35.

[157] E.g. Charney [1983] *Duke LJ* 748; Watts (2005) 30 *Ann Rev Env Res* 9.1.

[158] Report of the Special Rapporteur, UN Commission on Human Rights, Promotion and Protection of Human Rights: Human Rights and Human Responsibilities, Annex I (2003) E/CN.4/2003/105.

[159] (2003) E/CN.4/Sub.2/2003/12/Rev.2. See Weissbrodt & Kruger (2003) 97 *AJIL* 901; Kinley, Nolan & Zerial (2007) 25 *C&SLJ* 30; Knox (2008) 102 *AJIL* 1.

[160] See Protect, Respect and Remedy: A Framework for Business and Human Rights (2008) A/HRC/8/5 (including Add.1 and Add.2) and A/HRC/8/16.

[161] E.g. Weissbrodt & Kruger (2003) 97 *AJIL* 901.

[162] Knox (2008) 102 *AJIL* 1.

corporations accountable may imply regulatory prerogatives which corporations do not and should not have.[163] Codes of conduct are all very well, but they influence only the willing and are no substitute for enforcement *by* the state and (at the international level) *against* the state, using existing channels of accountability.

At present, no international processes exist that bind private businesses to protect human rights.[164] Decisions of international tribunals focus on states' responsibility for preventing human rights abuses by those within their jurisdiction.[165] Nor is corporate liability for human rights violations yet recognized under customary international law.[166]

6. PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS

(A) PROTECTION AND ENFORCEMENT UNDER THE UNITED NATIONS SYSTEM

(i) Action under the Charter

UN political organs have sometimes been prepared to exercise a general power of investigation and supervision in this field, but they have difficulty in dealing with particular cases; discussion normally centres on political implications and is often partisan. Nevertheless publicity, fact-finding machinery, and other 'measures' under Article 14 of the Charter can be useful.

For a long time the nearest approach to permanent machinery was the Commission on Human Rights, set up by the Economic and Social Council in 1946. Its principal function has been the preparation of various declarations (starting with the Universal Declaration) and other texts. Since 1967 the Commission has established investigatory procedures (the 1235 Procedure) in respect of country-specific complaints of gross violations.[167]

In 2006 growing unease with the way in which the Commission was functioning led to its replacement by the Human Rights Council, consisting of 47 member states.[168] So far the substitution seems to have made little difference.

[163] Charney [1983] *Duke LJ* 748.

[164] See Report of the Special Representative of the Secretary-General on the Issues of Human Rights and Transnational Corporations and Other Business Enterprises (2007) A/HRC/4/035, §44.

[165] E.g. *X and Y v Netherlands* [1985] ECtHR 8978/80; *Velásquez Rodríguez v Honduras* (1989) 95 ILR 232; *Hopu and Bessert v France* (1997) 118 ILR 262; *Social and Economic Rights Action Centre and Anor v Nigeria* (2001) AHRLR 60; *Mayagna (Sumo) Awas Tingni Community v Nicaragua* (2008) 136 ILR 73.

[166] See the disagreement over expert opinions of Crawford and Greenwood (given in *Presbyterian Church of Sudan v Talisman Energy, Inc*, 582 F.3d 244 (2nd Cir, 2009)) in *Kiobel v Royal Dutch Petroleum Co*, 621 F.3d 111 (2nd Cir, 2010), not followed in *Flomo v Firestone Natural Rubber Co*, 643 F.3d 1013 (7th Cir, 2011). The Supreme Court has granted certiorari in *Kiobel*. For the Alien Tort Claims Act see chapter 21.

[167] See Alston, in Alston (1992) 126 (an excellent account).

[168] GA Res 60/251, 15 March 2006; UKMIL (2006) 77 *BY* 726; Ghanea (2006) 55 *ICLQ* 695; Crook (2006) 100 *AJIL* 697.

The General Assembly lacks enforcement powers under the Charter. But it has frequently expressed concern about human rights violations occurring in different parts of the world. The Security Council was unable to act effectively, prior to the end of the Cold War, because of the veto, but did use its powers of investigation under Chapter VI from time to time, as in relation to the situation arising in South Africa (1960). In the period after 1990 the Council began to use its powers in respect of peacekeeping and, on the basis of Chapter VII, to ensure the provision of humanitarian assistance, as in the case of Somalia in 1992.[169] Extensive operations were undertaken in Bosnia in 1993 with the stated purpose of delivering humanitarian assistance. The mandate also included the creation of safe areas and the power to use force to protect UN-established safe areas. These various operations were based upon powers delegated to member States by the Security Council. In 1994 the Council authorized certain member states, on a short-term basis, to establish a safe haven in Rwanda for the protection of displaced persons, refugees, and civilians at risk, but the failure to act earlier to prevent the humanitarian catastrophe in Rwanda has been strongly criticized.[170]

Since that time the Council has authorized several peacekeeping operations;[171] it has also authorized forcible intervention in the Libyan Arab Jamahiriya for the protection of civilians, without the consent of the territorial state.[172] In other cases, however, such as Darfur in Sudan, the consensus recorded at the 2005 World Summit on the existence of a 'responsibility to protect' has failed to translate into collective action. Verbally the 'responsibility to protect' gains broad acceptance; in truth it states the problem without resolving it; and current articulations fall well short of holding that states have a right to forcibly intervene, without Security Council authorization, to alleviate humanitarian crises.[173]

The Security Council can also use its Chapter VII powers to refer situations to the International Criminal Court when crimes within the Court's jurisdiction appear to have been committed.[174] The Council has exercised this power in respect of Sudan[175] and Libya.[176]

[169] See Sarooshi, *The United Nations and the Development of Collective Security* (1999) 210–29; Chesterman, *Just War or Just Peace?* (2001) 127–218; Ramcharan, *The Security Council and the Protection of Human Rights* (2002); Gray, *International Law and the Use of Force* (3rd edn, 2008) 264–306.

[170] See Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda (1999) S/1999/1257; Gray (3rd edn, 2008) 292–4.

[171] Ibid, 272–326.

[172] SC Res 1973 (2011). See Hansard, HC Deb, 21 March 2011, cols 700–801 (esp 716–22); Bellamy & Williams, (2011) 87 *International Affairs* 825.

[173] World Summit Outcome Document (2005) A/60/L.70, §139; Gray (3rd edn, 2008) 53–5. On the 'responsibility to protect': Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect (2001); Pattison, *Humanitarian Intervention and the Responsibility to Protect* (2010); Badescu, *Humanitarian Intervention and the Responsibility to Protect* (2011).

[174] ICC Statute, 17 July 1998, 2187 UNTS 3, Art 13(b) (currently 117 parties).

[175] SC Res 1593 (2005).

[176] SC Res 1970 (2011).

(ii) Treaty bodies

It is impossible in a general work to provide a detailed picture of the multiform institutions involved in the protection of human rights.[177] However, even in a small compass, attention must be drawn to certain other organs. There are now nine bodies responsible for monitoring implementation of the core international human rights treaties, including the CESCR and HRC. In temporal sequence they are as set out in Table 29.2.

Table 29.2 Implementation of international human rights treaties

Committee	Convention	Commenced	Comment
Committee on the Elimination of Racial Discrimination (CERD)	International Convention on the Elimination of All Forms of Racial Discrimination[178]	1970	
Human Rights Committee (HRC)	ICCPR[179]	1976	Optional Protocol (1966)
Committee on the Elimination of Discrimination against Women (CEDAW)	Convention on the Elimination of All Forms of Discrimination against Women[180]	1981	
Committee against Torture (CAT)	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment[181]		Optional Protocol (2002) created system of regular visits to prisons and other places of detention[182]
Committee on Economic, Social and Cultural Rights (CESCR)	ICESCR[183]	1986	Optional Protocol (2008)

[177] Further: Alston & Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (2000); Bayefsky (ed), *The UN Human Rights Treaty System in the 21st Century* (2000); Bayefsky, *How to Complain to the UN Human Rights Treaty System* (2003).

[178] GA Res 2106(XX), 21 December 1965, 660 UNTS 195. Further: Partsch, in Alston (1992) 339; Banton, in Alston & Crawford (2000) 55; Vandenhole, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (2005).

[179] GA Res 2200(XXI), 16 December 1966. Generally: Tyagi (2011); further: de Zayas, Möller & Opsahl (1985) 28 *GYIL* 9; Cohn (1991) 13 *HRQ* 295; Ghandhi (1998).

[180] GA Res 34/180, 18 December 1979, 1249 UNTS 13. Further: Jacobson, in Alston (1992) 444; Bustelo, in Alston & Crawford (2000) 79; Schöpp-Schilling & Flinterman (eds), *The Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination against Women* (2007).

[181] GA Res 39/46, 10 December 1984, 1465 UNTS 85. Further: Byrnes, in Alston (1992) 509; Bank, in Alston & Crawford (2000) 145; Ingelse, *The UN Committee Against Torture* (2001); Nowak & McArthur, *The United Nations Convention Against Torture* (2008) 579–813.

[182] GA Res 57/199, 18 December 2002 (currently 61 parties). See Nowak & McArthur (2008) 937–1192.

[183] GA Res 2200(XXI), 16 December 1966. See Alston, in Alston (1992) 473; Craven (1995) 30–105; Craven, in Eide, Krause & Rosas (2nd edn, 2001) 455.

Committee on the Rights of the Child (CRC)	Convention on the Rights of the Child[184]	1991	
Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (Committee on Migrant Workers, CMW)	International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families[185]	2004	
Committee on the Rights of Persons with Disabilities (CRPD)	Convention on the Rights of Persons with Disabilities[186]	2009	Optional Protocol (2006)
Committee on Enforced Disappearances (CED)	International Convention for the Protection of All Persons from Enforced Disappearance[187]	2011	

The International Court has indicated that when considering issues arising in relation to the human rights treaties, it will ascribe 'great weight' to the interpretation of the treaty adopted by the relevant court or committee.[188]

The treaty body system has faced major challenges with respect to resources and coherence, amongst other things, and there have been many proposals for its reform. The Dublin Statement on the Process of Strengthening of the UN Human Rights Treaty Body System of 19 November 2009 represents an attempt by 35 serving or former members of UN treaty bodies to create a roadmap for reform and galvanize the debate.[189]

(iii) The High Commissioner for Human Rights

In 1993, the General Assembly created the office of UN High Commissioner for Human Rights,[190] whose principal task is to provide leadership in the human rights field.[191]

[184] GA Res 44/25, 20 November 1989, 1577 UNTS 3. Further: Lansdown, in Alston & Crawford (2000) 113–28; Doek, in Invernizzi & Williams (2011) 90.

[185] GA Res 45/158, 18 December 1990, 2220 UNTS 3 (currently 45 parties). Further: Cholewinski (1997); Edelenbos, in de Guchteneire, Pécoud & Cholewinski (2009) 100.

[186] GA Res 61/106, 13 December 2006. Further: Kanter (2007) 34 *Syracuse JILC* 287; Kayess & French (2008) 8 *HRLR* 1.

[187] GA Res 61/177, 20 December 2006. On enforced disappearance: Anderson (2006) 7 *Melb JIL* 245; Rodley (3rd edn, 2009) 329–78.

[188] *Ahmadou Sadio Diallo (Guinea v DRC)*, Judgment of 30 November 2010, §§66–8.

[189] See O'Flaherty (2010) 10 *HRLR* 319.

[190] GA Res 48/141, 20 December 1993. Further: Clapham (1994) 5 *EJIL* 556; Ramcharan, *The United Nations High Commissioner for Human Rights* (2002); Steiner, Alston & Goodman (3rd edn, 2008) 824–35.

[191] Robertson & Merrills, *Human Rights in the World* (4th edn, 1996) 112–14.

(B) REGIONAL MACHINERY

There is machinery for the judicial protection of human rights on a regional basis in Europe, the Americas, and Africa and the Arab world.[192] The emphasis here will be on judicial protection.

(i) Europe

The ECHR[193] is a comprehensive bill of rights on the Western liberal model, born of the Council of Europe. The contracting parties undertake to secure to 'everyone within their jurisdiction' the rights and freedoms defined in Section I of the Convention. The precise definition therein has enabled some of the parties to incorporate the rights in their national law as self-executing provisions. In order to make the draft acceptable to governments, certain qualifications on its field of application had to be incorporated. Article 17 provides: 'Nothing in this Convention 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 set forth herein'. Article 15 permits measures derogating from the obligations under the Convention 'in time of war or other public emergency threatening the life of the nation'. However, no derogation is permitted under this provision from Articles 2 (right to life) (except in respect of deaths resulting from lawful acts of war), 3 (torture and inhuman punishment), 4(1) (slavery or servitude), and 7 (no retrospective punishment).

The human rights protected by the treaty were originally implemented by three organs: the European Commission of Human Rights, the European Court of Human Rights, and the Committee of Ministers of the Council of Europe. Of those, the principal organ was the European Commission which received every complaint: individual complainants had standing if the government concerned had recognized the competence of the Commission to receive petitions from individuals. In November 1998 this structure was replaced by a new system.[194] Now the European Court of Human Rights deals with both individual applications and interstate cases, and the Commission has been abolished.

The Court has been a major influence in the development of European human rights law, in matters major and minor. It has produced many changes in national legislation and practice.[195] Cases of non-compliance have been relatively few. However, the Court

[192] Generally: Shelton (ed), *Regional Protection of Human Rights* (2008).

[193] 4 November 1950, ETS 5. Further: European Social Charter, 18 October 1961, ETS 35. Generally: Higgins, in 2 Meron (1984) 495; Harris & Darcy, *The European Social Charter* (2nd edn, 2001); van Dijk, van Hoof, van Rijn & Zwaak (eds), *Theory and Practice of the European Convention on Human Rights* (4th edn, 2006); Pettiti, Decaux & Imbert, *La Convention Européenne des Droits de l'Homme* (2nd edn, 1999); Harris, O'Boyle & Warbrick, *Law of the European Convention on Human Rights* (2nd edn, 2009); Jacobs, White & Ovey, *The European Convention on Human Rights* (5th edn, 2010).

[194] See Protocol 11, 11 May 1994, CETS 155.

[195] See Drzemczewski, *European Human Rights Convention in Domestic Law* (1997); Keller & Stone Sweet (eds), *A Europe of Rights* (2008).

has been to an extent a victim of its own success; it is inundated with cases and has a substantial backlog.[196] Various reforms involving greater selectivity in caseload are being implemented or are under consideration.[197]

(ii) The Americas[198]

The Inter-American system for the protection of human rights is complex, mainly because it consists of two overlapping mechanisms with different diplomatic starting points. In the first place the Inter-American Commission on Human Rights was created in 1960 as an organ of the Organization of American States (OAS) with the function of promoting respect for human rights. As amended by the Protocol of Buenos Aires,[199] the OAS Charter contains a substantial list of economic, social, and cultural standards, and the Commission, as reordered in accordance with the American Convention on Human Rights[200] of 1969, has an extensive competence in these matters in relation to OAS members. On the basis of this Convention an additional system for the promotion of human rights was created. The Inter-American Commission of Human Rights was re-established and retains its broad powers within the context of the OAS (Articles 41 to 43). At the same time the Commission has responsibilities arising from the provisions of the American Convention. Thus it has jurisdiction *ipso facto* to hear complaints against the parties from individual petitioners (Article 44). In addition, the Commission may deal with interstate disputes provided that both parties have made a declaration recognizing its competence in this respect (Article 45).

In accordance with the American Convention (Articles 52 to 69) an Inter-American Court of Human Rights began to function in 1979. The Court has an adjudicatory jurisdiction according to which the Commission and, if they expressly accept this form of jurisdiction, the states parties may submit cases concerning the interpretation and application of the Convention (Articles 61 to 63). Article 64 creates an advisory jurisdiction according to which OAS member states (and the organs listed in Chapter X of the Charter of the OAS) may consult the Court regarding 'interpretation of this Convention or of other treaties concerning the protection of human rights in the

[196] Protocol 14, 13 May 2004, CETS 194 (in force from 1 June 2010) aims to improve the Court's efficiency.

[197] E.g. Helfer (2008) 19 *EJIL* 125; Keller, Fischer & Kühne (2010) 21 *EJIL* 1025.

[198] Gros Espiell (1975) 145 Hague *Recueil* 1; Buergenthal, in 2 Meron (1984) 439; Medina Quiroga, *The Battle of Human Rights* (1988); Davidson, *The Inter-American Court of Human Rights* (1992); Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (2003).

[199] Protocol of Amendment to the Charter of the Organization of American States, 27 February 1967, 721 UNTS 324.

[200] 22 November 1969, 1144 UNTS 123. Also: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 14 November 1988, OAS Treaty Series 69 (Protocol of San Salvador); 28 ILM 156.

American States'.[201] In general the Court has been an innovator, notably with respect to remedies.[202]

In general the American Convention draws upon the ECHR, the American Declaration of the Rights and Duties of Man (1948),[203] and the ICCPR, and the result is a very extensive set of provisions. Only OAS members have the right to become parties; to date 25 of the 35 OAS members have done so.

In practice the Inter-American Commission has exercised its OAS competence in respect of petitions (concerning the execution of juveniles) on behalf of individuals, against the US, which is not a party to the American Convention, but was held to be bound by the American Declaration of the Rights and Duties of Man.[204]

(iii) Africa

On 17 June 1981 the Organization of African Unity (OAU) adopted the African Charter on Human and Peoples' Rights.[205] While the Charter has much in common with its European and American predecessors, it has features of its own.[206] Not only are rights of 'every individual' specified, but also duties (Chapter II). Several provisions (Articles 19 to 24) define the rights of 'peoples', for example, to 'freely dispose of their wealth and resources' (Article 21). Some of these provisions are framed in vague language, for example Article 24, which provides that 'all peoples shall have the right to a general satisfactory environment favourable to their development'. There are no derogation clauses comparable to Article 15 ECHR (war or other public emergency).

In the sphere of institutional safeguards, the main organ has been the African Commission on Human and Peoples' Rights. The Commission's mandate is in very general terms, and includes the interpretation of the Charter at the request of a state party, an institution of the OAU, or an African organization recognized by the OAU (Article 45). The emphasis is on conciliation. The Commission may investigate complaints by states (Articles 47 to 54) and endeavour to reach an amicable solution (Articles 52 to 53). The Commission may also consider complaints ('communications') from individuals (Articles 55 to 56). Only where a complaint reveals 'a series of serious or massive

[201] See *Costa Rica Journalists Association* (1985) 75 ILR 30. Also: *American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights* (1989) 96 ILR 416; Pasqualucci (2002) 38 *Stanford JIL* 241.

[202] The foundation for this was laid in *Velásquez Rodríguez v Honduras* (1989) 95 ILR 232. Further: Pasqualucci (2003) 230–90; papers compiled in (2007) 56 *AULR* 1675.

[203] American Declaration of the Rights and Duties of Man, OAS Res XXX (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System (1992) OEA/Ser.L.V/II.82 doc.6 rev.1, 17.

[204] See *Roach and Pinkerton (Case 9647)*, IACHR 3/87, 27 March 1987, §§44–9; *Michael Domingues*, IACHR 62/02, 22 October 2002.

[205] (1981) 1520 UNTS 363 (53 ratifications). See Umozurike (1983) 77 *AJIL* 902; Bello (1985) 194 Hague *Recueil* 13; Murray, *The African Commission on Human and Peoples' Rights in International Law* (2000); Nmehielle, *The African Human Rights System* (2001); Ouguergouz, *The African Charter on Human and Peoples' Rights* (2003); Evans & Murray (eds), *The African Charter on Human and Peoples' Rights: the System in Practice 1986–2006* (2nd edn, 2008).

[206] E.g. Padilla (2002); Naldi, in Evans & Murray (2nd edn, 2008) 20, 24–34.

violations' is the Commission bound to involve the OAU Assembly, which 'may then request the Commission to undertake an in-depth study of these cases, and make a factual report, accompanied by its findings and recommendations' (Article 58). The Commission developed an increasingly judicialized procedure and jurisprudence, despite the lack of an explicit mandate to consider individual communications.[207]

For some time the Commission was the only implementation agency. Since 1998, however, there have been various institutional changes. In 1998, the OAU adopted a Protocol on the Establishment of the African Court on Human and Peoples' Rights ('the African Court Protocol').[208] Two years later, the OAU was replaced by the African Union, with its Constitutive Act of 11 July 2000.[209] Article 5(1)(d) of the Constitutive Act established a Court of Justice. The Assembly of the AU adopted a Protocol of the Court of Justice of the African Union on 11 July 2003.[210] In 2004, however, the Assembly decided to merge the two institutions to form a single Court of Justice and Human Rights.[211] A Protocol on the Statute of the African Court of Justice and Human Rights was adopted on 1 July 2008; it will come into force 30 days after the fifteenth ratification, not yet in sight.[212]

(C) SUPERVISION: KEY LEGAL ISSUES

The work of the European Commission and the European Court of Human Rights over a long period has produced a set of legal concepts. These concepts, or variations of them, are also to be found in decisions under the other regional conventions. They rest in part upon the political premises that the respondent state is itself democratic and that there must be a fair balance between the general interest and the interests of the individual.

(i) Exhaustion of local remedies[213]

Article 35(1) ECHR provides that 'the Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law and within a period of six months from the date when the final decision was taken'. This reflects the role of the Court, which is supervisory and not

[207] Viljoen, in Evans & Murray (2nd edn, 2008) 76, 77; Naldi, in Evans & Murray (2nd edn, 2008), 20, 34–40; Killander (2006) 10 *LDD* 101.

[208] OAU/LEG/MIN/AFCHPR/PROT.1/rev/2/1997. The African Court Protocol came into force on 25 January 2004; 26 states have ratified the Protocol and the Court was ready to receive cases from June 2008. See Kane & Motala, in Evans & Murray (2nd edn, 2008) 406, 406. On the relationship between the Court and the Commission: Elsheikh (2002) 2 *Af HRLJ* 252; Naldi, in Evans & Murray (2nd edn, 2008) 20, 40–3.

[209] OAU Doc. CAB/LEG23.15 (currently 53 parties).

[210] (2005) 13 *Af JICL* 115 (currently 16 parties).

[211] See Udombana (2003) 28 *Brooklyn JIL* 811; Kane & Motala, in Evans & Murray (2nd edn, 2008) 406, 408–17.

[212] (2009) 48 ILM 334.

[213] See Jacobs, White & Ovey, *The European Convention on Human Rights* (5th edn, 2010) 34–7.

appellate.[214] But the Court will not require recourse to local remedies if the violation originates in an administrative practice of the respondent state.[215] Provisions on the exhaustion of local remedies are similarly found in Article 46(1)(a) of the American Convention[216] and Articles 50 and 56(5) of the African Charter.[217]

(ii) Restrictions upon freedoms 'necessary in a democratic society'[218]

Key provisions in ECHR are expressed to be subject to restrictions which are 'necessary in a democratic society'. In *Silver v UK*, the Court explained the general principles:

(a) the adjective 'necessary' is not synonymous with 'indispensable', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable'...;

(b) the Contracting States enjoy a certain but not unlimited margin of appreciation in the matter of the imposition of restrictions, but it is for the Court to give the final ruling on whether they are compatible with the Convention ...;

(c) the phrase 'necessary in a democratic society' means that, to be compatible with the Convention, the interference must, *inter alia*, correspond to a 'pressing social need' and be 'proportionate to the legitimate aim pursued' ...;

(d) those paragraphs of ... the Convention which provide for an exception to a right guaranteed are to be narrowly interpreted ...[219]

The issue arises regularly in cases concerning the right to respect for private and family life;[220] freedom of thought, conscience, and religion;[221] freedom of expression;[222] and freedom of assembly.[223]

The American Convention mirrors the wording of the ECHR with its reference to restrictions 'necessary in a democratic society' (e.g. Articles 15, 16(2), 22(3)).[224] By

[214] E.g. *López Ostra v Spain* (1994) 111 ILR 210.

[215] *Ireland v UK* (1978) 58 ILR 188, 2613.

[216] E.g. *Velásquez Rodríguez v Honduras* (1989) 95 ILR 232, 254–8; *Gangaram Panday v Suriname*, IACtHR C/12, 4 December 1991, §§38–40; *Castillo Páez v Peru*, IACtHR C/24, 30 January 1996, §§40–3.

[217] See *Article 19 v Eritrea* (2007) AHRLR 73, §§43–82. Cf Udombana (2003) 97 *AJIL* 1.

[218] See Marks (1995) 66 *BY* 209; Jacobs, White & Ovey (5th edn, 2010) 325–32.

[219] (1983) 72 ILR 334, 369.

[220] *Klass v Germany* (1978) 58 ILR 423, 448–54; *Silver v UK* (1983) 72 ILR 334, 369; *Messina v Italy (No 2)* [2000] ECtHR 25498/94, §§59–74; *Uzun v Germany* [2010] ECtHR 35623/05, §§75–81.

[221] *Young, James and Webster* (1981) 62 ILR 359; *Kokkinakis v Greece* [1993] ECtHR 14307/88, §§28–50; *Jakóbski v Poland* [2010] ECtHR 18429/06, §§42–55.

[222] *Handyside* (1976) 58 ILR 150, 174–80; *Sunday Times* (1979) 58 ILR 490, 529–37; *Lingens* (1986) 88 ILR 513, 527–30; *Müller* (1988) 88 ILR 570, 588–9; *Jersild v Denmark* (1994) 107 ILR 23, 39–45; *MGN Ltd v UK* [2011] ECtHR 39401/04, §§136–56.

[223] *United Communist Party of Turkey v Turkey* (1998) 122 ILR 404, 421–4; *Chassagnou v France* [1999] ECtHR 25088/94, §§109–17; *Hyde Park v Moldova (No 4)* [2009] ECtHR 18491/07, §§45–55; *Republican Party of Russia v Russia* [2011] ECtHR 12976/07.

[224] E.g. *Baena-Ricardo v Panama*, IACtHR C/72, 2 February 2001, §§151–73; cf Art 13 (freedom of thought and expression) which contains no such reference, although it has effectively been incorporated by interpretation in the jurisprudence: e.g. *Costa Rica Journalists Association* (1985) 75 ILR 30, 40–57; *Herrera Ulloa v Costa Rica*, IACtHR C/107, 2 July 2004, §§104–36.

contrast, the text of the African Charter makes no mention of democratic society in its provisions for limitations of rights: for example Article 11 refers to 'necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others' and Article 12 permits 'restrictions, provided for by law, for the protection of national security, law and order, public health or morality'. Article 27(2), cited in the jurisprudence as containing 'the only legitimate reasons for restricting the rights and freedoms contained in the Charter',[225] provides that 'the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest'.

(iii) Proportionality: the balance between the general interest and the interests of the individual

The ECHR seeks to maintain a balance between the general interest (a pressing social need) and the rights and interests of the individual. To this end the Court applies a principle of proportionality. In *Dudgeon*, the Court said:

> [I]n Article 8 ... the notion of 'necessity' is linked to that of a 'democratic society'. According to the Court's case-law, a restriction on a Convention right cannot be regarded as 'necessary in a democratic society'—two hallmarks of which are tolerance and broadmindedness—unless, amongst other things, it is proportionate to the legitimate aim pursued ...[226]

Notwithstanding the margin of appreciation left to the national authorities, the question of proportionality is ultimately one for the Court.

Proportionality has played a major role in the jurisprudence.[227] Whilst it is on its face a logical principle, it inevitably entails significant policy choices. In *Fogarty v UK*[228] the Court held that, as an aspect of proportionality, it was appropriate to interpret the Convention as far as possible in harmony with other rules of international law, including those relating to state immunity. The proportionality principle has also been a significant feature of the American[229] and African jurisprudence.[230]

(iv) Derogation 'in time of national emergency'

As noted above, Article 15 ECHR permits derogation from the obligation to comply with its provisions 'in time of war or other public emergency threatening the life

[225] E.g. *Constitutional Rights Project v Nigeria* (2000) AHRLR 227, §41; *Interights v Mauritania* (2004) AHRLR 87, §78.

[226] *Dudgeon (Article 50)* (1981) 67 ILR 395, 414, 416–17.

[227] E.g. *Lithgow (Shipbuilding Nationalization)* (1986) 75 ILR 438, 527–8; *Gillow* (1986) 75 ILR 561, 580–1; *Pine Valley Developments Ltd v Ireland* [1991] ECtHR 12742/87; *Open Door v Ireland* [1992] ECtHR 14234/88, §§67–80; *Steel v UK* [1998] ECtHR 24838/94, §§98–111; *Fayed v UK* [1994] ECtHR 17101/90, §§71–82; *Antonekov v Ukraine* [2005] ECtHR 14183/02, §§59–67; *Ryabikina v Russia* [2011] ECtHR 44150/04, §26.

[228] (2001) 123 ILR 53, 65.

[229] E.g. *Castañeda Gutman v Mexico*, IACtHR C/184, 6 August 2008, §§185–205; *Usón Ramírez v Venezuela*, IACtHR C/207, 20 November 2009, §§76–88.

[230] E.g. *Media Rights Agenda v Nigeria* (2000) AHRLR 200, §§64–71; *Amnesty International v Sudan* (2000) AHRLR 297, §82; *Interights v Mauritania* (2004) AHRLR 87, §§76–85.

of the nation', although certain provisions are specified as non-derogable: Articles 2 (right to life, except insofar as death is caused by lawful acts of war), 3 (prohibition of torture), 4(1) (prohibition of slavery), and 7 (prohibition of punishment without law). Similarly, allowance for 'suspension of guarantees' in time of 'war, public danger, or other emergency that threatens the independence or security of a State Party' is provided in Article 27 of the American Convention, with Article 27(2) excluding a wider range of provisions from derogation than the ECHR.[231]

No such derogation provision appears in the African Charter. The African Commission has emphasized that 'the lack of a derogation clause means that limitations on the rights and freedoms in the Charter cannot be justified by emergencies or special circumstances. The only legitimate reasons for limitations of the rights and freedoms of the African Charter are found in article 27(2)'.[232]

(v) The margin of appreciation[233]

This takes the form of a legal discretion which recognizes that the respondent state can be presumed to be best qualified to appreciate the necessities of a particular situation affecting its jurisdiction. The margin of appreciation is also applied in practice under the American and African frameworks,[234] although the term has been avoided by the Inter-American Court and the Human Rights Committee and raises its own problems of appreciation.

Nonetheless something like it is inevitable if we are not to have government by judiciary or—in the international context—by quasi-judiciary. In *James*, the European Court of Human Rights, rejecting a complaint against British leasehold reform legislation, observed that national authorities are best placed to determine what is in the public interest, and enjoy a wide discretion in implementing social and economic policies. The Court will respect that discretion, but only as long as it is not manifestly without reasonable foundation: 'although the Court cannot substitute its own assessment for that of the national authorities, it is bound to review the contested measures under Article 1 of Protocol No 1 and, in so doing, to make an inquiry into the facts with reference to which the national authorities acted'.[235]

[231] Under the American Convention, non-derogable rights include Arts 3 (right to juridical personality), 4 (right to life), 5 (right to human treatment), 6 (freedom from slavery), 9 (freedom from *ex post facto* laws), 12 (freedom of conscience and religion), 17 (rights of the family), 18 (right to a name), 19 (rights of the child), 20 (right to nationality), and 23 (right to participate in government), along with the judicial guarantees essential for the protection of such rights. See IACtHR Advisory Opinions OC-8/87, 30 January 1987; OC-9/87, 6 October 1987.

[232] *Constitutional Rights Project v Nigeria* (2000) AHRLR 227, §41; *Commission Nationale des Droits de l'Homme et des Libertés v Chad* (2000) AHRLR 66, §21; *Article 19 v Eritrea* (2007) AHRLR 73, §§87–108. Art 27(2) provides that individual rights and freedoms shall be exercised with due regard to the rights of others, collective security, morality, and common interest.

[233] See Merrills (2nd edn, 1993) 151–76; Shany (2006) 16 *EJIL* 907; *Mosley v UK* [2011] ECtHR 48009/08, §§106–11.

[234] In the American context: e.g. *Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica* (1984) 79 ILR 282, 301–3; in the African context: e.g. *Prince v South Africa* (2004) AHRLR 105, §§50–3.

[235] *James* (1986) 75 ILR 396, 417.

(vi) Complaints and proceedings at national level

The classical and still general method of enforcement is by means of the duty of performance of treaty undertakings imposed on the states parties. It is the domestic legal systems of the states parties to the given treaty which are the primary vehicles of implementation. Thus the ICCPR contains express provisions setting forth the duty to ensure that domestic law provides sufficient means of maintenance of treaty standards.[236] It is also a characteristic of such treaties that the means of implementing the treaty provisions are a matter of domestic jurisdiction. In this context it is helpful to recall Robert Jennings' remonstrance that it is a mistake to think of domestic jurisdiction 'in "either/or" terms'.[237]

In some cases, the absence of an official investigation may constitute evidence of a breach. In a series of decisions the European Court has responded to the extraordinary circumstances prevailing in certain regions of Turkey. In order to deal effectively with cases involving ill-treatment,[238] disappearances,[239] the destruction of a village,[240] the death of the applicant's sister,[241] and shooting by unidentified persons,[242] the Court has relied upon the evidence of a lack of effective investigation, or of any investigation, by the authorities, as evidence of violations of Article 2 (right to life),[243] Article 3 (prohibition of torture), Article 5 (right to liberty and security of person), and Article 8 (right to home and family life). In addition, such lack of an effective investigation has been held to constitute a violation of Article 13 (right to an effective remedy).[244] Similar principles have been applied by the Inter-American Court of Human Rights,[245] the Human Rights Committee,[246] and the African Commission.[247]

7. AN EVALUATION

This account of human rights is, it should be emphasized, an analysis from the perspective of public international law. This approach is appropriate for several reasons,

[236] See CCPR, General Comment 31.

[237] Jennings (1967) 121 Hague *Recueil* 495, 502.

[238] *Aksoy v Turkey* [1996] ECtHR 21987/93, §§98–100; *Timurtas v Turkey* [2000] ECtHR 23431/94.

[239] *Kurt v Turkey* [1998] ECtHR 24276/94; *Çakici v Turkey* [1999] ECtHR 23657/94, §§81–7.

[240] *Mentes v Turkey* [1997] ECtHR 23186/94.

[241] *Ergi v Turkey [1998]* ECtHR 23818/94, §§78–86.

[242] *Kaya v Turkey* [1998] ECtHR 22729/93, §§84–92; *Ergi v Turkey* [1998] ECtHR 23818/94, §§79–86.

[243] Further: *Al-Skeini v UK* [2011] ECtHR 55721/07, §§161–7.

[244] *Aksoy v Turkey* [1996] ECtHR 21987/93, §§98–100; *Yasa v Turkey* [1998] ECtHR 22495/93, §§109–15; *Kaya v Turkey* [1998] ECtHR 22729/93, §§106–8; *Çakici v Turkey* [1999] ECtHR 23657/94, §§108–14; *Tepe v Turkey* [2003] ECtHR 27244/95, §§192–8.

[245] E.g. *Case of the 'White Van' (Paniagua Morales v Guatemala)*, IACtHR C/23, 25 January 1996. See also *Extrajudicial Executions and Forced Disappearances v Peru*, IACHR 101/01, 11 October 2001.

[246] E.g. *Amirov v Russian Federation* (2009) CCPR/C/95/D/1447/2006.

[247] E.g. *Sudan Human Rights Organisation & Centre on Housing Rights and Eviction v Sudan*, Comm 279/03, 296/05, 28th ACHPR AAR Annex (2009–10).

including the fact that human rights as legal standards were primarily the work of international lawyers; so too the normative development of such standards through the various institutions.

An evaluation of the existing human rights system must begin by placing emphasis on three elements. In the first place, the 'system' depends for its efficacy upon the domestic legal systems of states. The decisions and recommendations of the supervisory and monitoring bodies can only be implemented by means of the legislatures and administrations of the states parties to the various standard-setting conventions. Secondly, the application of human rights forms part of a larger aim, belief in, and maintenance of, the rule of law, including the existence of an independent judiciary: overall the human rights bodies have been a very positive influence in this regard. The third element is related to the second. Adherence to human rights instruments presupposes that the states adhering will apply the standards. In practice, such a system fails when it has to face the worst case scenarios and a recalcitrant respondent state. Practitioners within the Strasbourg system (and governments) are well aware of the failure of Turkey to implement decisions of the European Court of Human Rights, including the case of *Loizidou v Turkey*,[248] and the judgments in the series of applications brought by the Republic of Cyprus against Turkey. These cases concern the rights of large groups, and long-lasting, intractable situations.

The question of the efficacy of the system of human rights leads to a wider problem. On occasion the Security Council may decide to take coercive action under Chapter VII of the Charter, avowedly to deal with the worst cases. This may appear to be the solution. But, in practice, such action has been taken on a selective basis and has been shadowed by ad hoc geopolitical reasons unconnected with human rights. This element of discrimination can best be illustrated by instances of failure to act, in particular, the failure of the Security Council to take any action in face of the gross and persistent measures of discrimination and breaches of humanitarian law on the part of Israel against the Palestinian people and their institutions.[249] The issue of selectivity can lead to claims of human rights violations being used as nothing more than a powerful political weapon.

Perhaps the most egregious example is provided by the case of Iraq. The Iraq–Iran War raged for eight years (1980–88). Iran was not the aggressor. There were several hundred thousand military and civilian casualties. During the conflict leading Western powers gave assistance to the Iraqi government in the form of matrices for chemical weapons (which were used against Iran) and satellite intelligence. The Security Council took no action under Chapter VII or otherwise. In contrast, in the period from 1991 up to the US-led attack on Iraq in March 2003, the same states took a strong line on the human rights record of the Iraqi regime and the attack was justified in part by reference to the human rights factor. Here is revealed a purely cyclical, if not

[248] (1996) 108 ILR 443.

[249] UN Commission on Human Rights, Res 2003/7, 15 April 2003 (50–1 (US): 2 (Australia, Costa Rica)).

cynical, version of human rights, contingent upon collateral political considerations. Similar criticisms of selectivity could be applied to the Human Rights Commission, now the Council.

Problems of consistency and efficacy affect all systems of law, not only public international law and human rights. The often appalling realities of power politics must be balanced against the 50 years of successful formulation of legal standards of human rights and the development of mechanisms of supervision and monitoring. These at least put the question of enforcement on the agenda.

Three further criticisms of the international human rights system deserve attention. The first is the Marxian critique that the system replicates liberal values and operates through liberal institutions which tend to reinforce class divisions within society, keeping power in the hands of the powerful and leaving those belonging to subordinated sectors to fall through the gaps.[250] This is certainly true to some degree—although it is significant that those criticizing the system on such grounds rarely advocate its destruction.[251]

The second is that the system is 'Eurocentric'.[252] While this too may be true, certainly historically, it is less true than it was, and again the critics do not advocate return to some (unachievable) *status quo ante*. The Inter-American system has gone its own way, as compared to Strasbourg, and the African system will likewise develop according to the region's own characteristics and priorities. The human rights treaties have been widely ratified by countries outside Europe and the West. Although the Universal Declaration was Western in its origin and focus, the human rights system has evolved considerably since 1948. More recent instruments are based on a broader consensus following negotiation between the representatives of states and, to a lesser extent, cultures.[253]

A third criticism is that the system operates under a democratic deficit; in other words, unelected judges and experts sitting in international tribunals and committees are making important decisions of public policy that should be left to elected officials within states.[254] A short answer is that these tribunals and committees are mandated to act by treaties that have been ratified by states; their authority derives from state consent. A longer answer is that international human rights are part of an international law in which state rights and prerogatives (reflecting, in normal circumstances, the autonomy of the community of the state) are set alongside and judged by reference

[250] See Marks (ed), *International Law on the Left* (2008), esp Koskenniemi (34–8), Roth (220–51), Chimni (82–4).

[251] A (non-Marxist) exception is Allott, who inveighs memorably against the international system (including the human rights system), while being careful not to prescribe material alternatives: cf 2 Cor 3:6. See Allott, *Eunomia* (1992); Allott, *The Health of Nations* (2002).

[252] E.g. Otto (1997) 29 *Col HRLR* 1; Falk, *Human Rights Horizons* (2000) 89–93; Mutua (2001) 42 *Harv ILJ* 201; Mutua, *Human Rights* (2002); Anghie, *Imperialism, Sovereignty and the Making of International Law* (2004); Mutua (2007) 29 *HRQ* 547; Dembour, in Moeckli, Shah & Sivakumaran (2010) 64, 75–8, 81–4.

[253] E.g. Onuma, in Bauer & Bell (1999) 103–23.

[254] Crawford & Marks, in Archibugi, Held & Köhler (eds), *Re-imagining Political Community* (1998) 72.

to the products of state consent. *Each* system retains a margin of appreciation (explicitly or implicitly); none is immune from judgement in terms of the other. There is no *imperium*, rather a dialectic of consent.

There is a close analogy in the system of closer union which is the EU, and its relation to fundamental rights at the level of the ECHR as well as of national law. Thus the German Federal Constitutional Court declined to rule that laws derived from the Treaty of Maastricht which allegedly took away rights protected by the Federal Constitution were invalid. The Court noted that Community law and domestic law were independent systems, operating side by side; the organs of one system were not competent to assess the interpretation and observance of the laws of the other.[255] The allegation of a violation had to be assessed against the fundamental guarantees inherent in Community law.[256] In normal circumstances, Community law could not be subject to constitutional review by municipal courts without calling into question the legal basis of the Community itself. At the same time, Community law cannot release member states from their obligations under the ECHR.[257] Each system retains competence to inspect the other system and to intervene if there is a sufficiently serious interference with rights. The principle of equivalent protection holds that as long as equivalent rights are protected by the regional human rights system, the state does not breach its obligations to the individual; otherwise there could never be interstate cooperation as envisaged by states when entering the Community. By contrast, an arbitrary refusal to comply with rights is not excused, for example on the grounds that the state is complying with a Security Council resolution.[258] There must be a presumption that the Security Council does not intend to impose obligations on states to violate fundamental human rights.[259] But it is, in the last resort, only a presumption. National systems are judged, or at least appraised, in terms they have formally accepted. They are not silenced.

[255] *Internationale Handelsgesellschaft v Einfuhr- und-Vorratsstelle für Getreide und Futtermittel (Solange I)* (1970) 93 ILR 362; *Wünsche Handelsgesellschaft (Solange II)* (1986) 93 ILR 403.

[256] *Re Accession of the European Community to the Convention for the Protection of Human Rights and Fundamental Freedoms (Opinion 2/94)* (1996) 108 ILR 225, 255.

[257] *Bosphorus v Minister for Transport* (1996) 117 ILR 267, 286–7.

[258] Joined Cases C-402/05 P and C-415/05 P, *Kadi & Al Barakaat International Foundation v Council & Commission* [2008] ECR I-06351.

[259] *Al-Jedda v UK* [2011] ECtHR 27021/08, §102.

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INTERNATIONAL CRIMINAL JUSTICE

1. INTRODUCTION

It is not too much of an exaggeration to say that the United Nations era began with a trial and a promise. The trial was that of the major German war criminals at Nuremberg. The promise was that the principles underlying the Nuremberg Charter would be treated as international law: only thus would the apparent selectivity and retrospectivity of Nuremberg be redeemed. But despite the Tokyo trials and some further trials in Germany, mostly under the auspices of the occupying powers, the arena of international criminal law became populated by conventions largely without implementation, and state practice turned to emphasize national trials for specified treaty-defined offences such as aircraft hijacking and drug trafficking.

Then, in the early 1990s, the arena came to life: ad hoc criminal courts were created by Security Council decree, a permanent International Criminal Court (ICC) was established at great speed, and there was much other activity. More than half a dozen international or 'internationalized' tribunals now exist, and they are generating a more robust body of jurisprudence on war crimes, crimes against humanity and genocide, as well as a more developed set of understandings concerning procedure. Developments at the international level have also sparked changes in domestic jurisdictions, including an increasing—though still small—number of domestic prosecutions of international crimes, including on the basis of universal jurisdiction.

The rapid development of the international criminal law field has not been without pitfalls. The operation of the international criminal tribunals has been far more expensive and time-consuming than anticipated, and the conduct of proceedings has generated controversy, particularly in cases involving high-profile figures. Most importantly, questions remain about the broad goals of this field. Although the prosecution of individuals responsible for the commission of international crimes may be justified on the basis of retribution and deterrence, a balance between national and international processes, and between peacemaking or post-conflict reconciliation and

the reduction of impunity, has proved elusive.[1] If there was any jury in this field (which there is not),[2] it would still be out.

2. DEVELOPMENT OF INTERNATIONAL CRIMINAL LAW AND INSTITUTIONS

(A) PRE-1945 ASPIRATIONS

The modern history of international criminal law sputtered into half-life in 1919, when the Allies established a Commission on the Responsibility of the Authors of the War and on the Enforcement of Penalties, which proposed the creation of an Allied High Tribunal to try violations of the laws and customs of war and the law of humanity.[3] The Tribunal never came into being: a few Germans were instead prosecuted domestically at the 'Leipzig trials', suffering token penalties.[4] There were discussions in the League of Nations about an international criminal court, but a statute concluded in 1937 obtained only a single ratification (British India).[5]

(B) THE NUREMBERG AND TOKYO TRIBUNALS

On 8 August 1945, the four Allied Powers concluded the London Agreement, establishing the International Military Tribunal (the Nuremberg Tribunal).[6] The Charter, annexed to the Agreement, provided for the prosecution of individuals for war crimes, crimes against humanity, and crimes against peace.[7] Each of the Tribunal's four principal judges represented one of the major Allied Powers, and the prosecution of the various counts of the indictment was divided among prosecutors from the four powers.[8] After a 10-month trial, three defendants were acquitted; the remaining 19 were convicted and sentenced to death or imprisonment. Three organizations were found to be

[1] Nouwen, in Crawford & Koskenniemi, *The Cambridge Companion to International Law* (2012) 327, and further: Akhavan (2001) 95 *AJIL* 7; Tallgren (2002) 13 *EJIL* 561; Drumbl, *Atrocity, Punishment and International Law* (2007).

[2] Even the 'Scottish court' which tried the Lockerbie bombers had no jury: *Her Majesty's Advocate v Abdelbaset Ali Mohmed Al Megrahi and Al Amin Khalifa Fhimah*, Scottish Court in the Netherlands, Judgment of 31 January 2001, Case No 1475/99.

[3] *Report Presented to the Preliminary Peace Conference* (1920) 14 *AJIL* 95.

[4] Mullins, *The Leipzig Trials* (1921); Willis, *Prologue to Nuremberg* (1982) 126–47.

[5] Convention for the Creation of an International Criminal Court, LN Doc C.547(I).M.384(I).1937.V (1938).

[6] Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, and Establishing the Charter of the International Military Tribunal, 8 August 1945, 82 UNTS 279. For contemporary accounts: Wright (1947) 41 *AJIL* 38; Kelsen (1947) 1 *ILQ* 153; Ehard (1949) 43 *AJIL* 223.

[7] IMT Charter, Art 6.

[8] Ibid, Arts 2, 14.

criminal, three were cleared.[9] The Nuremberg judgment was notable for its rejection of the argument that the Charter breached the principle of legality, as well as its holding that individuals may be held directly responsible under international law.[10]

The International Military Tribunal for the Far East was established not by a multilateral treaty but by a Special Proclamation issued by MacArthur, the Supreme Commander for the Allied Powers in Japan.[11] The Tokyo Tribunal consisted of 11 judges, from the nine signatories to the Japanese Instrument of Surrender as well as India and the Philippines.[12] A lengthy trial concluded in November 1948 with convictions for all surviving 25 defendants, who were sentenced to death or imprisonment.[13] The judgment generated substantial controversy among the judges,[14] and it has attracted criticism to a greater extent than the Nuremberg judgment, procedurally as well as substantively.[15] According to Judith Shklar:

> Natural law thinking played no part at Nuremberg, where every effort was made to build on the fiction of a positive international law envisaged as analogous in its formal structure to the legalistic image of municipal law in matured systems. At Tokyo natural law was, indeed, introduced, with very unfortunate results.[16]

In addition, prosecutions for war crimes, crimes against humanity, and crimes against peace were conducted in Germany by the Allied Powers in their respective zones of occupation under Control Council Law 10, as well as in the Pacific theatre.[17]

(C) NORMATIVE DEVELOPMENTS FOLLOWING THE SECOND WORLD WAR

The Nuremberg judgment had an immediate impact. The General Assembly unanimously affirmed 'the principles of international law recognized by the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal'.[18] The ILC was directed to formulate the principles of international law recognized in the Tribunal's judgment, and to prepare a draft code of offences against the peace and security of mankind. The ILC listed the following 'crimes under international law': crimes against peace, war crimes,

[9] Taylor, *The Anatomy of the Nuremberg Trials* (1993).

[10] *International Military Tribunal (Nuremberg), Judgment and Sentences* (1947) 41 *AJIL* 172, 216–21. See Metraux (ed), *Perspectives on the Nuremberg Trial* (2008); Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (2011).

[11] International Military Tribunal for the Far East, Special Proclamation by the Supreme Commander for the Allied Powers at Tokyo, 19 January 1946, 4 Bevans 20.

[12] International Military Tribunal for the Far East, Charter, Art 2.

[13] Boister & Cryer, *Documents on the Tokyo International Military Tribunal* (2008).

[14] Opinions of Justices Röling (diss), Pal (diss), and Jaranilla (sep). Cf Röling & Cassese, *The Tokyo Trial and Beyond* (1992).

[15] Further: Futamura, *War Crimes Tribunals and Transitional Justice* (2007); Boister & Cryer (eds), *The Tokyo International Military Tribunal* (2008). The standard study is still Minear, *Victors' Justice* (1971).

[16] Shklar, *Legalism* (1964) 156; also ibid, 128, 179.

[17] Cryer, *Prosecuting International Crimes* (2005) 119–20.

[18] GA Res 95(I), 21 November 1947.

and crimes against humanity.[19] It also identified as punishable the participation in a common plan or conspiracy for the accomplishment of any such acts, as well as complicity in their commission. But it did not go much beyond the Nuremberg formulations. For example, the category of 'crimes against humanity' was not freestanding:

> Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on *in execution of or in connexion with any crime against peace or any war crime*.[20]

The ILC's work on a 'code of crimes' proceeded slowly. After two separate phases of drafting between 1947–54 and 1982–96, the ILC in 1996 adopted 20 draft articles constituting a Code of Crimes against the Peace and Security of Mankind.[21] The Code was never implemented as such, being superseded by the Rome Statute.[22]

More important than the early ILC work was the conclusion of the Genocide Convention in 1948,[23] and the 'grave breaches' provisions of the 1949 Geneva Conventions.[24] Both envisaged prosecutions in national courts, but in fact little or nothing was done by way of enforcement, despite the Cambodian 'genocide'[25] and war crimes in a variety of theatres, including Vietnam.[26]

3. INTERNATIONAL CRIMINAL COURTS AND TRIBUNALS

(A) THE AD HOC TRIBUNALS

(i) The Yugoslav Tribunal

The end of the Cold War coincided with the dissolution of Yugoslavia, and increased opportunities for the Security Council to respond to ensuing armed conflicts.[27] In

[19] ILC *Ybk* 1950/II, 374–8, Principle VI.

[20] Principle VI(c) (emphasis added).

[21] ILC *Ybk* 1996/II(2), 15–56. Allain & Jones (1997) 8 *EJIL* 100.

[22] GA Res 51/160, 16 December 1996.

[23] Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 UNTS 277; Schabas, *Genocide in International Law* (2nd edn, 2009) 59–116.

[24] Geneva Convention I, 12 August 1949, 75 UNTS 31, Arts 49–50; Geneva Convention II, 12 August 1949, 75 UNTS 85, Arts 50–1; Geneva Convention III, 12 August 1949, 75 UNTS 135, Arts 129–30; Geneva Convention IV, 12 August 1949, 75 UNTS 287, Arts 146–7. Also ICRC commentary on these provisions: Pictet (ed), 1–4 *Geneva Conventions of 1949: Commentary* (1952–60) 362–72 (vol 1), 263–70 (vol 2), 620–9 (vol 3), 589–602 (vol 4). Cf Fischer, in McDonald & Swaak-Goldman (eds), *Substantive and Procedural Aspects of International Criminal Law* (2000) 63.

[25] Kiernan, *Genocide and Democracy and Cambodia* (1993). On the classification of crimes in Cambodia: Schabas (2001) 35 *NELR* 287; Abrams (2001) 35 *NELR* 303; Williams (2005) 5 *Int Crim LR* 447.

[26] Wolfrum, in Dinstein & Tabory (eds), *War Crimes in International Law* (1996) 233.

[27] O'Brien (1993) 87 *AJIL* 639; Cassese, *International Criminal Law* (2nd edn, 2008) 324–5.

May 1993, the Security Council acted under Chapter VII to establish an international tribunal in The Hague for the 'purpose of prosecuting persons responsible for serious violations of international humanitarian law' committed in the former Yugoslavia after 1 January 1991.[28] Because of the tribunal's open-ended temporal jurisdiction, it was able to prosecute crimes committed not only between 1991 and December 1995, when the Dayton Agreement was signed, but also in the late 1990s, when further violence ensued in Kosovo. There was controversy about whether the Security Council could create a criminal tribunal, but the International Criminal Tribunal for the former Yugoslavia (ICTY) upheld its own constitutionality, relying in part on the parallel support of the General Assembly (responsible for the ICTY budget, which exceeded US$100 million per annum).[29]

The ICTY slowly began functioning according to the relatively skeletal statute annexed to SC Resolution 827, and with detailed Rules of Procedure and Evidence made by the judges and frequently amended.[30] The Statute grants the ICTY the power to prosecute persons for violations of the laws or customs of war, genocide, and crimes against humanity (more broadly defined than at Nuremberg).[31] Although the ICTY and national courts have concurrent jurisdiction, the ICTY has primacy, and in its early years the Tribunal requested that national courts defer to its competence in situations where both were seeking to exercise jurisdiction.[32]

The ICTY proceeded slowly, in part because of a lack of accused persons in its custody.[33] It came under early criticism for prosecuting relatively minor figures, 'small fish' such as Duško Tadić, a local leader of the Serb Democratic Party in Bosnia who had no involvement in policy-making or planning and who was already being prosecuted in Germany.[34] This began to change in the late 1990s, when NATO became involved in effecting arrests, pro-EU parties were elected into government in the countries concerned and some accused voluntarily surrendered to the Tribunal.[35] There followed the arrest and transfer in 2001 of Slobodan Milosević, former president of the SFRY. The Prosecution initially charged Milosević with respect to the conflict in Kosovo, but then joined the Kosovo indictment with two separate indictments regarding Croatia

[28] SC Res 808 (1993); Report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 (1993), S/25704, 3 May 1993; SC Res 827 (1993), §2. Art 8 of the Statute simply provides that the Tribunal's temporal jurisdiction 'shall extend to a period beginning on 1 January 1991'.

[29] *Prosecutor v Tadić* (1995) 105 ILR 419 (jurisdiction) 430–42; O'Brien (1993) 87 *AJIL* 639, 643; Sarooshi, *The United Nations and the Development of Collective Security* (1999) 92–8.

[30] ICTY Statute, as amended 7 July 2009 by SC Res 1877 (2009); Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, Rev 45, 8 December 2010; Zacklin (2004) 2 *JICJ* 361.

[31] Arts 3–5; Shraga & Zacklin (1994) 5 *EJIL* 360.

[32] ICTY Statute, Art 9; RPE Rule 11.

[33] Cryer, *An Introduction to International Criminal Law and Procedure* (2010) 125–33.

[34] *Prosecutor v Tadić*, ICTY, IT-94-1-A, Appeals Chamber, Judgment, 15 July 1999; Sassoli & Olson (2000) 94 *AJIL* 371.

[35] Schabas (2nd edn, 2009) 457–9.

and Bosnia.[36] The result was an unmanageably large indictment of over 60 counts, and an unwieldy, lengthy trial, during which the judges struggled to deal with Milosević's astute and highly disruptive conduct.[37] His sudden death in 2006, before the end of the trial, was a significant blow. Subsequently the ICTY has gained custody over two other high-profile accused who had eluded capture for many years: Karadzić, the President of Republika Srpska,[38] and Mladić, the Commander of the Main Staff of the Bosnian Serb Army.[39] Remarkably, none of the ICTY's 161 indictees remains at large.

By 2000, the unanticipated length and cost of the Tribunal's operations led the Security Council to press the ICTY to develop a completion strategy.[40] Although the ICTY was already focusing on the prosecution of 'the most senior leaders suspected of being most responsible for crimes', this became an explicit requirement.[41] In addition, the Rules of Procedure and Evidence were amended to allow the ICTY to transfer cases back to national courts, reversing the earlier trend of deferrals to the ICTY. So far the ICTY has indicted 161 persons; proceedings have concluded for 126 accused (with 64 convictions on some or all charges and 13 complete acquittals).[42]

(ii) The Rwanda Tribunal

In April 1994, the assassination of Rwandan President Habyarimana ignited the slaughter of Tutsi and moderate Hutus, resulting in the deaths of approximately 800,000 persons over the course of several months.[43] Given the recent creation of the ICTY in response to an armed conflict in Europe, it was considered necessary to create an analogous tribunal following genocide in Africa.[44] In November 1994, after an ineffectual response to the genocide itself, the Security Council created the International Criminal Tribunal for Rwanda (ICTR), located in Arusha, Tanzania.[45] The Appeals Chamber is shared with the ICTY.[46] The ICTR and the ICTY also shared a prosecutor until 2003, when the Security Council considered it necessary for a prosecutor to be dedicated solely to the ICTR in order for it to fulfil its completion strategy.[47]

The ICTY Statute provided a model for the Statute of the ICTR, which similarly endows the ICTR with 'the power to prosecute persons responsible for serious violations of international humanitarian law.' There are, however, differences between

[36] *Prosecutor v Milosević*, Second Amended Indictment 'Kosovo', IT-99-37-PT, 16 October 2001; *Prosecutor v Milosević*, Second Amended Indictment 'Croatia', IT-02-54-T; 23 October 2002; *Prosecutor v Milosević*, Amended Indictment 'Bosnia', IT-02-54-T, 22 November 2002.

[37] Boas, *The Milosević Trial* (2007).

[38] *Prosecutor v Karadzić*, Prosecution's Marked-Up Indictment, IT-95-5/18, 19 October 2009.

[39] *Prosecutor v Mladić*, Second Amended Indictment, IT-09-92, 1 June 2011.

[40] SC Res 1329 (2000); SC Res 1503 (2003)

[41] SC Res 1534 (2003); Rule of Procedure and Evidence 28(A).

[42] ICTY, Key Figures, available at www.icty.org/sections/TheCases/KeyFigures. Proceedings for 13 individuals were transferred to a national jurisdiction and 36 individuals had their indictments withdrawn or they died before or after their transfer to the ICTY.

[43] Schabas (2nd edn, 2009) 547–52.

[44] Akhavan (1996) 90 *AJIL* 501; Cassese (2008) 327; Cryer (2010) 135–6.

[45] SC Res 955 (1994); also SC Res 935 (1994), SC Res 918 (1994); SC Res 977 (1995).

[46] ICTR Statute, 8 November 1994, SC Res 955 (1994), 33 ILM 1598 (1994), Art 12(2).

[47] Ibid, Art 15(3) (original); Art 15(4) (as amended); SC Res 1503 (2003), §8 & Annex I.

the Statutes, such as the omission of an article in the ICTR Statute for prosecution for grave breaches of the Geneva Conventions of 1949, on account of the non-international character of the armed conflict in Rwanda. The Statute instead provides for jurisdiction over violations of Article 3 common to the 1949 Geneva Conventions and of Additional Protocol II, which apply in non-international armed conflicts. In addition, the ICTR Statute requires a discriminatory motive as an element of crimes against humanity, although it has been held that this is not a requirement under customary international law.[48] The scope of the ICTR's jurisdiction is also narrower than that of the ICTY; its temporal jurisdiction runs from 1 January to 31 December 1994. The ICTR issued indictments for only 110 accused[49] and its budget has been smaller than that of the ICTY, although still substantial.[50]

The ICTR also began operations quite slowly, but it initially gained custody of indictees more successfully than did the ICTY.[51] In its early years, it experienced serious mismanagement, leading to the resignations of the Registrar and the deputy Prosecutor.[52] Already strained relations between the ICTR and Rwanda deteriorated following the Appeals Chamber's decision to decline jurisdiction over Barayagwiza, one of the media advocates of the genocide, on the grounds that his pre-trial detention violated his human rights.[53] Rwanda suspended co-operation with the ICTR, thereby impeding the progress of trials at the Tribunal. The next year, the Appeals Chamber controversially reversed its decision[54] and the relationship between Rwanda and the ICTR improved. Trials have nevertheless proceeded slowly, and the Security Council required it to develop a completion strategy which has involved, in part, the referral of cases to third countries such as France,[55] and eventually to Rwanda itself.[56]

Like the *Tadić* case at the ICTY, the *Akayesu* case was the first to go to trial at the ICTR, and has been seminal, representing the first conviction by an international tribunal for genocide, as well as the first time that rape in war was held to constitute genocide.[57] The ICTR's *'Media'* judgment is significant for its conviction of three radio and newspaper executives for public incitement to genocide.[58]

[48] Ibid, Art 3.

[49] ICTR, Status of Cases, available at www.unictr.org/Cases/StatusofCases/tabid/204/Default.aspx.

[50] Wippman (2006) 100 *AJIL* 861; Cryer (2010) 142.

[51] Schabas (2nd edn, 2009) 455–56; Cryer (2010) 137.

[52] A/51/789.

[53] *Prosecutor v Barayagwiza*, ICTR-97-19-AR72, Appeals Chamber, Decision, 3 November 1999.

[54] *Prosecutor v Barayagwiza*, ICTR-97-19-AR72, Appeals Chamber, Decision on Review and/or Reconsideration, 14 September 2000.

[55] SC Res 1503 (2003); Mose, in Bellelli (ed), *International Criminal Justice* (2010) 79.

[56] It was only in June 2011 that the first case was referred to Rwanda: *Prosecutor v Jean Uwinkindi*, ICTR-2001-75-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 28 June 2011. This contrasts with the ICTY, where most of the Art 11bis referrals were to the countries where the crimes were committed.

[57] *Prosecutor v Akayesu*, ICTR-96-4-T, Trial Chamber, Judgment, 2 September 1998; de Bouwer, *Supranational Criminal Prosecution of Sexual Violence* (2005) 41–84.

[58] *Prosecutor v Nahimana*, ICTR-99-52-T, Trial Chamber, Judgment, 3 December 2003; *Prosecutor v Nahimana*, ICTR-99-52-A, Appeals Chamber, Judgment, 28 November 2007. Cf MacKinnon (2004) 98 *AJIL* 325; Zahar (2005) 16 *CLF* 33; MacKinnon (2009) 103 *AJIL* 97.

In 2010, the Security Council decided to establish the International Residual Mechanism for Criminal Tribunals to finish the remaining tasks of the ICTY and ICTR. The Security Council requested both tribunals to take all possible measures to complete all their remaining work no later than the end of 2014. The Mechanism's ICTR branch commenced its operations on 1 July 2012 and the ICTY branch on 1 July 2013. The Mechanism will have the same jurisdiction, rights, obligations and essential functions, subject to provisions of Resolution 1966 and the Statute of the Mechanism.[59]

(iii) The ad hoc tribunals: an evaluation

Between them, the two tribunals have produced a substantial body of jurisprudence. The ICTR has made a significant contribution, for example, regarding gender crimes. Among the developments led by the ICTY, joint criminal enterprise (JCE) has been perhaps the most prominent. Under this doctrine, individuals may be held liable for crimes committed as part of a common plan carried out either jointly or by some members of the group.[60] The Appeals Chamber in *Tadić* explained that JCE constitutes a form of commission, even though Article 7(1) of the Statute does not explicitly provide for it. JCE may take three different forms. Under the 'basic' form, all co-perpetrators carry out a common purpose with the same criminal intention.[61] Under the 'systemic' form, a group of persons acts according to a common plan at a concentration camp or detention facility.[62] Finally, under the particularly controversial 'extended' form, the perpetrator commits a crime which was outside of the common plan, but was a 'natural and foreseeable consequence' of carrying out the common purpose.[63] JCE has generated scholarly criticism as a form of guilt by association (it is colloquially referred to as 'just convict everyone').[64] It is not included in the Rome Statute.

(B) THE INTERNATIONAL CRIMINAL COURT

Proposals for the establishment of a permanent international criminal tribunal date as far back as 1872, when Gustav Moynier, one of the founders of the ICRC, discussed the idea.[65] Although the Genocide Convention contemplated an 'international penal tribunal',[66] no such institution was established: indeed until 1989 such a proposal seemed hopelessly utopian.

[59] SC Res 1966 (2010).

[60] *Prosecutor v Tadić*, ICTY, IT-94-1, Appeal Judgment, 15 July 1999, §190. Generally: Cassese (2008) 189–213; Shahabuddeen, in Darcy & Powderly (eds), *Judicial Creativity at the International Criminal Tribunals* (2010) 184; Zahar & Sluiter, *International Criminal Law* (2008) 221–57.

[61] *Prosecutor v Tadić*, ICTY, IT-94-1, Appeal Judgment, 15 July 1999, §196.

[62] Ibid, §202.

[63] Ibid, §204.

[64] E.g. Ohlin (2007) 5 *JICJ* 69; Cassese (2007) 5 *JICJ* 109.

[65] Hall (1998) 322 *IRRC* 57.

[66] Art VI.

(i) The work of the ILC

At the request of the UN General Assembly the ILC produced a draft statute for a permanent court (1953), but the General Assembly never proceeded with the matter due to difficulties concerning the definition of aggression and to underlying Cold War politics.[67] In 1989, Trinidad and Tobago proposed that the issue be put back on the General Assembly's agenda because of its wish to see international prosecutions of drug-related offences.[68] The matter was referred to the ILC which in two years produced a draft statute.[69] The 1994 draft was in most respects a more modest proposal than the statute that was ultimately adopted in 1998, but it paved the way to Rome.

(ii) The Rome Statute (1998)

Following detailed work by the Prepcom, the ICC's Statute was finalized at a five-week conference in 1998: it entered into force on 1 July 2002, after 60 ratifications.[70] The ICC, located in The Hague, began its work in 2003. Its jurisdiction is limited to 'the most serious crimes of concern to the international community as a whole', namely, genocide, crimes against humanity, war crimes, and the crime of aggression. The Assembly of States Parties also adopted the Elements of Crimes, intended to assist the Court in the interpretation and application of these crimes. The ICC's temporal jurisdiction does not extend to offences committed prior to the entry into force of the Statute.[71] Its territorial jurisdiction extends to the territory of states parties; its personal jurisdiction covers nationals of those states. The ICC may also exercise its jurisdiction with respect to the territory and nationals of a state not party to the Rome Statute if that state has accepted the ICC's jurisdiction in accordance with Article 12(3), which provides that a state not a party to the Statute may accept the ICC's jurisdiction by a declaration lodged with the Registrar. This was done, for example, by Côte d'Ivoire.[72] It is also possible for the ICC to exercise jurisdiction over nationals of third states if the conduct in question occurred on the territory of a state party,[73] a possibility which has given rise to major objections on the part of the US. But none of these restrictions with respect to personal or territorial jurisdiction apply in case of a Security Council referral.

[67] GA Res 260(III)B, 9 December 1948; Revised Draft Statute for an International Criminal Court; GAOR, 9th Sess, Supp No 12, A/2645, 23; GA Res 898(IX), 14 December 1954.

[68] A/44/195 (1989); GA Res 44/39, 4 December 1989.

[69] ILC *Ybk* 1994/II(1), 18–67; and Crawford (1995) 48 *CLP* 303.

[70] Crawford, in Sands (ed), *From Nuremberg to The Hague* (2003) 109; Lee, *The International Criminal Court* (1999).

[71] Temporal jurisdiction is further limited in the case of a state which becomes a party at a later date and does not explicitly extend the jurisdiction back to 2002: Art 11(2).

[72] In the event it took years for the jurisdiction in Côte d'Ivoire to be triggered, and this was done on the basis of the Prosecutor's *proprio motu* powers rather than a self-referral.

[73] Rome Statute, Art 12(2); and Scharf (2001) 64 *LCP* 98; Morris (2001) 64 *LCP* 131; Akande (2003) 1 *JICJ* 618.

The ICC's exercise of jurisdiction may be triggered in three different ways, all of which have been utilized in its first decade.[74] First, a state party may refer to the ICC a situation where one or more crimes within the Court's jurisdiction appear to have been committed.[75] Uganda, the Democratic Republic of Congo, and the Central African Republic have referred such situations to the ICC, and the Prosecutor initiated investigations in all of them. Secondly, the Security Council, acting under Chapter VII, may refer a situation to the Prosecutor. The Security Council did so in 2005 with respect to the situation in Darfur, Sudan, and in 2011 with respect to the situation in Libya.[76] Finally, the Prosecutor may initiate an investigation independently. In March 2010, Pre-Trial Chamber II granted the Prosecution's request to open an investigation into the post-election violence that took place in Kenya in late 2007 and early 2008, and in October 2011, the Prosecutor's application to proceed in Côte d'Ivoire was also accepted by Pre-Trial Chamber III.[77] Even though three out of these seven situations came before the court by virtue of self-referrals, the fact that all the ICC's situations concern Africa has generated criticism and contributed to strained relations between the ICC and the African Union.[78]

Whereas the ICTY and ICTR had primacy of jurisdiction, the ICC's jurisdiction is 'complementary'. This means that if in a specific case there are, or have been, genuine domestic proceedings, the case is inadmissible before the ICC.[79] It should be stressed that it is cases which are inadmissible, not situations. This is one of the weaknesses of the complementarity regime: in situations of mass crime, the Prosecutor will almost always be able to find a case that has not been prosecuted domestically.[80]

In the spirit of the principle of complementarity, some states parties have enacted legislation allowing national courts to exercise jurisdiction over ICC crimes whether committed by their nationals or on their territory or more broadly (although the Rome Statute does not require this). Neither a national amnesty law nor a promise of immunity conceded in a fragile peace process can halt ICC proceedings on grounds of complementarity since in the absence of domestic proceedings cases are admissible before the ICC. Commentators have suggested that the Prosecutor nevertheless has

[74] Art 13; Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2010); Schabas, *An Introduction to the International Criminal Court* (4th edn, 2011) 157–86.

[75] It had not been expected that states parties would refer situations in their own countries (so-called 'self-referrals'), but there is nothing in the Statute that prevents it. Nouwen & Werner, in Smeulers (ed), *Collective Violence and International Criminal Justice* (2010) 255.

[76] SC Res 1593 (2005); SC Res 1970 (2011).

[77] *Prosecutor v Ruto, Kosgey & Sang*, ICC-01/09-01/11; *Prosecutor v Muthaura, Kenyatta & Ali*, ICC-01/09-02/11; Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, 3 October 2011, ICC-02/11.

[78] Jalloh, Akande & du Plessis (2011) 4 *AfJLS* 5.

[79] Preamble, §10; Arts 1, 17.

[80] *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, Motion Challenging the Admissibility of the Case by the Defence of Germain Katanda, Pursuant to Article 19(2)(a), ICC-01/04-01/07-949, Defence, 11 March 2009, §§39–43.

the discretion to decline to investigate such situations, for example, where an investigation would 'not serve the interests of justice'.[81]

The ICC's process is somewhat more civil law-oriented than that of the ad hoc tribunals. It includes a Pre-Trial Chamber whose functions include authorizing investigations, issuing arrest warrants and summonses to appear, and deciding on the confirmation of charges. In addition, the Statute provides for the participation of victims in proceedings and for reparations for victims.[82]

(iii) The United States and the ICC

The position of the US towards the ICC has evolved considerably since 1998.[83] The US delegation to the Rome Conference lobbied for significant changes to make the Statute more acceptable.[84] Even though it failed to achieve its goals, President Clinton signed the Rome Statute on 31 December 2000, the last available day for doing so. The position of the US towards the court changed dramatically under President Bush: the US 'unsigned' the Statute[85] and concluded a series of bilateral agreements with states parties under Article 98(2) of the Statute, designed to prevent the latter from surrendering its citizens to the ICC.[86] The US stance softened somewhat during the Bush administration's second term: for example, it refrained from vetoing the Security Council's referral of the Darfur situation to the ICC.[87] While the Obama administration has engaged in a positive manner with the ICC and voted with the majority of the Security Council to refer the situation in Libya, ratification of the Rome Statute remains highly unlikely.

(iv) The crime of aggression

An important development occurred at a Review Conference in Kampala, Uganda in June 2010, when the Assembly of States Parties defied expectations by agreeing upon a definition of the crime of aggression.[88] The definition now included in the Statute requires that an act of aggression constitute a 'manifest violation' of the UN Charter, a term with uncertain meaning. In addition, the states parties resolved a long-standing debate about the trigger mechanisms for prosecutions of aggression by deciding that, in addition to the Security Council, states parties can refer a situation to the ICC, and that the Prosecutor, with the authorization of the Pre-Trial Chamber, can initiate an

[81] Art 53(1)(c); Stahn (2005) 3 *JICJ* 695. It is not clear that the Prosecutor agrees. And Nouwen, in Curtis & Dzinesa (eds), *Peacebuilding, Power and Politics in Africa* (2012).

[82] Generally: McCarthy, *Reparations and Victim Support in the International Criminal Court* (2012).

[83] Schabas (4th edn, 2011) 25–34.

[84] Scheffer (1999) 93 *AJIL* 12; Leigh (2001) 95 *AJIL* 124.

[85] Letter from US Under-Secretary of State for Arms Control to Secretary-General (2002) 41 ILM 1014.

[86] Murphy (2002) 96 *AJIL* 725; O'Keefe (2010) 24 *Cam RIA* 335.

[87] Cerone (2007) 18 *EJIL* 227.

[88] Art 5(2); Gaja, in Cassese, Gaeta & Jones (eds), *The Rome Statute of the International Criminal Court* (2002) 427, and for the new definition: 'The Crime of Aggression', Resolution RC/Res.4, adopted at the 13th Plenary Meeting on 11 June 2010 by consensus. Further: Blokker & Kress (2010) 23 *LJIL* 889; Scheffer (2010) 23 *LJIL* 897; Barriga & Kreβ (eds), *The Travaux Préparatoires of the Crime of Aggression* (2012).

investigation *proprio motu*. The Security Council does not have the monopoly on the determination whether an act of aggression has taken place. The amendments regarding aggression will not come into force until 2017 at the earliest; even then, parties may opt out under certain conditions.

(v) Interim evaluation

It is far too soon to offer an evaluation of the ICC, but the legal and practical challenges faced by the court merit some mention.

At the legal level, the ICC has shown a measure of adaptability, even to a fault. For example, unlike the ICTY and ICTR there is no doctrine of joint criminal enterprise, but instead reliance on notions of direct and indirect perpetration.[89] Other features include the early erosion of complementarity; issues with victim participation,[90] and the disregard for President Bashir's immunity. The Rome Statute provides that immunities do not bar the Court from exercising jurisdiction once an accused is present before it, but it is far from clear that a foreign head of state could be surrendered to the Court without violating state immunity.

At the practical level, the fact is that unlike Nuremberg and Tokyo, the ICC does not deal with those already defeated in conflicts but becomes an instrument in conflict. The greatest obstacle so far has been obtaining custody of the accused, particularly of figures such as Omar Al-Bashir, the President of Sudan and Joseph Kony, head of the Lord's Resistance Army. President al-Bashir's visits to other African states parties to the Statute have highlighted the practical difficulties the ICC faces in enforcing arrest warrants. Where it has secured the accused, however, the ICC has proved capable of delivering a verdict.[91]

(c) INTERNATIONALIZED OR HYBRID TRIBUNALS

More recent tribunals have not taken the same shape as the ICTY and the ICTR. Instead 'hybrid' tribunals have been created (East Timor, Kosovo, Sierra Leone, Cambodia, Bosnia and Herzegovina, Lebanon).

The terms 'internationalized', 'hybrid', and 'mixed' have no fixed meaning, but they generally refer to a range of tribunals with a mixed composition which apply both domestic and international law. They operate more or less in relation to or even as part of national institutions, arguably filling national voids, not international ones.[92]

[89] Art 25; Akande (2004) 98 *AJIL* 407; Akande (2009) 7 *JICJ* 333.

[90] Trumbull (2007–8) 29 *Mich JIL* 777; Chung (2007–8) 6 *Nw JIHR* 459; Cohen (2008–9) 37 *DJILP* 351. For a positive account: McCarthy (2012).

[91] *Prosecutor v Lubanga*, Judgment pursuant to Article 74 of the Statute, 14 March 2012, ICC-01/04–01/06.

[92] Romano, Nollkaemper & Kleffner (eds), *Internationalized Criminal Courts and Tribunals* (2004); Nouwen (2006) 2 *Utrecht LR* 190; Williams, *Hybrid and Internationalised Criminal Tribunals* (2009).

(i) The Special Court for Sierra Leone

In June 2000, Sierra Leone requested UN assistance in establishing a court to try members of the Revolutionary United Front (RUF) for crimes against Sierra Leoneans and the hostage-taking of UN peacekeepers.[93] At the time the armed conflict in Sierra Leone had been continuing since 1991, and the RUF had recently violated the 1999 Lomé Peace Accord.[94] When the conflict finally ended in 2002, both the Special Court for Sierra Leone (SCSL) and the Truth and Reconciliation Commission came into being; they co-existed until the latter concluded its work in October 2004.[95] The SCSL was established by a treaty between the United Nations and Sierra Leone,[96] combined with detailed implementing legislation.[97]

The SCSL is a 'hybrid' tribunal as it is a court of mixed jurisdiction and composition. The Statute provides for the application of Sierra Leone as well as international law. The Secretary-General is responsible for appointing the majority of the judges in the Trial and Appeals Chambers; the government appoints the others, who have been Sierra Leonean as well as foreign nationals; the prosecutor's office is mixed also. The Statute allows for the prosecution of persons for a limited number of crimes under local law. The Chief Prosecutor decided early on, however, that the indictments would include only charges under international law, so the SCSL has not been hybrid in practice with respect to its applicable law. The SCSL may also be distinguished from the ad hoc tribunals on the basis of its location. With the exception of the Charles Taylor trial, it has operated in Freetown.

The Prosecution indicted 13 individuals, but has convicted only nine because of the deaths of three and the unknown status of a fourth. The relatively small number of trials reflects the narrowness of its personal jurisdiction. The SCSL Statute calls for the prosecution of those 'persons who bear the greatest responsibility for serious violations of international humanitarian law' (as well as Sierra Leone law). Although Sierra Leone originally requested UN help in prosecuting only the RUF, the Prosecution tried the top leaders of the RUF as well as the Armed Forces Revolutionary Council, the Civil Defence Forces—which was controversial in Sierra Leone as it had come to Kabbah's assistance—and Charles Taylor, former president of Liberia. While the SCSL's personal jurisdiction is relatively narrow, its subject-matter jurisdiction is, in some respects, notably more extensive than that of the ICTY and ICTR. Its Statute includes provisions on the recruitment of child soldiers as well as sex-based crimes, such as sexual slavery, enforced prostitution, and forced pregnancy—none of which appear in the Statutes of the ICTY and the ICTR.

[93] S/2000/786, 10 August 2000.

[94] Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 2 June 1999, S/1999/777.

[95] Tejan-Cole (2002) 5 *Ybk IHL* 313; Schabas (2004) 4 *JICJ* 1082; Nesbitt (2007) 8 *GLJ* 977.

[96] UN–Sierra Leone, Agreement on the Establishment of a Special Court for Sierra Leone, 16 January 2002, 2178 UNTS 138.

[97] Special Court Agreement, 2002 (Ratification) Act.

The SCSL is best known for the trial of Charles Taylor, held in The Hague due to concerns about security.[98] Other cases have concluded with the defendants sentenced to prison. The *Taylor* case has generated controversy, in part, because of the Appeals Chamber's May 2004 decision to deny personal immunity to Taylor, President of Liberia at the time the indictment was issued.[99] The Court's interpretation and application of joint criminal enterprise has also been controversial, due in part to departures from the jurisprudence of the ICTY.[100]

(ii) Extraordinary Chambers in the Courts of Cambodia

In 1997, Cambodia's co-prime ministers requested UN assistance in bringing to justice those responsible for the genocide and crimes against humanity during the Khmer Rouge period (1975–79).[101] Difficult and lengthy negotiations were concluded in 2003 with an agreement to establish the Extraordinary Chambers in the Courts of Cambodia (ECCC).[102] In 2004 the Cambodian National Assembly ratified this agreement and amended a 2001 law on the ECCC.[103] The ECCC commenced operations in the summer of 2006, and began trying accused in 2007 after the adoption of Internal Rules.[104] Its structure, composition, and jurisdiction reflect compromises struck due to Cambodian concerns about 'national ownership' over the tribunal and, to a lesser extent, UN concern about judicial independence given the weak state of the Cambodian judicial system.[105]

As a result, the ECCC are located in Cambodia, near Phnom Penh, and form part of Cambodia's judicial system, as the name suggests.[106] In keeping with Cambodia's legal tradition, the ECCC's procedures have a much greater civil law orientation than do the SCSL and the ad hoc tribunals.[107] The ECCC have co-investigating judges (one Cambodian and one foreign), as well as a scheme for 'civil party' or victim participation.[108] In addition, the negotiations resulted in a relatively complex compromise regarding the composition of the Trial Chamber and Supreme Court Chamber. A majority of Cambodian judges serves in each Chamber, but a 'supermajority' is required for decision-making, such that one international judge must cast a vote with

[98] Bigi (2007) 6 *LPICT* 303; MacAuliff (2008) 55 *NILR* 365.

[99] Klingberg (2003) 46 *GYIL* 537; Frulli (2004) 2 *JICJ* 1008; Nouwen (2005) 18 *LJIL* 283; Deen-Racsmany (2005) 18 *LJIL* 299.

[100] Rose (2009) 7 *JICJ* 353; Jordash & Van Tuyl (2010) 8 *JICJ* 591.

[101] A/51/930 (Annex), Prince Norodom Ranariddh & Hun Sen to UN Secretary-General, 21 June 1997.

[102] UN–Royal Government of Cambodia, Agreement concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, 6 June 2003, 2329 UNTS 41723.

[103] Law Approving the Agreement, NS/RKM/1004/004, 19 October 2004; Law on the amendment of the Extraordinary Chambers in the Courts of Cambodia, NS/RKM/1004/006, 27 October 2004.

[104] Kodama (2010) 9 *LPICT* 37.

[105] Bertelman (2010) 79 *Nordic JIL* 341, 343–4, 346–50.

[106] Unlike the SCSL, the agreement with the UN does not *establish* the ECCC but merely regulates co-operation.

[107] Art 12(1); Internal Rules, as revised 3 August 2011.

[108] Internal Rules, Rules 14, 23. And McGonigle (2009) 22 *LJIL* 127.

the Cambodian judges. The ECCC have jurisdiction over 'crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia'.[109]

As to personal jurisdiction, the ECCC may prosecute 'senior leaders of Democratic Kampuchea and those who were most responsible' for violations of Cambodian and international law committed during the period from 17 April 1975 to 6 January 1979. Although some 1.7 million persons died during the Khmer Rouge regime, the ECCC has brought only two cases against five accused. Kain Guek Eav (alias Duch), chairman of the Khmer Rouge S-21 Security Center, was convicted in July 2010 for crimes against humanity and grave breaches of the Geneva Conventions of 1949. In June 2011, the trial began of four other accused who held senior leadership positions in the Khmer Rouge. While the International Co-Prosecutor has sought to prosecute other individuals beyond these five, the Cambodian Co-Prosecutor has publicly opposed this, on the ground that further prosecutions could destabilize Cambodia.[110]

The most significant jurisprudential development thus far has been the Pre-Trial Chamber's lengthy ruling on the extended form of joint criminal enterprise (JCE III). The Trial Chamber determined that while the basic and systemic forms of JCE have a basis in customary international law, the extended form of JCE did not exist in customary international law between 1975 and 1979.[111] This represents a notable departure from the ICTY's *Tadić* judgment.[112] The ECCC have pioneered extensive victim participation.

(iii) The Special Tribunal for Lebanon

In late 2005, Lebanon asked the Security Council to establish 'a tribunal of an international character' to try those responsible for a massive car bomb in Beirut on 14 February 2005, which killed Lebanese Prime Minister Rafiq Hariri and 22 others.[113] The Special Tribunal for Lebanon (STL) is a resolution-based rather than treaty-based tribunal, established by SC Resolution 1757 (2007) under Chapter VII.[114] It was so established after the speaker of the Lebanese Parliament refused to call a meeting to ratify an agreement which had been negotiated, although a majority of members of Parliament supported the Tribunal's establishment.[115]

[109] Law on ECCC, Art 1.

[110] Information available at the ECCC website: www.eccc.gov.kh/en/case/topic/286. On 7 September 2009, the International Co-Prosecutor requested the Co-Investigating Judges to initiate investigations of five additional persons: ibid.

[111] *Decision on the Appeals against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE)*, ECCC Pre-Trial Chamber, 20 May 2010, Case No 002-19-09-2007-ECCC/OCIJ; Karnavas (2010) 21 *CLF* 445; Gustafson (2010) 8 *JICJ* 1323; Marsh & Ramsden (2011) 11 *ICLR* 137.

[112] *Prosecutor v Tadić*, ICTY, IT-94-1, Appeal Judgment, 15 July 1999.

[113] S/2005/783, 13 December 2005.

[114] Cf Wetzel & Mitri (2008) 7 *LPICT* 81, 94-5.

[115] S/2007/281, 16 May 2007; Fassbender (2007) 5 *JICJ* 1091.

By comparison to the ad hoc and other hybrid tribunals, the STL operates under an unusually narrow mandate, which reflects the fact that it was created in the aftermath of a political assassination and connected terrorist attacks. The STL's temporal jurisdiction extends beyond the attack of 14 February 2005, but it is still quite restricted. The STL may exercise jurisdiction over other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005 only if they are 'connected in accordance with the principles of criminal justice and are of a nature and gravity similar' to the 14 February 2005 attack.[116] While the STL and the national courts of Lebanon have concurrent jurisdiction over crimes committed within this time period, the STL has primacy. So far the STL has brought only two cases, about which little information is publicly available.[117]

The most distinctive feature of the STL may be its application of municipal criminal law, to the exclusion of international criminal law.[118] The applicable criminal law consists of the provisions of the Lebanese Criminal Code that relate to acts of terrorism, crimes and offences against life and personal integrity, illicit associations, failure to report crimes and offences, criminal participation, and conspiracy.[119] A February 2011 decision by the Appeals Chamber, however, suggests that even though the Statute calls for the application of the Lebanese Criminal Code's provision on terrorism, the STL will take every opportunity to develop the crime of terrorism under international law, as domestic Lebanese law must be interpreted in accordance with international law.[120] In addition, the Statute calls for the application of international modes of liability—namely, joint criminal enterprise and superior responsibility. This could breach the principle of legality (*nullum crimen sine lege*) because the Statute allows for the punishment of crimes under the Lebanese Code pursuant to international theories of liability unrecognized by the Code.[121] The STL may have found a way to resolve this problem, however, as the Appeals Chamber indicated in its February 2011 decision that the STL will generally apply Lebanese law regarding forms of responsibility.[122]

Another controversial feature of the STL is the requirement of trials *in absentia*.[123] The Statute provides that the STL *shall* conduct trial proceedings *in absentia* where the

[116] Statute of the Special Tribunal for Lebanon, Art 1. The Tribunal may also have jurisdiction over attacks at 'any later time decided by the Parties and with the consent of the Security Council'.

[117] *Prosecutor v Ayyash*, STL-11-01/I/PTJ, Indictment, 10 June 2011. A connected case concerns attacks against Marwan Hamadeh, George Hawi, and Elias El-Murr (STL-11-02).

[118] Jurdi (2007) 5 *JICJ* 1125. Technically speaking, the Bosnian War Crimes Court, for instance, does the same, when it exercises jurisdiction over 'international crimes' *as incorporated in* Bosnian law.

[119] Statute, Art 2(a). The applicable law also includes provisions on 'increasing the penalties for sedition, civil war and interfaith struggle': Art 2(b).

[120] STL, Appeals Chamber, STL-11-01/I, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, §§42–148.

[121] Milanović (2007) 5 *JICJ* 1139, 1142.

[122] Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, §§210–11.

[123] Statute, Art 22; Gaeta (2007) 5 *JICJ* 1165; Jordash & Parker (2010) 8 *JICJ* 487; Riachy (2010) 8 *JICJ* 1295; Pons (2010) 8 *JICJ* 1307.

accused has waived his right to be present, has not been handed over to the STL by state authorities, or cannot be found and all reasonable steps have been taken to secure and inform the accused of the charges against him. An accused convicted *in absentia*, however, has the right to be retried.[124] Such retrials could prove problematic given that the STL has a finite existence as a tribunal.[125] Other procedural aspects include the role of the pre-trial judge, the degree to which judges may conduct proceedings, and the participation of victims in proceedings.[126] These were designed to create more efficient international criminal procedures, but the STL's functioning may nevertheless be inhibited in that the Statute makes no provision for removing the personal or functional immunities of state officials, or for obliging other states to co-operate with the STL.[127]

4. INTERNATIONAL CRIMINAL JUSTICE IN NATIONAL COURTS

(A) HISTORICAL BACKGROUND

Following the Second World War, domestic prosecutions of crimes pursuant to international law took place in a number of European countries, including France, which notably prosecuted Klaus Barbie, the head of the Gestapo in Lyon.[128] Israel prosecuted Adolf Eichmann, one of the organizers of the Holocaust, after abducting him from Argentina.[129] National prosecutions have also been pursued more recently outside the context of the Second World War, most famously in the case of Augusto Pinochet, the former Chilean head of state whose extradition Spain requested from the UK in 1998. In its third hearing in this case, the House of Lords decided that immunity did not prevent Pinochet's extradition for torture, although the judges did not reach agreement on the rationale for this decision.[130] In the event Pinochet was not extradited, ostensibly on health grounds.

(B) UNIVERSAL JURISDICTION

The principle of universal jurisdiction involves jurisdiction to prescribe without a nexus or link between the forum and the relevant conduct at the time of its

[124] Statute, Art 22(1,3).
[125] Jenks (2009) 33 *Fordham ILJ* 57.
[126] Aptel (2007) 5 *JICJ* 1107.
[127] Swart (2007) 5 *JICJ* 1153.
[128] *Barbie* (1988) 78 ILR 136.
[129] *Attorney-General v Eichmann* (1968) 36 ILR 277.
[130] *R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 3)* [1999] 2 All ER 97. Further: Davis (ed), *The Pinochet Case* (2003). This holding was later, implicitly, overturned by the ICJ in *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)*: ICJ Reports 2002 p 3, 29–30.

commission.[131] In circumstances where there is no link of territory, nationality, or otherwise, the principle of universal jurisdiction nevertheless permits the assertion of jurisdiction because the crimes at issue have been prescribed by international law. Universal jurisdiction may now be exercised over a somewhat expanded list of crimes under customary international law.[132] The actual enforcement of universal jurisdiction, however, may be thwarted by a range of practical and legal obstacles.[133] In practice, some states limit their exercise of universal jurisdiction to cases in which the accused is present on their territory. In general, the enforcement of universal jurisdiction has been controversial, as in Belgium, where a series of cases prompted a backlash from the US that led to a substantial revision of its law.[134]

(C) DOMESTIC TRIALS AND THE PRINCIPLE OF COMPLEMENTARITY

The rise of international criminal tribunals since the early to mid 1990s has served as a catalyst for domestic prosecutions of individuals for war crimes, crimes against humanity, and genocide. This is due in part to the fact that the ICC is premised on the principle of complementarity: it operates under the presumption that the vast majority of prosecutions for international crimes will take place at the domestic level, as it lacks the capacity to prosecute large numbers of accused, nor would this be appropriate in any event.

(D) IMMUNITY FROM CRIMINAL JURISDICTION

When state officials face criminal proceedings in foreign courts, immunities may constitute a significant barrier to prosecution, even for serious international crimes. Under international law, two different forms of immunity may apply: functional or state immunity (immunity *ratione materiae*), and personal immunity (immunity *ratione personae*).[135] Functional immunity is premised on the principle of sovereign equality and applies to the official acts of a large range of state officials, even after they have left office. Whether functional immunity still applies in cases where state officials have been accused of violations of international criminal law is controversial.[136] While some have argued that customary international law lifts immunity for

[131] Reydams, *Universal Jurisdiction* (2003); O'Keefe (2004) 2 *JICJ* 735, 745; Zahar & Sluiter (2008) 496–503; Lowe, in Evans (ed), *International Law* (3rd edn, 2010) 326–7. Generally: chapter 21.

[132] Cryer (2005) 84–95.

[133] Cryer (2010) 55–62.

[134] In particular Belgian law did not respect immunities and allowed for private prosecutions. See now Act Concerning the Punishment of Grave Breaches of International Humanitarian Law, 10 February 1999, 28 ILM 921; Ratner (2003) 97 *AJIL* 888; Vandermeersch (2005) 3 *JICJ* 400.

[135] Van Alebeek, *The Immunity of States and Their Officials in International Criminal Law and International Human Rights Law* (2008); Fox, *The Law of State Immunity* (2008) 667–700. Generally: chapter 22.

[136] *R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 3)* [1999] 2 All ER 97; *Wijngaarde v Bouterse* (2000) *Netherlands Juristenblad* 2001, 51; reprinted in 32 *NYIL* 276, 278–9; *Sharon & Yaron* (2003) 127 ILR 110; *Jones v Saudi Arabia* [2007] 1 AC 270; *Lozano v Italy* (2008), Case No 31171/2008, ILDC 1085 (IT 2008).

international crimes, the weight of national practice does not currently support this conclusion.[137] Personal immunity, on the other hand, is premised on a pragmatic need to keep channels open between states: it applies to any conduct of a much smaller range of state officials, but ceases when they leave office.[138] In *Arrest Warrant* the International Court clarified that personal immunities apply to a serving Minister of Foreign Affairs, but the extent to which personal immunities apply to other high-level state officials remains unclear.[139] Personal immunity is relatively uncontroversial, unlike functional immunity, and national courts have upheld it in a range of cases involving torture, war crimes, and genocide.[140]

(E) SUBSTANTIVE CRIMINAL LAW AND PROCEDURE

The field of international criminal law extends far beyond the crimes over which international criminal tribunals exercise jurisdiction. The field also includes drug trafficking, torture, piracy, slavery, terrorism, transnational organized crime and corruption, apartheid, and enforced disappearances (even if not amounting to crimes against humanity).[141] Multilateral treaties generally serve as the source of law for many such international criminal prohibitions, though debates continue about whether customary international law exists, for example, with respect to certain conduct such as terrorism.[142]

These treaties generally do not impose criminal responsibility directly upon individuals, but rather require states parties to prevent and punish certain conduct. Thus, the criminalization of conduct occurs at the domestic not the international level. The Convention against Torture and Other Cruel, Inhuman or Degrading Punishment requires states parties to ensure that all acts of torture are offences under their domestic criminal law. Since the 1970s, an extensive body of multilateral treaties has developed in response to terrorism.[143] These treaties oblige states parties to criminalize the unlawful seizure of aircraft, the taking of hostages, terrorist bombings, and the financing of terrorism, among other things. In recent years, multilateral treaties have

[137] Cassese (2008) 302–14; Immunity of State officials from foreign criminal jurisdiction, Memorandum by the Secretariat, 31 March 2008, A/CN.4/596, 116–36; Wirth (2002) 13 *EJIL* 877; Institut de Droit International, Resolution: Immunities from Jurisdiction and Execution of Heads of State and of Government in International Law (2001).

[138] Van Alebeek (2008) 158–99.

[139] *Arrest Warrant*, ICJ Reports 2002 p 3, 21–2 (indicating the characteristics of a Foreign Minister which necessitate immunity on a functional basis).

[140] *Gaddafi* (2001) 125 ILR 490; *Tatchell v Mugabe* (2004) 136 ILR 572; *Re Mofaz* (2004) 128 ILR 709; *Re Bo Xilai* (2005) 128 ILR 713.

[141] E.g. International Convention against Transnational Organized Crime, A/RES/55/25, 15 November 2000. For more comprehensive discussions: Bantekas, *International Criminal Law* (2010) chs 11–12, 14.

[142] E.g. Cassese (2008) 162–83.

[143] There are nearly 20 treaties concerning various aspects of terrorism: e.g. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September 1971, 974 UNTS 177. For a comprehensive list: Bassiouni (2008) 699. Also Bassiouni, *International Terrorism: Multilateral Conventions (1937–2001)* (2001).

also targeted transnational organized crime and corruption.[144] The 2005 Convention against Corruption, for example, requires states parties to criminalize a range of conduct, including bribery, embezzlement, and money-laundering.

The enforcement of such norms occurs at the domestic rather than the international level, as the treaties envisage punishment only by domestic courts. In addition to obliging states parties to criminalize certain conduct, such treaties generally require them to prosecute or extradite accused persons to other states parties that are willing to prosecute them (*aut dedere aut iudicare*).[145] Mutual legal assistance agreements often govern the extradition of suspects from one state to another. States may also make arrangements on an ad hoc basis. While the enforcement of these norms is dependent on domestic legal systems either prosecuting or extraditing accused persons, various treaty bodies—such as the Committee against Torture—often play an important role in monitoring the implementation of the treaty norms at the domestic level.

5. CONCLUSIONS

The rapid developments in the field of international criminal law leave lawyers with much to study. Yet these developments are no cause for celebration: they reflect repeated failures to prevent serious violations of human rights and international humanitarian law. The deterrent effect of international prosecutions is unclear, and probably always will be. Moreover, international criminal justice represents only one possible response to atrocities. Truth and reconciliation commissions, for example, may be more effective in certain respects—the perpetuation of testimony, the correction of the historical record, solace to victims. While international criminal justice constitutes an increasingly important area, its continued prominence raises questions about how the international legal system can *effectively* respond to atrocities, not limiting itself to the pursuit of the obvious and already ostracized 'enemies of mankind'.

[144] Convention against Transnational Organized Crime; Convention against Corruption.

[145] Bassiouni & Wise, *Aut Dedere Aut Judicare* (1995); Bantekas (2010) 373–83; Cryer (2010) 69–73, 85–106.

Annex 148

N. Lerner, *The UN Convention on the Elimination of All Forms of Racial Discrimination* (BRILL, 2014)

The UN Convention on the Elimination of All Forms of Racial Discrimination

Reprint Revised by Natan Lerner

By

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PART 3

Interpretation of the Convention

CHAPTER 1

The Preamble

The Preamble of the Convention, as adopted by the General Assembly reads:

> 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 distinctions 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 have 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,

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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 on Discrimination in Respect of Employment and Occupation adopted by the International Labour Organization 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: …

1 Discussion in the Sub-Commission

The Sub-Commission had before it three texts for the Preamble, presented by Mr. Abram (USA),[1] Mr. Calvocoressi (United Kingdom)[2] and, jointly, Messrs. Ivanov (USSR) and Mr. Ketrzynski (Poland).[3] While Mr. Abram's and Mr. Ivanov's and Mr. Ketrzynski's draft proposed detailed texts, Mr. Calvocoressi's test was a very short one. It referred to Article 55 of the United Nations Charter and to Resolution 1904 (XVIII) of the Assembly of 20 November 1963, and

1 E/CN.4/Sub.2/L.308.

2 E/CN.4/Sub.2/L.309.

3 E/CN.4/Sub.2/L.314.

expressed the desire "to eliminate all forms of racial discrimination and to secure the respect for the dignity of the human person."

Several amendments were submitted to the different drafts, a number of which were incorporated in a joint draft submitted by Messrs. Calvocoressi and Capotorti (Italy).[4] A new debate followed and, after a number of amendments were suggested orally, a working group was established and prepared a new draft. Several amendments to this draft were still adopted before the final text[5] was unanimously agreed upon. It referred to the Charter, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the Declaration on the Elimination of All Forms of Racial Discrimination. Reference was also made to the ILO and UNESCO Conventions.

The text followed then:

> *Convinced* that any doctrine based on racial differentiation or superiority 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 a fact capable of disturbing peace and security among peoples as did the evil racial doctrines and practices of nazism in the past,
>
> *Concerned* 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, and desiring therefore to adopt further measures in order to eliminate racial discrimination in all its forms and manifestations as soon as possible,

During the discussion in the Sub-Commission, Mr. Abram proposed to transpose the words in the paragraph beginning "*Convinced*" so that the text would read: "*Convinced* that any doctrine of superiority based on racial differentiation is scientifically false…."

In Mr. Abram's view, the doctrine of racial superiority was the root-cause of discrimination, but some members of the Committee interpreted this

4 E/CN.4/Sub.2/L.313.

5 E/CN.4/Sub.2/L.317.

amendment as intended to justify the doctrine of "separate but equal."[6] It was recalled by the Chairman of the Sub-Commission, Mr. Santa Cruz (Chile), that the original wording of the draft was based on the conclusion of a UNESCO group of experts, for whom the concept of race commonly held was scientifically false since there were no basic differences between racial and ethnic groups. Mr. Bouquin (France) felt that Mr. Abram's amendment improved the text, and recalled that the UNESCO experts did not conclude that there were no differences between races, but that racial differences implied neither superiority nor inferiority. Mr. Abram's amendment was finally rejected in the Sub-Commission, but his view was later adopted by the Commission on Human Rights.

Another discussion centred on the question of substituting the word "nazism" for the suggested term "national socialism." Some delegates wanted to clarify that the term "national socialism" referred to the theory and practice in Germany and Italy before and during the Second World War, in order not to confuse it with the national socialism advocated by some political groups in Africa. The wisdom of including a specific reference to one form of racist theories was questioned by some members of the Sub-Commission.

2 Discussion in the Commission

Several amendments were submitted, in the Commission on Human Rights, to the draft Preamble prepared by the Sub-Commission. Preambular paragraph 1 gave rise to difficulty, since some members considered it inappropriate to use the words "ensure" and "universal," not included in the Charter, and which could be interpreted as giving a controversial interpretation of the Charter and as justifying interference in the internal affairs of States.[7] The question whether Article 56 of the Charter refers only to Article 55, or to the Charter as a whole, is also involved here. Amendments by Lebanon and the Philippines to paragraph 1 were incorporated in a joint amendment, which was also cosponsored by India, and adopted.

6 This doctrine was adopted in 1896 by the United States Supreme Court in the famous case *Plessy vs. Ferguson* and prevailed until 1954 when it was rejected by the Court in the historic decision of *Brown* vs. *Board of Education of Topeka*. See, on this doctrine, this writer's *En Defensa de los Derechos Humanos*, Buenos Aires, 1958.

7 Schwelb, *op. cit.*, p. 1029, criticizes the objectors of the paragraph, particularly the British delegate, asking what national interest was supposed to be served by opposing "the principle of effectiveness in the interpretation of the basic instrument of the international community."

A proposal by Lebanon, to add the words "in particular as to race, colour or national origin" at the end of the second paragraph, was adopted in spite of the fact that the words "national origin" were objected to as being open to different interpretations.

An amendment proposed by the Philippines to the third paragraph was adopted, while no changes were made in the fourth paragraph.

An amendment by Lebanon to paragraph 5 (6 in the final text), in order to replace the words "based on racial differentiation or of superiority" by the words "of superiority based on racial differentiation," was adopted unanimously, reversing the stand taken by the Sub-Commission.

In paragraph 6 (7 in the final text), the words "of nazism" were voted on separately, as requested by the representative of France, and rejected by eight votes to six with five abstentions.

A new paragraph 8 (corresponding to 10 in the final text) was adopted after paragraph 7 as a joint amendment by Italy and Lebanon, incorporating suggestions made by the representatives of India, Lebanon and the USSR. It read:

> *Resolved* to adopt all necessary measures for eliminating speedily racial discrimination in all its forms and manifestations and to prevent and combat racist doctrines and practices in order to build an international community free from all forms of racial segregation and racial discrimination.

3 Discussion in the Third Committee

Several amendments were proposed in the Third Committee. The third paragraph of the final text is the result of an amendment proposed by Romania and modified by the United Kingdom.

Paragraph 5, as drafted by the Commission on Human Rights, concluded with the word "manifestations." An amendment, submitted by a group of Latin American States, and adopted unanimously by the Committee, proposed the addition, at the end of the paragraph, of the words "and of securing understanding of and respect for the dignity of the human person."

The same Latin American countries proposed an amendment to paragraph 7 (paragraph 6 in the Commission's draft), calling for the replacement of the words "as evil racial doctrines and practices have in the past" by "as well as the harmonious co-existence of persons within the same State." As a consequence of a suggestion by the representative of India, the final text adopted was: "and the harmony of persons living side by side even within one and the same State."

The new paragraph 8 was introduced by Brazil, Colombia and Senegal, which proposed the following text:

> Convinced that the existence of racial barriers is repugnant to the ideals of any civilized society.

Some representatives objected to the use of the term "any civilized society." The sponsors of the amendment agreed therefore to substitute the word "human" for the word "civilized."

In the new paragraph 10 (paragraph 8 of the Commission's draft) an amendment proposed by several Latin American delegations and calling for the insertion of the words "promote understanding between races and to" after the words "in order to," was adopted.

4 Contents of the Preamble

The Preamble of the Convention is a lengthy description of the aims of the instrument, and should be useful for interpreting the operative articles. Being the outcome of so many discussions in different United Nations bodies, it lacks complete unity. It is, of course, no source of obligations for the Parties.

The Preamble begins by recalling that the Charter of the United Nations is based on the principles of dignity and equality inherent in all human beings, and that all Member States have pledged themselves 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. This is a reference to the principles embodied in Articles 1(3), 55 and 56 of the Charter.

Besides the Charter, the Preamble mentions five other international instruments: the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples,[8] the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the Convention on Discrimination in Respect of Employment and Occupation of the International Labour Organization, and the Convention Against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO). The United Nations Declaration is mentioned twice (paragraph 5 and 12). While some essential principles from the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the

8 General Assembly Resolution 1514 (XV).

U.N. Declaration on Racial Discrimination are expressly quoted, the ILO and UNESCO Conventions are only mentioned (paragraph 11) as having been borne in mind.

The Preamble, following the wording of Article 7 of the Universal Declaration, proclaims (paragraph 3) that all human beings are equal before the law, and are entitled to equal protection of the law against any discrimination, as well as against any incitement to discrimination. It declares (paragraph 6) that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, differing here from the Declaration, which condemns any doctrine of racial differentiation *or* superiority. This question was a source of difficulty when both the Declaration and Convention were discussed. When this paragraph of the Declaration was taken up by the Third Committee, the United States of America asked for a separate vote on the words "differentiation or." The words were retained after a roll-call vote, by thirty-five votes to nineteen, with forty-five abstentions. The whole paragraph was also adopted by a roll-call vote, by sixty-four to one, with thirty-four abstentions. The text, as adopted by the Convention, is the result of an amendment unanimously accepted by the Commission on Human Rights, in line with a remark made by the UNESCO representative.

Paragraph 7 reaffirms that discrimination on the grounds of race, colour or ethnic origin is an obstacle to peace. The text differs from paragraph 2 *in fine*, which prohibits distinctions based particularly on "race, colour or national origin." The use of the words "national origin" in the Preamble as well as in Article 1, and in the deleted Article VIII of the draft prepared by the Sub-Commission, created difficulty.[9] Paragraph 7 covers both the problems of racism as an obstacle to international peace and as a threat to harmony within the borders of a given State. This second aspect is connected with the problem of incitement to group-hatred dealt with by the Convention in Article 4.

Paragraph 9 expresses alarm because of the "manifestations of racial discrimination" still in evidence in some areas of the world, and because of *governmental* policies based on racial superiority or hatred, such as "*apartheid*, segregation or separation." Paragraph 9 should be related to Article 3 of the Convention, although the last one does not mention "separation," condemning only *apartheid* and racial segregation.

The drafters of the Convention clearly discriminated here, as they did in Article 3, in favour of the victims of *apartheid*. The not convincing explanation given for the special mention of *apartheid* and exclusion of other racial evils, such as nazism and anti-Semitism, was that *apartheid* is *today* the only instance

9 We deal with this problem in Chapter 2, Article 1.

of racial discrimination as an official policy of government, and, while it would be possible to find in the past other equally repulsive practices, a convention could not be transformed into a study of social evils. It is quite apparent from the nature of the debate on the adoption of this paragraph, as well as of the debates on the deletion of the reference to nazism and on the proposed new article on anti-Semitism, that what decided the final text were political considerations.[10]

Paragraph 10, which speaks about the Parties' resolution to take measures against descrimination, does not offer any difficulties, and should be related to paragraphs 5 and 7.

The Preamble of the Convention follows more or less the structure of the Preamble of the Declaration. Paragraph 6 in the Convention differs from the respective paragraph 5 in the Declaration, as already indicated. Paragraph 8 has no direct equivalent in the Declaration. The Convention does not emphasize, as the Declaration does, that "international action and efforts in a number of countries have made it possible to achieve progress" in the field of discrimination.

Compared to the preambles of other similar international instruments, such as the ILO Convention Concerning Discrimination in Respect of Employment and Occupation, and the UNESCO Convention against Discrimination in Education, the Preamble of the Convention on Racial Discrimination is a more elaborate and detailed one. It was felt that in general, the structure of the Preamble of the Declaration should be followed in the Convention, with some changes emanating from its binding nature. Some differences of a substantial character were also introduced, as mentioned above.

5 Reference to Nazism

The question of including an explicit condemnation of nazism in the Preamble was discussed in the Commission and in the Third Committee. Such a condemnation was incorporated in paragraph 6 of the draft prepared by the Sub-Commission. It read:

10 During the debate in the Sub-Commission the representative of the International League for the Rights of Man, recalling that his organization had drawn the attention of the United Nations, after the outbreak of the "Swastika epidemic," to the need for studying the question of racial discrimination, pointed out that colonialism and *apartheid* had never caused as many victims as Hitlerism and nazism. The United Nations could not, therefore, lose sight of the phenomena which were at the origin of its own work.

> *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 as did the evil racial doctrines and practices of nazism in the past...

During the debate in the Commission, the representative of France requested a separate vote on the words "of nazism" in paragraph 6. He, and other representatives who favoured the omission of the reference to nazism, emphasized that, while abhorring its doctrines and practices, which had led to the loss of many lives, historically there had been other equally repulsive and reprehensible evils, which were not specifically singled out in the text. Therefore it was preferable to adopt a general text describing all evil racial doctrines and practices in the past. It was pointed out that no specific reference to nazism had been included in the Declaration on Racial Discrimination or in the Universal Declaration on Human Rights or in the Charter.

Those favouring a reference to nazism considered that it represented the most striking historical instance of racist doctrines and practices, and had led to the Second World War. Besides, the fear of the resurgence of nazism was a problem of our time, and it was necessary therefore to include a reference to it. Some other representatives considered the move to omit the reference to nazism as being politically motivated.

The words "of nazism" were voted on separately in the Commission, and were rejected by eight votes to six, with five abstentions. An additional discussion on the same subject was held when the Commission discussed the proposal to add a new article on anti-Semitism.[11]

In the Third Committee, Poland proposed an amendment including a reference to nazism in the Preamble. Similar opinions in favour of, and against, the singling out of nazism were repeated. As a consequence of the adoption of the Greek-Hungarian proposal, not to single out any specific form of discrimination,[12] the Polish amendment could not be considered and voted upon.

The only form of racial discrimination singled out in the Preamble is, therefore, *apartheid*. While accepting the view that an international Convention should be as general as possible, it is difficult to share the argument that racial evils such as nazism and anti-Semitism, the condemnation of which engendered the U.N. legislative process that culminated with the adoption of the Convention, should be left out of the Preamble that aims at explaining the objectives of the instrument.

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11 See Part 3, Chapter 3.

12 Ibid.

CHAPTER 2

Substantive Articles

Article 1. Definition of Racial Discrimination

Article 1, as adopted by the General Assembly, reads as follows:

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 to 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.

1 *Discussion in the Sub-Commission*

The Sub-Commission had before it the three texts submitted by Messrs. Abram,[1] Calvocoressi[2] and jointly by Messrs. Ivanov and Ketrzynski.[3] The text proposed by Mr. Abram included in the term "racial discrimination" any

1 E/CN.4/Sub.2/L.308.

2 E/CN.4/Sub.2/L.309.

3 E/CN.4/Sub.2/L.314.

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"distinction, exclusion or preference made on the basis of race, colour or ethnic origin, and in the case of States composed of different nationalities or persons of different national origin, discrimination based on such differences."

The text proposed by Mr. Calvocoressi added to the words "distinction," "exclusion" or "preference" the word "limitation."

The text proposed jointly by Messrs, Ivanov and Ketrzynski covered "any differentiation, ban on access, exclusion, preference or limitation based on race, colour, national or ethnic origin, which has the purpose or effect of nullifying or impairing equality in granting or practising human rights and freedoms in political, economic, social, cultural, or any other field of public life."

Amendments were submitted to the different texts. Several of them were incorporated in the new draft submitted jointly by Messrs. Calvocoressi and Capotorti.[4] A working group later prepared a new draft.[5] The first of its two paragraphs followed, in general, the lines of the final text adopted by the General Assembly. It did not refer to "descent" and included, in brackets, a reference to cases of States composed of different nationalities. It referred also to the rights and freedoms set forth "*inter alia* in the Universal Declaration of Human Rights." The second paragraph dealt with measures giving preference to certain groups, in a shorter wording than that of paragraph 4 of the final text approved by the General Assembly.

2 *Discussion in the Commission*

Several amendments to both paragraphs of the text prepared by the Sub-Commission were submitted to the Commission. After a discussion, agreement was reached in order to end the first paragraph after the words "of public life," thus eliminating the reference to the Universal Declaration, since it was pointed out that there were rights not mentioned in the Declaration that should also be protected, and it was considered inappropriate to use the vague expression *inter alia*.

A controversy arose on the advisability of retaining the words "national or" in paragraph 1. Some members considered that it was undesirable to include a notion like "national origin" in an operative paragraph of a convention, since its meaning and scope were vague and could lead to misinterpretation. At the request of the representative of the United Kingdom, a separate vote was taken on these words, which were retained by ten votes to nine, with one abstention. At a further meeting of the Commission, after a decision was taken to delete Article VIII of the draft prepared by the Sub-Commission, the representative of

4 E/CN.4/Sub.2/L.318.

5 E/CN.4/Sub.2/L.319.

France moved to reconsider article 1, paragraph 1, with a view to deciding whether the word "national" should be retained. This motion was voted on by roll-call and adopted by eight votes to six, with seven abstentions. It was again underlined that difficulties arose out of the fact that the term "national" in the English and French languages was not necessarily related to the country of origin, but referred to citizenship. Finally it was decided to place the word "national" within square brackets and to add, at the end of the paragraph, also in square brackets, the words "In this paragraph the expression 'national origin' does not cover the status of any person as a citizen of a given State."

The Commission decided to eliminate the parenthetic phrase related to States composed of different nationalities.

Paragraph 2, dealing with preferential measures for certain racial groups, gave rise to difficulties, since several representatives considered that it required further clarification. Several amendments were submitted. The discussion centred on the need to secure that special measures should not be maintained indefinitely, and on the use of the word "under-developed." The discussion of this paragraph was postponed until a decision was taken on Article II, paragraph 2. When it was resumed, after the submission of a revised amendment by the representative of India, the paragraph was adopted unanimously.

3 *Discussion in the Third Committee*

Several amendments were proposed in the Third Committee to the text of Article 1 as submitted by the Commission. Most centred around the words in square brackets, in paragraph 1, and the reference to "under-developed" groups in the second paragraph. Finally the different amendments were withdrawn in favour of a joint amendment of Ghana, India, Kuwait, Lebanon, Mauritania, Morocco, Nigeria, Poland and Senegal,[6] which proposed the replacement of paragraph 1 of the text of the Commission by a new one, which corresponds to paragraphs 1, 2 and 3 of the text adopted by the Assembly. The new text was adopted unanimously by the Committee.

An amendment of the Democratic Republic of Congo and the Ivory Coast, to delete paragraph 2 of the original text, was rejected. After an oral amendment of Ethiopia and India, it was decided, by sixty-seven votes to ten, with fifteen abstentions, to replace, in the former paragraph 2 of the text of the Commission (paragraph 4 of the final text), the words "development or protection of certain under-developed racial groups or individuals belonging to them" by the words "advancement of certain racial or ethnic groups or individuals needing such protection as may be necessary."

6 A/C.3/L.1220.

4 *Contents of Article 1. The Question of National Origin*

Article 1 has four paragraphs. Paragraph 1 defines racial discrimination. Paragraphs 2 and 3 contemplate cases when the Convention does not apply. Paragraph 4 deals with special temporary measures in favour of certain racial groups or individuals.

According to paragraph 1, four kinds of acts are, in given circumstances, considered discriminatory: any *distinction, exclusion, restriction* or *preference*. There were some doubts with regard to the use of words indicating discrimination, and there were proposals to include in the definition words as "differentiation," "limitation" and "ban on access." It was agreed finally that the four mentioned terms would cover all aspects of discrimination which should be taken into account. When the discriminatory act consists in a "preference" it will only fall within the ban of the Convention if it is not one of the *special measures* mentioned in paragraph 4 of Article 1 or in Article 2.2. We refer later to this problem.

In order that any of those four acts be considered discriminatory, two conditions are necessary:

1. that they should be based on (a) race, (b) colour, (c) descent, (d) national origin or (e) ethnic origin;
2. that they should have 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.

The intention of the drafters of Article 1 was to cover in its first paragraph all kind of acts of discrimination among persons, as long as they were based on motivations of a racial nature, in the broad sense of the word. The Sub-Commission, the Commission and the Third Committee had to overcome delicate problems in order to reach agreement on this wording. As it was pointed out in the debate in the Sub-Commission, "while, as UNESCO had shown, there was no such thing as race, the term 'race' would have to be used in the draft convention."[7] The words *colour, descent*[8] and *ethnic origin* did not present major difficulties, but a serious problem arose with regard to the term "national origin," even after it was made clear that these words were not utilized as

7 Statement of the expert from Finland, Mr. Saario, E/CN.4/Sub.2/SR.411, p. 6.

8 The term "descent" was incorporated by the Third Committee and was originally suggested by India. Schwelb (*op. cit.*, p. 1003) believes that the term includes the notion of "caste" used by the Indian Constitution.

equivalents of the term "nationality" or "citizenship." The question was still more complicated after the deletion of the proposed Article VIII containing an interpretation of the meaning of these words.

The words "national origin" are used in the Preamble of the Declaration but not in its body. As the representative of Poland pointed out during the debate in the Third Committee, in many languages and cultural systems "national origin" meant something different from "ethnic origin."[9] There were nations made up of different ethnic groups, and also situations in which a politically organized nation was included within a different State, and continued to exist as a nation in the social and cultural senses, even without being a sovereign State. Members of such a nation within a State might be discriminated against, not as members of a particular race or as individuals, but as members of a nation which existed in its former political form.

On the other hand, in the same debate, the representative of Haiti[10] favoured the deletion of the word "national," not because a State could not be made up of different nationalities, as in the case of some federations, but because it was superfluous, since, after joining the federation, all citizens acquired the same nationality. He mentioned as examples the Roman Empire, the Union of Soviet Socialist Republics, and Switzerland.

This discussion showed the confusion between the terms "national origin" and "nationality." As the representative of Austria[11] pointed out, the terms "national origin" and "nationality" had been widely used in literature as relating, not only to persons who were citizens of, or held passports issued by, a given State, but also to those having a certain culture, language and traditional way of life peculiar to a nation, but who lived within another State.

The French delegate[12] also underlined the ambiguity involved in the use of the word "national," observing that it could be interpretated in entirely different ways, The word does not create difficulties when used in a sociological sense, but it might be equated with the word "nationality," which in many countries had a very specific legal meaning. In French law—and the same applies, of course, to many countries—persons acquiring French nationality by naturalization did not enjoy full possession of certain rights until after the expiration of a period of time.

Other representatives, like the Indian, stressed that no delegation suggested that the rights guaranteed and the duties imposed under national

9 A/C.3/SR.1304, p. 2–3.
10 A/C.3/SR.1304, p. 4.
11 A/C.3/SR.1304, p. 4.
12 A/C.3/SR.1304, p. 5.

constitutions should be extended to aliens.[13] The USA representative said that national origin differed from nationality in that national origin related to the past, while nationality related to present status. It differed from citizenship in that it related to non-citizens as well as to citizens. It was also narrower in scope than ethnic origin, since the latter was associated with racial and cultural characteristics.[14]

Agreement was reached by adding paragraphs 2 and 3 of Article 1. They do not offer particular difficulties, as they merely determine that distinctions, exclusions, restrictions or preference between citizens and non-citizens could not be considered discriminatory acts prohibited by the Convention. On the other hand, the Convention should not be interpreted as affecting the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that they do not discriminate against any particular nationality. The Convention does not therefore interfere in the internal legislation of any State as far as differences in the rights of citizens and non-citizens are concerned, neither does it pretend to affect substantive or procedural norms on citizenship and naturalization. It only proclaims the principle that any particular nationality—and here the term is used as equivalent to "national origin"—should not be discriminated against.

The second condition for making a distinction, exclusion, restriction or preference a discriminatory act is that they must (a) have the *purpose* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms *or* (*b*) have such an *effect*.

In the first case, a subjective consideration will define the discriminatory nature of the act; in the second, the objective consequences of the act will be the decisive element. It is not necessary that both the purpose and the effect be present. One of them will be enough to define an act as discriminatory.

The human rights and fundamental freedoms jeopardized could be any in the political, economic, social, cultural or any other field of public life. We have referred already to the decision adopted by the Commission on Human Rights eliminating the specific mention of the Universal Declaration, in order to prevent a restrictive interpretation of the Article. In effect, Article 5 of the Convention mentions some rights not included in the Universal Declaration, such as the rights of accesss to public places and to inherit. Schwelb[15] criticizes the contradiction between Article 1 and the detailed provisions of the Convention and particularly the omission, in the definitions article, of the

13 A/C.3/SR.1304, p. 6.

14 A/C.3/SR.1304, p. 7.

15 *Op. cit.*, p. 1004 *et. seq.*

category of "civil rights." He also deems it inappropriate to use the words *public life* when obviously the Convention also protects rights outside the sphere of public life.

There is no definition of racial discrimination in Article 1 of the U.N. Declaration on the Elimination of all Forms of Racial Discrimination, which refers to discrimination on the grounds of *race, colour* or *ethnic* origin. The Covenants on Economic, Social and Cultural Rights and on Civil Rights refer to distinctions of "any kind, such as race, colour…national origin…birth…" (Article 2 of both covenants), following the terminology used by the Universal Declaration on Human Rights (Article 2).

The ILO Convention Concerning Discrimination in Respect of Employment and Occupation defines discrimination as any "distinction, exclusion or preference" made on the basis of "race, colour…national extraction…which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."[16]

The UNESCO Convention Against Discrimination in Education uses the words "distinction, exclusion, limitation or preference" based on "race," "colour," "national…origin" or "birth."[17] A working paper on the draft Convention submitted by Czechoslovakia[18] included, in its proposed Article 1, a definition which covered not only discrimination but also racial hatred "based on differences of race or colour," considering as such all "manifestations advocating superiority of one race or group of persons of one colour over another race or group of persons of another colour or inciting hatred by one race or group of persons of one colour against another race or group of persons of another colour."[19]

The European Convention on Human Rights also uses the term "association with a national minority" (Article 14), while the European Social Charter of 1961 speaks in its Preamble about "national extraction."

While comparing the Convention on Racial Discrimination with the other international instruments mentioned above, it should not be forgotten that it only deals with racial discrimination. Any discrimination on grounds of sex, political opinion or social origin is obviously outside its scope. As for religion, we have already indicated that the United Nations intended to deal with both

16 Article 1,1 (a).

17 Article 1,1.

18 E/CN.4/Sub.2/234, Annex IV.

19 The Convention definition leaves out the problem of racial hatred, a term which gave rise to considerable difficulties and which is used in Article 4. In Part VI, Chapter II we deal with the 1978 UNESCO Declaration on Race.

forms of discrimination in "twin" instruments. In some cases discrimination on the ground of *language* could fall within the scope of the Convention.

5 ***Special Non-Discriminatory Measures***

Paragraph 4 of Article 1 deals with what was called "favourable discrimination," measures taken in favour of certain racial or ethnic groups or individuals in order to ensure to them equal enjoyment or exercise of human rights and fundamental freedoms.

This paragraph should be related to Article 2, paragraph 2, which imposes on States Parties the duty to take special 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.

Some delegations, as mentioned earlier, proposed to delete paragraph 4 of Article 1 (paragraph 2 in the original draft), particularly in the light of the existence of the paragraph in Article 2 imposing on State Parties duties of preferential treatment. In the debate it was recalled that a similar provision was included in the Declaration (Article 2, paragraph 3). It was underlined that protection of certain groups did not constitute discrimination, provided that such measures were not maintained after the achievement of the aims for which they had been taken. It was made clear that the Convention should protect groups as well as individuals, although some representatives felt that groups as such should not be stressed, because the Convention should seek to accomplish the objective of the Universal Declaration of Human Rights to promote the rights and freedoms of all human beings, without distinction of any kind. The aim should not be to emphasize the distinctions between different racial groups, but rather to ensure that persons belonging to such groups could be integrated into the community.

Another problem raised by paragraph 4 was the use of the word "underdeveloped," in which some offending element could be found and which was not used in the Declaration. It was pointed out that the term "under-development," while valid for countries in an economic context, should not be applied to human beings. The word "under-privileged" was proposed, but was also objected to, even for legal and constitutional reasons.

There is a similar Article (5) in the ILO Convention, and, as mentioned, Article 3 of the Declaration refers to the same matter.

The reason for having two provisions in the Convention dealing with the same problem is that, while Article 1 defines discrimination and its paragraph 4 refers to a case in which the application of a different treatment should not be deemed discriminatory, Article 2 relates to duties which are imposed by the

Convention on States Parties. There are some inessential differences in the wording of the two Articles, but both cover clearly the same question, and both insist upon the temporary character of the special—*special and concrete*, says Article 2—measures. Article 1 refers to "adequate advancement" while Article 2 speaks about "adequate development and protection."

In the debate on the paragraph on special measures, as well as in the discussion on the similar provision in the Declaration, some representatives mentioned their concern that it could be used as a weapon by governments anxious to perpetuate the privileges of certain racial groups, as in the case of *apartheid*.

Article 2. Obligations of States

Article 2, as adopted by the General Assembly, reads as follows:

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 multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.
2. State 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.

1 *Discussion in the Sub-Commission*

The Sub-Commission had before it texts prepared by Mr. Abram, Mr. Calvocoressi, jointly by Messrs. Ivanov and Ketrzynski, by Mr. Ketrzynski alone, and jointly by Messrs. Calvocoressi and Capotorti. The last one[20] was selected by the working group as a basis for discussion. In the light of the discussion and the amendments, a new revised text[21] was submitted.

Several amendments to the revised text were suggested. Mr. Ivanov proposed replacing the first sentence of Article II by the following:

> Each contracting State undertakes to prohibit racial discrimination and to carry out by all possible measures a policy of eliminating it in all its forms, since racial discrimination is an infringement of the rights and an offence to the dignity of the human person and a denial of the rules of international law and of the principles and objectives set forth in the United Nations documents mentioned in the Preamble of the present Convention.

The amendment was rejected by the Sub-Commission.

An amendment by Mr. Mudawi (Sudan) adding a paragraph on special concrete measures in order to secure adequate development or protection of individuals belonging to "under-developed racial groups" was adopted by the Sub-Commission.

2 *Discussion in the Commission*

Several amendments to both paragraphs of Article 2 were proposed in the Commission on Human Rights.

An amendment by the Austrian representative, to add the words "against persons, groups of persons or institutions" after the words "no act or practice of racial discrimination" in paragraph 1(a), was adopted. A Lebanese proposal to delete the second sentence of paragraph 1(a), by which States Parties undertook not to encourage, advocate or support racial discrimination,

20 E/CN.4/Sub.2/L.324.

21 E/CN.4/Sub.2/L.324/Rev.1.

was adopted, since it was felt to be unthinkable that States could engage in such acts.

In paragraph 1(b) only minor changes were introduced. Paragraph 1(c)—1(d) in the final text—as adopted unanimously by the Commission, was proposed orally by the representative of Turkey. The discussion in connection with this paragraph centred around the question whether every State would be in a position to prohibit immediately racial discrimination, and around the need to fight racial discrimination with methods other than legislation, such as educational measures. The problem arising in States with a common law system, where racial discrimination was dealt with under general measures of protection and not by declaring it an offence, was also discussed in the Commission.

Several amendments to paragraph 2 were replaced by a joint amendment redrafting the text. At the request of the representative of Philippines, a separate vote was taken on the word "underdeveloped," which was retained.

3 *Discussion in the Third Committee*

Several amendments to both paragraphs of Article 2 were submitted to the Third Committee. Seventeen Latin-American States proposed a new sub-paragraph (b) to paragraph 1, with the following text: "Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations." The amendment was adopted.

An oral suggestion of the representative of Ghana to replace the words "if necessary" by the words "as required by circumstances" was adopted.

A new sub-paragraph, (e) in the final text, was proposed by Brazil, Colombia and Senegal and adopted by roll-call, by ninety-seven votes to none, with four abstentions.[22]

In connection with paragraph 2, a new discussion took place with regard to the use of the word "under-developed." Some delegations suggested the word "under-privileged." A nine-State amendment suggesting the text incorporated in the Convention was finally adopted.

4 *Contents of Article 2. Obligations of States*

The essential purpose of Article 2 is to lay down the principle that States Members must neither practise nor encourage discrimination. It corresponds to Article 2 of the Declaration which proclaims that *no state, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups or institutions on the ground of race, colour or ethnic origin*. A second paragraph of

22 Costa Rica, Haiti, Jamaica and Japan.

Article 2 of the Declaration calls upon States not to encourage or support private acts of discrimination, and a third one refers to special concrete measures, in the spirit of paragraph 2 of Article 2 of the Convention.

Article 2 has two paragraphs. Paragraph 1 deals with obligations of the States to adopt measures to eliminate racial discrimination; paragraph 2 deals with the problem of special measures for the so-called under-developed or underprivileged groups.

Paragraph 1 begins with a general condemnation of racial discrimination. State Parties undertake to pursue *without delay* a policy of eliminating racial discrimination and to this end sub-paragraphs (a) to (e) determine a series of obligations, as follows:

(a) States Parties undertake 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.

Sub-paragraph (a) involves a negative obligation for States Parties and its agents. It protects not only physical persons and groups of persons, but also institutions. Of course, an institution has no race, but an organization which is discriminated against because of the race, colour, descent or national or ethnic origin of its members could therefore invoke the provisions of the Convention.

States have to ensure that all their agents, on the national and local level, should act in conformity with that obligation. The purpose of this provision is to cover not only organs which depend directly on the central government, but also autonomous entities such as, for instance, State railways, power or port authorities and local cultural institutions.[23] While autonomous, such entities are always of a public nature. Sub-paragraph (a) does not deal with private organizations engaged in acts of discrimination, which are referred to in sub-paragraphs (b) and (d).

(b) *Not to sponsor, defend or support racial discrimination by any persons or organizations*. This is again a negative obligation. While sub-paragraph (a) deals with discriminatory acts by the State or its agents, this sub-paragraph refers to the duty of the State not to add its support to discriminatory acts committed by any persons or organizations that may or may not depend on the State. The drafters of Article 2 wanted to establish in it a gradual system of undertakings for State Parties. While according to sub-paragraph (d) States Parties shall prohibit racial discrimination,

23 Statement of Mr. Capotorti. E/CN.4/Sub.2/SR.417, p. 4.

sub-paragraph (b) simply intends to prevent persons or organizations engaged in racial discrimination from getting the official support of the State. Thus, for instance, an official publishing house that prints a racist book, or a local government that gives financial support to a school engaging in racial discrimination, would be violating sub-paragraph (b).

(c) Sub-paragraph (c) calls upon States to *take effective measures to review governmental policies*, on the national or the local level, and to *amend, rescind or nullify* laws and regulations of a discriminatory nature. There were some difficulties with the wording of this sub-paragraph, since it was considered that the word "nullify" was unnecessary after the use of the word "rescind." However, it was decided to retain it, considering it equivalent to "supress entirely." The word "review" was adopted by the Commission instead of the term "revise" in the draft of the Sub-Commission.
This paragraph does not present any difficulties. It calls upon States Parties to review and modify those among their own legal provisions that could be a source of racial discrimination.

(d) Sub-paragraph (d) is a crucial one, and is closely connected with Article 4 of the Convention, which penalizes the dissemination of ideas based on racial superiority or hatred. *Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any person, group or organization*.
Sub-paragraph (d) gave rise to many difficulties. The whole matter of the use of legislation in order to stop racial discrimination came under scrutiny during the discussion of this sub-paragraph, particularly with regard to the problem arising for States with a common law system, where racial discrimination was dealt with, not by making it an offence, but by the protection given under the law to all without distinction. The possibility of jeopardizing freedom of thought and expression, and of invading the private life of individuals, was raised in the discussion, as well as the general controversy on the use of legislation or education in the fight against racial discrimination.[24] The words "as required by circumstances" are intended to cover the cases of States which already have such legislation, or of those which do not need it. The words "if necessary" had also been proposed with the same view.

Sub-paragraph (d) is of great significance, to the point that it was considered "the most important and most far-reaching of all substantive provisions of the Convention."[25] If duly observed by State Parties, it could

24 We deal with this problem when commenting on Art. 4.

25 Schwelb, *op. cit.*, p. 1017.

certainly be decisive in the fight against racialist practices, including those of private organizations.

(e) Sub-paragraph (e), proposed in the Third Committee, deals with the encouragement that States Parties should give, where appropriate, to *integrationist multiracial organizations and movements and other means of eliminating barriers between races*. States should discourage *anything which tends to strengthen racial division*.

This sub-paragraph is broadly and vaguely worded. It imposes upon States the duty to use their moral influence in order to strengthen those organizations and movements that advocate racial integration, as well as to discourage *anything* which strengthens racial division. The last sentence was adopted in the Committee after a separate vote was taken on it, at the request of Venezuela. The whole sub-paragraph was adopted by a roll-call vote, as mentioned before. What "integrationist" movements are, and what "strengthens" racial "division," is not defined. In general, Article 2, besides defining legal obligations for State Parties, is rather a kind of programmatic article, suggesting to States a policy in the field of racial relations, reaching its highest effectiveness in the duty imposed on State Parties by paragraph 1(d).

5 *Favourable Discrimination*

Paragraph 2 of Article 2 is related to paragraph 4 of Article 1, and we referred to the problems involved when commenting on Article 1. The drafters of the Convention decided to deal twice with this question, since they considered that, while Article 1 defines racial discrimination, Article 2 enunciates the policies that State Members should follow in order to eradicate racial discrimination. Its purpose is to secure the integration of certain racial groups in the nation, in order to attain the objective of equal development for all citizens.[26]

During the discussion on this paragraph, references were made to the situation in South America where there were two conflicting schools of thought. According to one, racial groups which were economically and socially backward in comparison with the rest of society could only be integrated through measures of special protection. The second school of thought considered that to adopt special measures with regard to these groups only served to maintain and perpetuate their separation from the rest of the population.[27]

The dangers involved in the possibility of such a paragraph being used by some racist States were pointed out in the discussion. Difficulties also arose

26 Statement of Mr. Krishnaswami (India), E/CN.4/Sub.2/SR.416, p. 12.

27 Statement of Mr. Santa Cruz (Chile), E/CN.4/Sub.2/SR.416, p. 13.

with regard to the use of words like "underdeveloped" or "under-privileged." We have already referred to these questions.

Article 5 of the ILO Convention contemplates special measures of protection or assistance which will not be deemed to be discrimination. The UNESCO Convention determines when separate educational systems will not be deemed to constitute discrimination, but does not refer to special measures of favourable discrimination. The 1978 UNESCO Declaration on Race and Racial Prejudice deals with such measures in Article 9, paragraph 2.

Article 3. Apartheid

Article 3, the shortest of the Convention, reads:

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

1 *Drafting of the Article*

The text drafted by the Sub-Commission, on the basis of a preliminary text proposed by Mr. Abram on the lines of Article 5 of the Declaration, and modified by a working group, did not differ substantially from the final text. Instead of the word "under" it read "subject to."

The Commission on Human Rights did not introduce any changes in the text. An oral amendment of the United States of America, to replace the words "racial segregation and *apartheid*" by "racial segregation, *apartheid* and anti-Semitism," was withdrawn by its sponsor in order to introduce a new article on anti-Semitism.[28]

In the Third Committee, seventeen Latin American States proposed to have the words "subject to" changed to the word "under."

2 *Contents of Article 3. Definition of Apartheid*

Article 3 of the Convention is shorter and sharper in its wording than Article 5 of the Declaration, which reads:

> An end shall be put without delay to governmental and other public policies of racial segregation and especially policies of apartheid, as well as all forms of racial discrimination and separation resulting from such policies.

28 For the discussion on the article on anti-Semitism see Part III, Chapter III.

Apartheid is mentioned twice in the Convention. In paragraph 9 of the Preamble the "policies of *apartheid*, segregation or separation" are mentioned as instances of governmental policies based on racial superiority or hatred. Article 3 of the Convention does not use the word "separation" and condemns racial segregation *and apartheid*, while the Preamble refers to *apartheid*, segregation *or* separation.

State Members undertake to:

(a) prevent practices of *apartheid* and racial segregation;
(b) prohibit them and
(c) eradicate them.

Article 3 should be interpreted as a general condemnation of all forms of racial segregation and separation which States Members shall prevent, prohibit and eradicate. More particularly it is a condemnation of the practices of *apartheid* of the Government of South Africa, practices that have been dealt with by the United Nations since the very first session of the General Assembly in 1946.

The Secretary-General of the United Nations defined *apartheid*, "the most conspicuous and anachronistic mass violation of human rights and fundamental freedoms," as the policy which "continues to be enforced against the 'non-white' majority of the people of the Republic of South Africa."[29]

The term *apartheid* was defined in the Afrikaans Dictionary in 1950 as "a political tendency or trend in South Africa, based on the general principles (a) of a differentiation corresponding to differences of race and/or level of civilization, as opposed to assimilation; (b) of the maintenance and perpetuation of the individuality (identity) of the different colour groups of which the population is composed, and of the separate development of these groups in accordance with their individual nature, traditions and capabilities as opposed to integration."

The Convention does not define *apartheid*, and does not mention by name the Republic of South Africa. The numerous debates held in the United Nations on the subject were however explanatory enough. Besides, the United Nations have established a Special Committee on the Policies of *Apartheid* of the Government of the Republic of South Africa, and the General Assembly adopted, in November 1962, Resolution 1761 (XVII) on sanctions. There is no doubt therefore that, when the Convention refers to *apartheid*, it deals primarily with the practice of racial segregation prevailing in South Africa. However,

29 Introduction to the Annual Report on the Work of the Organization covering the period 16 June 1965 to 15 June 1966; U.N. Doc. E/CN.4/Sub. 2/301, p. 130 ff.

the term is also being used with regard to other territories, such as South West Africa, Rhodesia, the Portuguese Territories and Basutoland, Swaziland and Bechuanaland,[30] and Article 3 could therefore be applicable to the situations there created.

Apartheid was described as the "implacable application by a minority of three million persons of European origin imbued with a doctrine of white supremacy, of a policy designed to keep power permanently and exclusively in their own hands and to keep in permanent dependency and subjection some fourteen million people of African, Asian and mixed descent."[31] The result of such a policy was the deprivation of 80 percent of the inhabitants of South Africa of political, economic, social and civil rights and of other fundamental freedoms. The rule of law was abrogated, and such legal procedures as continued to exist operate under discriminatory laws. The Pretoria Government, in order to achieve its aims, has conceived the notion of regrouping the non-white population in separate areas, "Bantustans," or "separate developments" restricted to only 13 percent of the total area of the country. Under the Bantu Laws Amendment Act, 1964, the three and a half million Africans outside the Bantustans were deprived of political and economic rights. In addition, a repressive legislation provides the government with legal means to prevent any manifestation of dissent. Freedom of work, freedom of movement and freedom of association had been abrogated for the non-white communities.[32]

3 *Singling Out of Apartheid*

This is not the place to study in detail the abuses of *apartheid*, nor to examine if *apartheid*, described by the General Assembly as a "crime against humanity,"[33] should be considered a threat to international peace and security under Chapter VII of the Charter. The U.N. seminar held at Brasilia in August-September 1966 dealt with this and other related problems. One of the

30 See Report of the United Nations Human Rights Seminar on *Apartheid*, held at Brasilia from 23 August to 4 September 1966, U.N. document A/6412, paras. 41 and 119.

31 Above-mentioned report, par. 31.

32 For the problems resulting from the racial classification established in South Africa in 1950, see *Apartheid. Its Effects on Education, Science, Culture and Information*, published in 1967 by UNESCO in Paris, and John T. Baker, *Human Rights in South Africa* in Howard Law Journal, Symposium on the International Law of Human Rights, Volume II, Number 2, Spring 1965, Washington DC, USA, p. 549–582.

33 The United Nations have instituted March 21 as "international day for the elimination of racial discrimination" as a recordation day of the massacre of Sharpeville, in South Africa, in 1960. See, also, Part VI, Chapter II, on the relationship between the Convention and the 1973 Convention on *Apartheid*.

conclusions reached by many participants in the seminar was that "the policies of the Pretoria Government bore, in fact, much similarity to nazism."

The fact that *apartheid* is specially condemned by the Convention, while nazism, as well as anti-Semitism, are not specifically mentioned, should not be considered a consequence of a substantial difference among these forms of racial discrimination, but rather as a consequence of political and other considerations of the majority of States Members of the United Nations. *Apartheid* violates every accepted concept of fundamental rights and the rule of law as set out in the Charter of the United Nations and the Universal Declaration of Human Rights. But so do nazism and anti-Semitism. Once it had been decided to single out one form of racial discrimination, the juridical logic demanded a similar treatment for other equally abhorrent forms which have resulted in no less tragic consequences.

Article 4. Measures to Eradicate Incitement and Prohibition of Racist Organizations

Article 4, one of the most difficult and controversial of the Convention, reads:

> 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 other 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.

1 *Discussion in the Sub-Commission*

When the Sub-Commission began to discuss Article 4, it had before it two drafts, one submitted by Mr. Abram[34] and one, jointly, by Messrs. Ivanov and Ketrzynski.[35]

Mr. Abram's text declared "all incitement to racial hatred and discrimination resulting in or likely to cause acts of violence, whether by individuals or organizations, as an offence against society and punishable under law." The draft asked States Parties not to grant franchises to organizations or individuals for the purpose of inciting to racial hatred, and not to permit its officials or government-supported agencies to promote or incite racial hatred or discrimination.

Messrs. Ivanov and Ketrzynski's draft urged "to prohibit and disband racist, fascist, and any other organization practising or inciting to racial discrimination," "to admit no propaganda of the superiority of one race or national group over another," and to consider "participation in the activities of such organizations, as well as incitement to or acts of violence on the ground of their racial, national or ethnic origin" as a "criminal offence counter to the interest of society punishable under laws."

Several amendments were suggested, and new drafts were submitted. Finally Messrs. Cuevas Cancino (Mexico) and Ingles (Philippines) submitted a revised text[36] which condemned all propaganda and organizations which justify or promote racial hatred and discrimination, urged the penalization of all incitement to racial discrimination resulting in, or likely to cause, acts of violence, and urged that organizations, and also organized propaganda activities which promote and incite racial discrimination, should be declared illegal and prohibited.

2 *Discussion in the Commission*

Several amendments to the Article were proposed in the Commission. Some representatives expressed doubts regarding the words "or likely to cause" in paragraph (a). They felt that the words could give place to subjective judgments, and make possible abuse on the part of public officers.

A Danish amendment proposed to replace the words "racial discrimination resulting in or likely to cause acts of violence" by "or acts of violence against any race or group of persons of another colour or ethnic origin." Other representatives pointed out, however, that the Danish amendment referred only to

34 E/CN.4/Sub.2/L.308, Add.1/Rev.1/Corr.1.

35 E/CN.4/Sub.2/L.314.

36 E/CN.4/Sub.2/L.330/Rev.1.

acts of violence and incitement to acts of violence, already punishable in most countries, regardless of their motivation. They favoured that appeals to acts of racial discrimination and racial violence should also be held punishable.

The representative of Denmark withdrew his amendment in favour of an Indian oral proposal, which proposed to replace the words "or likely to cause acts of violence" in the text submitted by the Sub-Commission, by the following: "acts of violence, 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." The Indian amendment was adopted unanimously.

Costa Rica proposed to insert in paragraph (b) after the word "organizations," the words "or the activities of organizations, as appropriate." This amendment, intended to meet objections related to the matter of freedom of expression, was originally submitted as a sub-amendment to an amendment of the USA which called for the insertion of the words "activities of" before the word "organizations." The USA amendment was later withdrawn in favour of the Costa Rican amendment.

Other members opposed the USA and Costa Rica amendments, pointing out that the rights to freedom of expression and to freedom of association were not unlimited.

Several amendments and sub-amendments, intended to strengthen the text, were rejected. Finally, paragraph (b), as amended, was adopted by sixteen votes to none, with five abstentions.

3 *Discussion in the Third Committee*

Numerous amendments to the text adopted by the Commission were considered by the Third Committee. Denmark, Finland, Iceland, Norway and Sweden proposed to insert, after the words "to this end," the words "with due regard to the rights expressly set forth in Article V." France proposed to insert after the words "such discriminations" the words "within the framework of the principles set forth in the Universal Declaration on Human Rights." Both proposals aimed at meeting the objections related to the question of freedom of expression.

In paragraph (a) the Ukrainian representative proposed to penalize the financing of racist activities. Czechoslovakia asked to declare a punishable offence all "dissemination of ideas and doctrines based on racial superiority or hatred" and to delete the words "resulting in acts of violence."

The United States of America proposed to add, at the end of the first Czechoslovakian amendment, the words "with due regard for the fundamental right of freedom of expression."

In paragraph (b), Poland submitted a text intended to make stronger the wording of that paragraph, and the USA proposed an amendment to Poland's

amendment in order to preserve "the right to freedom of expression and association." India proposed to replace "and" by "or" in the phrase "which promote and incite racial discrimination."

In the light of the difficulties which arose, Nigeria submitted a new text, which corresponds to the final text adopted by the Assembly. Separate votes were taken on the words "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," in the introductory paragraph, "all dissemination of ideas based on racial superiority or hatred," in paragraph (a), and "also the provision of any assistance to racist activities, including the financing thereof" in the same paragraph (a). All these words were retained. Article 4, as a whole, was adopted by eighty-eight votes to none with five abstentions.

4 *Discussion in the General Assembly*

When the draft prepared by the Third Committee was submitted to the General Assembly, five Latin American States—Argentina, Colombia, Ecuador, Panama and Peru—introduced an amendment in order to delete in sub-paragraph (a) the words "dissemination of ideas based on racial superiority or hatred." The amendment was defeated by a vote of fifty-four against, twenty-five in favour and twenty-three abstentions. When introducing his amendment, the Argentine representative supported the punishment of organizations devoted to racial discrimination, propaganda activities, and acts of violence, as well as the incitement or promotion of discrimination. But the sponsors of the amendment did not wish to condemn "the fact that a scientist might publish a document pointing out differences among races…We are not opposed to a discussion on the subject between two or more persons in a public place."[37]

5 *Contents of Article 4. The Questions of Freedom of Speech and Association*

Article 4, which should be related to Article 9 of the Declaration, raised, as the one in the Declaration did, many difficulties in all stages of its drafting. As it was stated in the General Assembly,[38] Article 4 "was the outcome of a difficult compromise after hours, and even days, of discussion, drafting and redrafting." Some delegations saw in Article 4, as finally drafted, and even more in the light of some amendments submitted to the text prepared by the Commission, an infringement of the fundamental rights of freedom of speech and freedom of

37 Statement of the Argentine representative in the General Assembly, A/PV. 1406, p. 27.

38 By the delegate of Ghana, Mr. Lamptey, A/PV.1406, p. 7.

association.[39] The representative of Colombia even announced that, because of Article 4, the Colombian Parliament would be unable to ratify "a pact contrary to the political constitution of the country and contrary to the norms of public life." Article 4, he added, "is a throwback to the past," since "punishing ideas, whatever they may be, is to aid and abet tyranny, and leads to the abuse of power…As far as we are concerned and as far as democracy is concerned, ideas should be fought with ideas and reasons; theories must be refuted by arguments and not by the scaffold, prison, exile, confiscation or fines."[40] The Colombian delegate made the point that penal law should not be imposed as "punishment for subjective crimes."

Article 4 has an opening paragraph and three operative paragraphs imposing concrete duties on States Parties. In the opening paragraph States Parties condemn (a) *all propaganda* and (b) *all organizations* that 1. *are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin*, or 2. *attempt to justify and promote racial hatred and discrimination in any form*.

The opening paragraph of Article 4 as well as paragraph 1 of Article 9 of the Declaration, condemn all propaganda and all organizations based on theories of racial superiority. Both also refer to one race or group of persons of one colour or ethnic origin. This paragraph should be related to Article 1 of the Convention, that defines racial discrimination, as well as to Article 3, that condemns racial segregation and *apartheid*. The terms "race or group of persons of one colour or ethnic origin" should not be interpreted in a restricted way. The purpose is to condemn any theory of racial superiority in the broad sense of the definition contained in Article 1.

But the Convention goes further than the Declaration, in that it condemns not only propaganda and organizations which attempt to justify or promote racial discrimination, but also those that attempt to justify or promote racial *hatred*. The use of the word *hatred* caused many difficulties, and the point was made that, being only a feeling, a state of mind, it was impossible to deal effectively with racial hatred. The point was stressed particularly with regard to the first operative paragraph of Article 4 which urges States to declare a punishable offence the dissemination of ideas based on racial superiority or hatred.

In the second part of the opening paragraph, States Parties undertake to adopt *immediate* and *positive* measures to eradicate incitement to, or acts of, racial discrimination. To this end, States Parties will have to adopt, *inter alia*, three kinds of measures, always *with due regard to the principles embodied in*

39 See statement of the representative of the United Kingdom, Lady Gaitskell, in the Third Committee, A/C.3/SR.1315, p. 2.

40 A/PV.1406, p. 42–43.

the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention.

The phrase beginning with "with due regard" was introduced, as explained before, in the Third Committee in order to meet objections of those who maintained that Article 4 would violate the principles of freedom of speech and freedom of association. The incorporated phrase was interpreted in the sense of giving State Parties the right to understand Article 4 "as imposing no obligation on any party to take measures which are not fully consistent with its constitutional guarantees of freedom, including freedom of speech and association."[41] Provisions of the Universal Declaration of Human Rights that should be particularly kept in mind in this regard are Articles 19 (on freedom of opinion and expression) and 20 (on freedom of assembly and association), both, of course, with the limitations permissible under Article 29 (2) of the Declaration.

The three kinds of obligations that Article 4 imposes upon States Parties in its three operative sub-paragraphs are: (a) to punish dissemination of racist ideas, incitement to racial discrimination and racist violence and activities; (b) to declare illegal racist organizations and propaganda; (c) to prevent official bodies from engaging in racial discrimination.

Sub-paragraph (a) deals with the first point. States Parties shall declare an offence punishable by law (a) all dissemination of ideas based on racial superiority or hatred; (b) incitement to racial discrimination; (c) acts of violence against any race or group of persons of another colour or ethnic origin; (d) incitement to acts as expressed in (c); (e) provision of any assistance to racist activities, including the financing thereof.

As said above, the question of dissemination of ideas based on racial superiority or hatred engendered an amendment in the General Assembly itself, when the report of the Third Committee was discussed. In all the debates it was made clear that the Convention should not be interpreted as objecting to the dissemination of scientific ideas that deal with the problem of race. It should not be forgotten, however, that in the past many books and papers aimed at disseminating racial hatred adopted the external form of "scientific" books or studies. The Nazi regime was specially prolific in the production of such studies. The reference in the opening sentence to the Universal Declaration and to the rights set forth in Article 5 should, therefore, help to interpret sub-paragraph (a). It is not the free discussion of ideas which should be punished, but the dissemination of ideas based on "racial superiority or

41 Statement in the General Assembly by the representative of the United States of America, A/PV.1406, p. 53–55.

hatred," and this always in accordance with the constitutional framework of each country in order not to violate fundamental rights.

There are no difficulties with the punishment of acts of violence or incitement to such acts. But problems arise from the use of the word "incitement" when referring to racial discrimination. It was one of the controversial points raised in all the stages of the drafting of the Convention.

Also complicated is the matter of the provision of "assistance to racist activities, including the financing thereof." The question was asked whether buying a propaganda booklet of a racist organization could involve the danger of having committed a crime.

We are here again in the presence of one of those marginal fields when it is hard *a priori* to state if an offence is being committed. States Parties, when implementing the duties imposed on them by Article 4 and adopting the respective penal legislation, will have to establish clearly the dividing line between licit and illicit acts in order to avoid precisely the violation of rights in those marginal fields. The British delegate declared, for instance, that her country could never agree to punish by law somebody who paid a subscription towards membership of a fascist organization.[42]

Sub-paragraph (b) deals with racist organizations. States Parties shall declare illegal and prohibit organizations which promote and incite racial discrimination. The Declaration uses, in its article 9, the words "promote *or* incite," after the adoption, by the General Assembly itself, of an amendment by Argentina intended to add the words "or incite to." The adoption of this amendment permitted the Assembly to bring to an end a crisis which delayed the adoption of the Declaration. The Convention, on its part, uses the words "promote *and* incite."

The prohibition of racist organizations was also one of the most difficult problems in the drafting of the Convention. The matter of freedom of association is involved here, and again we have the question of marginal problems. During the discussion it was pointed out that racist organizations could not be allowed to become a danger to peace. They should, therefore, be declared illegal as soon as it becomes clear that they intend to engage in promoting and inciting racial discrimination. Again it is a matter for internal penal legislation to be adopted in accordance with the Convention to solve these problems in the framework of each constitutional system.[43]

States Parties should also declare an offence "organized and all other propaganda activities of a racist nature." This phrase refers to forms of propaganda

42 In the Third Committee, A/C.3/SR.1315, p. 2.

43 Numerous countries have adopted legislation against racist organizations. See this writer's above-mentioned Survey. See, also, Part VI, Chapter I.

carried on by groups which do not possess the status of organizations but that are considered dangerous. The words "all other" provide a wide field for internal legislation.

Participation in organizations such as those to be declared illegal, and in activities such as those mentioned, should also be declared a punishable offence.

Sub-paragraph (c) determines that States Parties shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination. There are no major difficulties involved in this sub-paragraph. It is obvious that activities which are an offence when committed by individuals should certainly not be committed by public authorities or public institutions. The words "public authorities or public institutions" are also used in Article 2, and Article 4 employs them in the same sense. Autonomous institutions should therefore be included.

Sub-paragraph (c) differs from the preceding two by the fact that it does not impose upon States Parties any obligation related to their internal criminal law, but only urges them to adjust their policies to principles in accordance with the Convention and to take care that public officers, on the national and local levels, do not depart from such policies. In that sense it complements Article 2, paragraph 1.

Most of the difficulties involved in Article 4 of the Convention received expression during the debates in the Third Committee and in the subsidiary United Nations bodies. A similar debate took place previously during the discussion of what subsequently became Article 9 of the Declaration.

One of the points of the discussion was the need, already commented on, to reconcile respect for the right of expression and association with the desire to provide effective sanctions against the advocacy of racial discrimination and hatred. The question is related to the right of the State to intervene even before acts of violence are committed, or are likely to be committed. It was argued that to recognize such a right would be a means of giving States the right to punish intentions or even feelings. But, as indicated, States could certainly not wait until the unlimited right of association reaches a stage of imminent violence against sectors of the population.

The distinction was also made between the need of the State to prohibit its agents to engage in racist activities, and its limitations when the ideas of private individuals are involved. The fact that a government did not prohibit individuals from expressing certain views did not mean that the government itself condoned those views, but "citizens must still be allowed the right to be wrong."[44]

44 The American expert, Mr. Morris Abram, in the Sub-Commission. E/CN.4/Sub.2/SR.418.

The risks involved in the power given the State to prohibit organizations were also exposed in the debate. Such a power, it was said, opens the way for totalitarian measures and abuses. On the other hand, it was recalled that such a power was already incorporated in international instruments, such as the Treaty of Peace signed by several countries with Italy after the Second World War, the Potsdam Agreement, the Treaties of Peace with Austria and Finland and the Treaty of Peace with Hungary.[45]

The differences between incitement to racial discrimination and propaganda in favour of it, were also discussed. For the Italian expert in the Sub-Commission, Mr. Capotorti, for instance, while propaganda could be regarded only as the expression of an opinion contrary to the established order, incitement was an act that could be declared illegal.[46]

The relationship between hatred and incitement was stressed by those who considered that "the fact of creating an atmosphere of racial hatred" would inevitably lead indirectly to racial discrimination.[47]

Some discussion was also devoted to the question of using the words "promote or incite" in sub-paragraph (c). The proposal was made to drop the word "promote" or use the conjunction "and" between both words, since the word "promote" by itself could be too widely interpreted. It was argued that, while incitement was a conscious and motivated act, promotion presented a "lower degree" of motivation, and might occur even without any real intention or endeavour to incite.

Several references were made during the debate to Articles 29(2) and 30 of the Universal Declaration of Human Rights, and to Article 26 of the draft Covenant on Civil and Political Rights. References were also made to the difficulties of States Parties in adjusting their internal criminal law to the terms of sub-paragraphs (a) and (b).[48] The representative of France in the Third

45 The representative of Hungary in the Third Committee declared that his country could not sign a Convention which *permitted* fascist organizations to operate.

46 E/CN.4/Sub.2/SR.418.

47 The Polish expert, Mr. Ketrzynski, E/CN.4/Sub.2/SR.418.

48 Canada abstained from voting on these paragraphs in the Third Committee "because they went considerably beyond the existing provisions of Canadian criminal law," under scrutiny at that time. An Act to amend the Canadian Criminal Code was introduced following the report of a special committee which concluded that the protection of individuals as members of groups required the enactment of legislation to curb the spreading of racial and religious hatred. Under the heading of "Hate propaganda" the Act, passed by the House of Commons on 13 April 1970, as Bill C-3, covers incitement to hatred or contempt against any "identifiable group," i.e. any section of the public distinguished by colour, race, religion or ethnic origin.

Committee felt that an international convention should not involve penal sanctions.[49]

The Convention solved in Article 4 one of the conflicts between freedoms which cannot be ignored in the process of shaping of the international bill of rights. The Convention goes further than the Covenant on Civil and Political Rights, which states that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law" (Article 20,2). The more severe pattern was also followed by the Model Law drafted by the Council of Europe, which penalizes persons who publicly call for or incite hatred, intolerance, discrimination or violence against persons or groups of persons distinguished by colour, race, ethnic or national origin, or religion, or insult them or hold them to contempt or slander them on account of the distinguishing particularities above mentioned (Article 1). Organizations whose aims or activities fall within the indicated scope shall be prosecuted and/or prohibited (Article 4). The public use of insignia of organizations that are prohibited is also made an offence (Article 5).[50]

6 *Interpretation of Article 4*

The United Kingdom, when signing the Convention, formulated the following interpretation regarding Article 4: "It interprets Article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by sub-paragraphs (a), (b) and (c) of that Article only in so far as it may consider, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association), that some legislative addition to or variation of existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of Article 4."[51]

The United States of America, without referring directly to Article 4, made the following declaration: "The Constitution of the United States contains provisions for the protection of individual rights, such as the right of free speech, and nothing in the Convention shall be deemed to require or to authorize legislation or other action by the United States of America incompatible with the

49 A/C.3/SR.1318, p. 4.

50 For the full text of the Model Law, see *Measures to be taken against incitement to racial, national and religious hatred*, Council of Europe, Strasbourg 1966; Lerner: International Definitions to Racial Hatred, in *New York Law Forum*, vol. XIV, no. 1, Spring 1968, p. 49.

51 See, in Part V, the statements on interpretation of Article 4 formulated by several States upon signature or ratification of the Convention.

provisions of the Constitution of the United States of America." The declaration followed the points made in the Third Committee by the American representative, Mr. Goldberg.[52]

Article 5. Rights Specially Guaranteed by the Convention

In compliance with the fundamental obligations laid down in Article 2, States Parties, by Article 5, 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 rights expressly enumerated in the Article.

1 *Discussion in the Sub-Commission*

Clauses relating to the obligation of States to prohibit and to eliminate racial discrimination in the enjoyment of various rights, were included in the different drafts submitted to the Sub-Commission. In Mr. Abram's draft articles IV, V and VI dealt with the matter. Article III of Mr. Calvocoressi's draft contained a short enumeration of rights guaranteed to everyone. Article II of the joint draft submitted by Messrs. Ivanov and Ketrzynski enumerated such rights in its paragraphs (d) to (1).

After a discussion of the three texts and amendments proposed, a working group elaborated a new text,[53] which was orally amended and unanimously adopted.

2 *Discussion in the Commission*

Members of the Commission considered as generally satisfactory the structure and the text of draft Article 5. Some representatives would have preferred a more general formulation, in order to avoid leaving out rights proclaimed in the Universal Declaration of Human Rights, although it was felt that the use of the word "notably" could avoid a restrictive interpretation. A reservation was made with regard to the right of everyone to return to his country, in order to prevent its application to members of former royal families.

A joint amendment of France and Poland to the introductory paragraph was adopted unanimously. The new paragraph corresponds to the final text adopted by the Assembly.

A revised amendment of France, Italy and Poland to paragraph (a), corresponding also to the final text, was adopted unanimously.

52 A/C.3/SR.1373.

53 E/CN.4/Sub.2/L.334.

A Polish amendment to add, after paragraph (d) (v), a new sub-paragraph (vi)—the right to inherit—was adopted.

3 *Discussion in the Third Committee*

Several amendments were submitted in the Third Committee to the draft as approved by the Commission on Human Rights. An amendment by Czechoslovakia to insert the word "national" before the words "or ethnic origin" in the introductory paragraph was adopted by a majority. The Committee also adopted an amendment by Bulgaria to insert, in paragraph (c), after the word "elections," the words "to vote and to stand for election."

A proposal of Mauritania, Nigeria and Uganda to add, in paragraph (d) (iv), the words "and choice of spouse," after the word "marriage," was accepted. The Committee rejected by thirty-seven votes to thirty-three, with twenty-four abstentions, a proposal by the same countries to replace paragraph (e) (vi) by the following text: "The equal right to organize cultural associations and to participate in all kinds of cultural activities."

4 *Contents of Article 5*

The Declaration on the Elimination of all Forms of Racial Discrimination does not contain any general article enumerating rights particularly guaranteed. Article 3 of the Declaration refers to civil rights, accesss to citizenship, education, religion, employment, occupation, housing and equal access to any place or facility intended for use by the general public. Article 5 of the Declaration deals with political and citizenship rights and equal access to public service, and Article 7 proclaims the right to equality before the law and to equal justice under the law, and the right to security of person and protection by the State against violence or bodily harm.

Article 5 of the Convention has an opening paragraph and six paragraphs enumerating some rights selected for special mention. The opening paragraph refers to Article 2 of the Convention, which determines the fundamental obligations of States Parties, repeats—unnecessarily, according to some delegates—their undertaking to eliminate racial discrimination in all its forms, and imposes upon them the obligation to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law. This is the general principle, intended to be as wide as possible, for which purpose the word "everyone" was used.[54] The inclusion of the words "equality before the law" in the opening, and not in the enunciating paragraph,

54 The word "everyone" was objected to, since some delegates considered that distinctions between citizens and non-citizens could legitimately be made by any State with regard to the enjoyment of some rights, as determined by Art. 1 of the Convention.

has also the same purpose of establishing the general principle. The word "notably" was used in order to avoid a restrictive interpretation of the rights enumerated.

As said before, some delegations would have preferred a more general and less detailed wording, with a view to preventing such an interpretation, which could be deemed as logical in the light of the extension of the enumeration. There were also proposals to add a clause stating that the omission of any rights mentioned in the Universal Declaration did not imply that such a right was intentionally excluded from protection by the Convention.

The enumeration of rights in Article 5 should, thus, not be considered as exhaustive. The Article is a typical catalogue of human rights with regard to which discrimination on grounds of race, colour or national or ethnic origin is prohibited. Most of the rights correspond to those listed in the Universal Declaration. No attempt will be made here to discuss the nature, scope or interpretation of the enumerated rights.[55]

Paragraph (a) refers to *the right to equal treatment before the tribunals and all other organs administering justice*. There were proposals to proclaim the right to a "fair trial" and to "equal treatment before the courts." Finally the words used were agreed upon as clear and broad enough.

The paragraph guarantees the right of everyone who seeks justice before a competent organ not to be discriminated against because of racist motivations. It should not be confused with Article 6 of the Convention, which refers to protection and remedies through the competent tribunals in case of violations of the Convention.[56]

Paragraph (b) deals with 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*. The wording of the Declaration on the Elimination of all Forms of Racial Discrimination was here followed.[57]

The violence or bodily harm can be inflicted by public officers or by private individuals or groups. The word "institutions" should be intepreted as referring to violence or harm inflicted through agents or officials of an institution. The purpose of the paragraph is to avoid any distinction in the protection of individuals against any violence, whoever inflicts it.

55 See, *inter alia*, N. Robinson, *The Universal Declaration of Human Rights*, New York, 1958, and H. Lauterpacht, *International Law and Human Rights*, London, 1950. See, also, as relevant, the rich literature on the European Convention on Human Rights.

56 See Art. 7 of the Universal Declaration of Human Rights and Arts. 14 and 26 of the Covenant on Civil and Political Rights.

57 See Art. 3 of the Universal Declaration and Art. 7 of the Covenant on Civil and Political Rights.

Paragraph (c) deals with *political* rights, in particular active and passive electoral rights, i.e. *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*. Article 6 of the Declaration on the Elimination of all Forms of Racial Discrimination refers to *political and citizenship rights* and *to the right to participate in elections through universal and equal suffrage*.[58]

Paragraph (c) does not deal with the problem of citizenship. The principle is that nobody should be deprived, because of reasons of race, colour, national or ethnic origin, of political rights to which he is entitled as a national of the country. The words "to participate in elections" should be understood in a broad sense, in connection with the words "to vote and to stand for election," as covering the complete set of active and passive electoral rights.

In the Sub-Commission some difficulties arose with regard to a proposal by the Soviet expert to have the right proclaimed to actual participation by racial, national and ethnic *groups* in legislative and executive bodies. The amendment was withdrawn when the majority of the experts stated their opposition to a reference to groups, on the basis of the view that the Convention should protect the rights of the individual and not touch the complicated matter of the rights of groups as such.

Paragraph (d) deals, in its nine sub-paragraphs, with "other civil rights."[59] Those mentioned *in particular* are:

(i) *the right to freedom of movement and residence within the border of the State*. The Convention here literally follows the wording of Article 13(1) of the Universal Declaration of Human Rights;[60]

(ii) *the right to leave any country, including his own, and to return to his country*;[61]

(iii) *the right to nationality*. Article 15(1) of the Universal Declaration proclaims that everyone has the right to a nationality. Article 3 of the

58 See Art. 21 of the Universal Declaration and Art. 25 of the Covenant of Civil and Political Rights.

59 The term "civil rights" is not used in Art. 1 of the Convention. The omission cannot be covered by the words "any other field of public life" since some rights mentioned in Art. 5 under the heading of "civil rights" do not belong to the field of "public life."

60 See Art. 12 of the Covenant on Civil and Political Rights.

61 See Art. 13(2) of the Universal Declaration and Art. 12 of the Covenant on Civil and Political Rights.

Declaration on the Elimination of all Forms of Racial Discrimination deals with "access to citizenship";[62]

(iv) *the right to marriage and choice of spouse*. As expressed before, the words "and choice of spouse" were added in the Third Committee, at a suggestion of Mauritania, Nigeria and Uganda. This addition is related to the laws existing in some countries that prohibit inter-racial marriage;[63]

(v) *the right to own property alone as well as in association with others*. This is the literal text of Article 17(1) of the Universal Declaration. The Covenants do not mention this right;

(vi) *the right to inherit*. The Commission on Human Rights adopted a Polish amendment to mention specifically this right, to which neither the Universal Declaration, nor the Covenants, nor the Declaration on the Elimination of All Forms of Racial Discrimination refer explicitly;

(vii) *the right to freedom of thought, conscience and religion*. This right is proclaimed in Article 18 of the Universal Declaration and Article 18 of the Covenant on Civil and Political Rights;

(viii) *the right to freedom of opinion and expression*, which is recognized by Article 19 of the Universal Declaration and Article 19 of the Covenant on Civil and Political Rights;

(ix) *the right to freedom of peaceful assembly and association*. The Convention followed the wording of Article 20(1) of the Universal Declaration. Articles 20 and 21 of the Covenant on Civil and Political Rights deal, respectively, with those two.

Paragraph (e) refers to *economic, social and cultural rights*, and mentions in particular the following:

(i) the right to work, free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work, just and favourable remuneration. These are the same rights enunciated in Article 23, paragraphs (1), (2) and (3) of the Universal Declaration. The rights of employment and occupation are also mentioned in Article 3 of the Declaration on the Elimination of all Forms of Racial Discrimination. In connection with this sub-paragraph, the provisions of

62 Art. 24 of the Covenant on Civil and Political Rights states that every child has the right to acquire a nationality, but no reference is made to adults.

63 The Universal Declaration, Art. 16(1) proclaims the right to marry and to found a family. Art. 23 of the Covenant on Civil and Political Rights and Art. 10 of the Covenant on Economic, Social and Cultural Rights deal with this right.

the ILO Convention concerning Discrimination in Respect of Employment and Occupation, and Articles 6 and 7 of the Covenant on Economic, Social and Cultural Rights, should be taken into consideration;

(ii) the right to form and join trade unions. This right is established in paragraph (4) of the above-mentioned Article of the Universal Declaration and in Article 8 of the Covenant on Economic, Social and Cultural Rights;

(iii) the right to housing, mentioned in Article 3 of the Declaration on the Elimination of all Forms of Racial Discrimination and included among the rights enunciated in Article 25 of the Universal Declaration. This right is enunciated in Article 11 of the Covenant on Economic, Social and Cultural Rights;

(iv) the right to public health, medical care and social security and social services. These rights are enunciated in Article 25 of the Universal Declaration. Articles 12 and 9 of the Covenant on Economic, Social and Cultural Rights deal with these aspects;

(v) the right to education and training. The right to education is mentioned in Article 3 of the Declaration on the Elimination of all Forms of Racial Discrimination, and is dealt with in Article 26 of the Universal Declaration and Articles 13 and 14 of the Covenant on Economic, Social and Cultural Rights. The provisions of the UNESCO Convention Against Discrimination in Education should also be taken into consideration.

The word "education" should be used in the sense of the definition contained in the UNESCO Convention. Situations like those enumerated in Article 2 of the UNESCO Convention—separate educational systems or institutions in order to keep the two sexes apart, or for religious or linguistic reasons, or in order to provide additional educational facilities—shall not be deemed to constitute discrimination, when permitted in a State. The right to training should be connected with the right to work as established in subparagraph (i). The ILO Convention deals with the right to vocational training, also recognized in Article 6 of the Covenant on Economic, Social and Cultural Rights;

(vi) *the right to equal participation in cultural activities*. Article 27 of the Universal Declaration and Article 15 of the Covenant on Economic, Social and Cultural Rights deal with this right.

The last paragraph, (f), refers to *the right of access to any place or service intended for use by the general public such as transport, hotels, restaurants, cafés, theatres, parks*. Articles 3 of the Declaration on the Elimination of all Forms of Racial Discrimination proclaims that *everyone shall have equal access to any*

place or facility intended for use by the general public. This right is not mentioned in the Universal Declaration.

The enunciation of public places and services should not be interpreted in a restrictive way, as indicated by the use of the words "such as."

Article 6. Remedies Against Racial Discrimination

Article 6 reads:

> 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.

1 *Discussion in the Sub-Commission*

The Sub-Commission considered three drafts, proposed, respectively, by Messrs. Abram,[64] Calvocoressi[65] and, jointly, Cuevas Cancino and Ingles.[66] After a discussion, Messrs. Abram, Calvocoressi and Capotorti[67] submitted a new draft, which was orally revised and unanimously adopted. It referred to "effective remedies and protection through independent tribunals" and to the right to obtain from such tribunals reparation for any damages suffered as a result of racial discrimination. The text did not include reference to "other State institutions," as does the final text adopted by the Assembly.

2 *Discussion in the Commission*

The discussion in the Commission centred around the nature of the tribunals which were to assure remedies and protection and to the question of the remedies themselves.

The Commission finally adopted a revised text proposed by Lebanon, incorporating the various amendments proposed and corresponding very closely to the final text. There was general agreement, in the sense that the tribunals

64 E/CN.4/Sub.2/L.308.
65 E/CN.4/Sub.2/L.309.
66 E/CN.4/Sub.2/L.330.
67 E/CN.4/Sub.2/L.339.

mentioned in the Article should be independent national tribunals. The absence of the word "national" was considered a simple omission. The word "competent" proposed by the Soviet Union, was intended to contemplate the creation of new tribunals that might have to be set up to consider exclusively cases of racial discrimination. It was pointed out, however, that the word was used, in a similar context, in Article 8 of the Universal Declaration of Human Rights, as just meaning legal competence. It was also suggested that the qualification of "impartial" be added when referring to the tribunals, but it was considered unnecessary since the word "independent" had already been used.

The United Kingdom proposed to insert the words "contrary to the present Convention" after "racial discrimination" in order to clarify in which cases the remedies and protection were available. The suggestion was opposed on the ground that it could narrow the scope of the article. Agreement was reached on the phrase as stated in the proposal of Lebanon.

The Commission decided to refer to the "right to seek" reparations, in order to avoid prejudgement on the question whether reparations were pertinent or not in a given case. The representative of Austria proposed to add the words "just satisfaction" to cover cases where pecuniary damages were insufficient. It was decided to refer to "just and adequate reparation or satisfaction," in spite of the fact that some members of the Commission considered that those were subjective terms which would create difficulties for the tribunals. It was understood that the right to obtain reparation should cover not only reparation for financial damage, but also the restoration of the victim's rights.

3 *Discussion in the Third Committee*

The Third Committee only voted upon one amendment, proposed by Bulgaria, intended to insert the words "and other State institutions" between the words "tribunals" and "against." The amendment was adopted.

4 *Contents of Article 6*

Article 6 should be compared with Article 8 of the Universal Declaration of Human Rights, Article 2 of the Covenant on Civil and Political Rights, and Article 7(2) of the Declaration on the Elimination of all Forms of Racial Discrimination. The first grants the right to an *effective remedy by the competent natural tribunals for acts violating fundamental rights*. Article 2 of the Covenant refers to an *effective remedy by competent judicial, administrative or legislative authorities*. The Declaration on Racial Discrimination speaks about an *effective remedy and protection against any discrimination on the ground of race, colour or ethnic origin*, through *independent national tribunals competent to deal with such matters*. The Convention goes further than the

aforementioned instruments, granting also the right to seek *just and adequate reparation or satisfaction* for any damage suffered as a result of racial discrimination.

The intention of the drafters of the Article was to ensure that the party responsible for causing injury as a result of racial discrimination, whether it be the State itself or a private individual or organization, should provide an effective remedy to the victim.[68]

The first part of the Article deals with the protection and remedies through competent tribunals and other State institutions. The word "national" here means municipal or domestic tribunals. The second part is intended to ensure reparation or satisfaction when the victim of the act of racial discrimination has already suffered damage as a result of it. The words *just and adequate reparation or satisfaction* should be interpreted liberally. The word *satisfaction* should cover the instances when material reparation is impossible or difficult.

Article 6 should be taken into consideration when dealing with Article 14, paragraph 2, which establishes the procedure for petitions by victims of a violation "who have exhausted other available local remedies."

Article 7. Steps in the Fields of Education and Information

Article 7, as adopted by the General Assembly, reads:

> 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 on the Elimination of All Forms of Racial Discrimination, and this Convention.

When the Sub-Commission on Prevention of Discrimination and Protection of Minorities began the discussion of this Article it had before it the draft prepared by Mr. Abram and an amended text proposed by Mr. Krishnaswami (India).[69] A new text was proposed by Messrs. Abram, Calvocoressi and

68 Statement of the Italian expert in the Sub-Commission, Mr. Capotorti. E/CN.4/Sub.2/SR.425, p. 3.

69 E/CN.4/Sub.2/L.310.

Capotorti[70] and, finally, the Sub-Commission adopted unanimously a text proposed by the Chairman, Mr. Santa Cruz (Chile).[71]

In the Commission on Human Rights, the representative of the United Kingdom submitted an amendment, revised upon a suggestion of the representative of Lebanon and unanimously adopted, according to which "State Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education and information with a view to combating prejudices which lead to racial discrimination and promoting…" The rest of the Article remained unchanged.

During the debate in the Commission it was pointed out that the wording of the Article should follow closely that of Article 8 of the Declaration. The attention of the Commission was called to the fact that in another article reference was made not only to racial discrimination but also to racial hatred. However, since the Article dealt with measures connected with teaching, education and information, it was decided to refer only to discrimination.

Two small changes were made in the Third Committee. One was the adoption of an amendment of Bulgaria, calling for the insertion of the word "culture" between the words "education" and "and." The second one was the addition, proposed by Czechoslovakia, of the words "and of this Convention" at the end of the Article.

Article 7 is inspired by Article 8 of the Declaration. It has a similar intention to that of Article 26(2) of the Universal Declaration, which refers to the purposes of education. Article 5, paragraph 1(a) of the UNESCO Convention Against Discrimination in Education repeats the wording of the Universal Declaration. Article 13 of the Covenant on Economic, Social and Cultural Rights states that education shall promote understanding, tolerance and friendship among all racial, ethnic or religious groups.

This Article does not present any difficulties. We have already indicated the discussion on the inclusion of a reference to racial hatred.

70 E/CN.4/Sub.2/L.339.

71 For its text, see E/CN.4/Sub.2/241, p. 40.

CHAPTER 3

Substantive Articles Not Incorporated in the Convention

The Sub-Commission had before it, and discussed, the text of several articles proposed for incorporation in the Convention, which were later deleted by the Commission on Human Rights.

1 Article on Interpretation

Messrs. Calvocoressi and Capotorti submitted to the Sub-Commission a draft Article (VIII), on interpretation of the Convention, that read:

> 1. Nothing in this Convention shall be interpreted as implying any right to discriminate on any other basis other than those listed in Article I, such as sex, language, religion, political or other opinion, social origin, property, birth or other status.
> 2. Nothing in this Convention shall be interpreted as implying a grant of equal political rights to nationals of a contracting State or a grant of political rights to a distinct racial, ethnic or national group as such.

Mr. Matsch (expert from Austria) proposed to add the following words at the end of paragraph 2:

> in a contracting State where no such special rights have been or are granted to a group of persons for reasons of race, colour or ethnic origin.

The first paragraph, considered unnecessary by some experts, was later withdrawn and Mr. Cuevas Cancino proposed a new text for the second paragraph. It read:

> Nothing in the Convention shall be interpreted as implying positive obligations in accordance with which the States Parties undertake to grant a specific political or social status to aliens in their territory. It shall not be interpreted as a grant of political rights to racial, ethnic or national groups as such, if such a grant might destroy, in whole or in part, the national unity and the territorial integrity of a State Party.

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Messrs. Krishnaswami and Mudawi proposed a different text. It read:

> The distinction between nationals and non-nationals of a State recognized by public international law in the enjoyment of political rights shall not be affected by this convention, nor does it impose a duty to grant *special political rights* to any group because of race, colour or ethnic origin, although it does not prohibit their exercise if otherwise established.

After a discussion in which several oral amendments were proposed, the Sub-Commission adopted a text suggested by the Chairman, which read:

> Nothing in the present Convention may be interpreted as implicitly recognizing or denying political or other rights to non-nationals nor to groups of persons of a common race, colour, ethnic or national origin which exist or may exist as distinct groups within a State Party.

The proposed Article VIII caused considerable difficulty. The discussion centered around two problems: the question of nationals and non-nationals, related to the definition of Article 1, and the applicability of the Convention to groups and not only to individuals. In the Commission the Ukrainian SSR proposed to delete the portion of the text following the words "to non-nationals." France proposed to add the following phrase:

> or as amending provisions governing, on a temporary basis, the exercise of political or other rights by naturalized persons.

France, India and the Philippines proposed to replace the text by the following:

> Nothing in the present Convention may be interpreted as affecting in any way the distinction between nationals and non-nationals of a State, as recognized by international law, in the enjoyment of political or other rights, or as amending provisions governing the exercise of political or other rights by naturalized persons; nor does anything in this Convention impose a duty to grant special political or other rights to any groups of persons because of race, colour or ethnic origin.

The phrase "as recognized by international law" was later deleted by the sponsors.

The Commission devoted several meetings to the proposed Article. The discussion was interrupted in order to allow the Commission to complete all other substantive Articles. When the Commission returned to the proposed Article, India and Philippines withdrew their sponsorship of the joint amendment. France announced that she would be willing to withdraw the text if the Commission were to revert back to the consideration of Article 1, and to delete there the reference to "national origin."[1] Finally, on the motion of Austria, the Commission decided by twelve votes to two, with six abstentions, to delete Article VIII from the draft.

There was agreement in the Commission on the distinction to be drawn between nationals and non-nationals in the enjoyment of political or other rights, as well as on the special position of naturalized persons who might, temporarily, not be in a position, in every country, to enjoy political or other rights immediately. The Ukrainian amendment was objected to by several members of the Commission, who stressed that the Convention should apply to all nationals of a State, regardless of the ethnic group to which they belonged.

2 Other Articles Deleted

The Sub-Commission adopted, as Article IX, a draft Article proposed by Mr. Mudawi that read:

> Every State Party shall, as far as appropriate, include in its Constitution or fundamental law provisions prohibiting all forms of racial discrimination.

Mr. Mudawi also proposed two more Articles, one on the application of the Convention also to all non-self-governing, trust and colonial territories, and one on cooperation between States Parties and regional organizations in connection with the draft Convention. The Sub-Commission did not consider these two draft Articles.

In the Commission on Human Rights, amendments were submitted to the Article IX as adopted by the Sub-Commission. The Ukrainian SSR proposed to replace the words "as far as appropriate" by the words "if this has not yet been done" and to add at the end of the Article the words "and establishing administrative responsibility and responsibility before the courts for the violations of the provisions."

1 See Part III, Chapter II, Art. 1.

Costa Rica submitted a new text which, after revisions, read:

> States Parties shall take steps to promulgate, in conformity with their legal systems, constitutional or legal provisions which may be necessary to prohibit all forms of racial discrimination, and to establish administrative and judicial responsibility for the violation of these provisions.

Members of the Commission considered the text ambiguous and a source of difficulty for States where the procedure for amending constitutions was complicated and required a special act, as well as for those that had no constitutions. Other members felt that the Article would not add anything to the provisions of Article 5 and Article 2, paragraph 1(c).

As for the matter of establishing administrative and judicial responsibility for violations covered by the Convention, several representatives felt that the ordinary internal law would be sufficient.

After the adoption of a motion of India to close the debate on this Article, and after a procedural debate, the Commission adopted, by ten votes to five, with six abstentions, a motion of the United Kingdom proposing to delete Article IX.

3 Article on Anti-Semitism

During the twentieth session of the Commission on Human Rights, the representative of the United States of America proposed an oral amendment to Article III, in order to replace the words "racial segregation and *apartheid*" by "racial segregation, *apartheid* and anti-Semitism."

The representative of the Union of Soviet Socialist Republics orally proposed a sub-amendment to the USA amendment, suggesting the addition of the word "nazism" after the word "apartheid," and the words "and other expressions of hatred based on doctrines of racial superiority" after the word "anti-Semitism."

After a discussion, in which several members of the Commission favoured the idea of a reference to anti-Semitism, while others opposed such a reference in the Article connected with *apartheid*, the USA representative withdrew the oral amendment, and said that she would introduce a new Article specifically condemning anti-Semitism.

The new Article proposed by the USA would read:

> States Parties condemn anti-Semitism and shall take action as appropriate for its speedy eradication in the territories subject to their jurisdiction.

The Union of Soviet Socialist Republics submitted a sub-amendment to the USA amendment. According to it, the text would read:

> States Parties condemn nazism, including all its new manifestations (neo-nazism), genocide, anti-Semitism and other manifestations of atrocious racist ideas and practices and shall take action as appropriate for their speedy eradication in the territories subject to their jurisdiction.[2]

After a debate in which many representatives favoured the adoption of the USA amendment, as well as the sub-amendment of the USSR, the Commission approved, by nineteen votes to none with two abstentions, a motion of the representative of India to transmit the proposal of the USA and the amendments thereto of the USSR, together with the records of the discussion thereon, to the General Assembly.

During the debate it was pointed out that anti-Semitism, of which the most pernicious form had been Hitler's policy of extermination of Jews, had not disappeared. Anti-Semitism should be considered, in all its manifestations, past and present, as a "repugnant form of racial discrimination and as a dangerous social and political phenomenon."[3]

Although many representatives approved the sub-amendment of the USSR, it was suggested that the inclusion of the words "neonazism" brought in a notion with a doubtful meaning which might also have political implications. The reference to nazism, "including all its new manifestations," would provide a satisfactory solution. Some representatives were in favour of dealing with anti-Semitism in one Article and in another Article with nazism, genocide and other forms of racist ideas and practices. It was also suggested that such enumerations be included in the Preamble.

Those who opposed the Article expressed doubts about the desirability of singling out any special form of racial discrimination in the draft Convention. They argued that the special reference to *apartheid* in article 3 followed a similar reference in the Declaration, because *apartheid* has been declared to be part of a governmental policy of a Member State, and it was therefore proper for the United Nations to condemn it. With regard to other forms of racial

2 Both the amendment and the sub-amendment were modified by their sponsors, but later the modifications were withdrawn.

3 Statement of the Soviet representative, Mr. Morozov, E/CN.4/SR.807. He insisted on the close relationship between anti-Semitism and nazism. The Israeli representative Mr. Comay, while stressing the historical association between anti-Semitism and nazism, recalled the manifestations of anti-Semitism outside the nazi context.

discrimination, it would be necessary to determine carefully their enumeration in order to reach general agreement. It was recalled in this connection that the Commission had decided earlier to leave out the reference to nazism in paragraph 6 of the Preamble.

In the Third Committee, Brazil and the USA proposed to insert a new Article, according to which

> States Parties condemn anti-Semitism and will take action as appropriate for its speedy eradication in the territories subject to their jurisdiction.

The USSR introduced an amendment to the Article proposed by Brazil and the USA. According to this amendment, the new Article would read:

> States Parties condemn anti-Semitism, Zionism, nazism, neo-nazism and all other forms of the policy and ideology of colonialism, national and race hatred and exclusiveness and shall take action as appropriate for the speedy eradication of those misanthropic ideas and practices in the territories subject to their jurisdiction.

Ultimately, the USSR replaced the word "misanthropic" by the word "inhuman."

Bolivia introduced a sub-amendment to the Soviet amendment, proposing to delete the word "Zionism" and to replace "neo-nazism" by a more general phraseology referring to all forms of manifestations of nazism.

During the debate on these amendments, Greece and Hungary introduced a draft Resolution according to which the Third Committee would decide not to include in the draft Convention any reference to specific forms of racial discrimination. This decision would not affect the already adopted article on *apartheid*.

By a roll-call vote of eighty in favour, seven[4] against, and eighteen[5] abstentions, the Committee agreed to give priority to the draft Resolution of Greece and Hungary.

After a few delegates referred to the Greek-Hungarian proposal, Ghana moved for the closing of the debate, and its proposal was approved by fifty-seven votes in favour, twenty-four against and eighteen abstentions.

4 Australia, Belgium, Bolivia, Brazil, Canada, Israel and USA.

5 Austria, China, Costa Rica, Dominican Republic, Finland, France, Guatemala, Haiti, Italy, Ivory Coast, Luxembourg, Mexico, Netherlands, New Zealand, Panama, United Kingdom, Uruguay and Venezuela. Absent were: Albania, Burundi, Cambodia, Gambia, Laos, Maldive Islands, Malta, Nepal, Nicaragua, Paraguay, Singapore and South Africa.

As this vote precluded many delegations from referring to the proposed amendments and sub-amendments, some delegations proposed that an opportunity be given to the members of the Committee to explain their stand before the vote on the Greek-Hungarian proposal. The Chairman submitted such request to the Committee and the latter voted, by seventy-seven votes in favour, eight against and twelve abstentions, that the explanations on the vote be given *after* the vote.

A roll-call vote was then taken on the substance of the Greek-Hungarian proposal. The result was: eighty-two in favour, twelve against and ten abstentions.[6]

As a result of the vote, the following amendments could not be considered: the Brazil-USA amendment condemning anti-Semitism; the Soviet sub-amendment condemning not only anti-Semitism but also Zionism, nazism and neo-nazism; the Bolivian sub-amendment deleting the word "Zionism" from the Russian amendment, and Polish and Czech amendments, specifying nazism and fascism.

During the debate on procedure, several representatives announced that they would oppose the Brazilian-USA amendment because they considered that a U.N. Convention should not specifically single out discrimination against a given race. Others who favoured the amendment based their support on the need to refer to particularly evil forms of discrimination. Some delegations were in favour of a specific condemnation of nazism. The majority of Afro-Asian countries stated that they had decided to reject all new proposals, and would vote in favour of the original text prepared by the Commission on Human Rights. The USSR subordinated its position to that of the USA on its own amendment. Greece, one of the cosponsors of the procedural proposal, opposed all specific references as "unnecessary and dangerous."

The Israel representative, Mr. Michael Comay, said that his delegation opposed the Greek-Hungarian proposal, and considered it essential that anti-Semitism should be expressly mentioned in the Convention. After summarizing the history of anti-Semitism, he stated that the Convention owed its origin to the manifestations of anti-Semitism which had occured in a number of countries in 1959 and 1960. The general consensus had been then that anti-Semitism was not a matter of religious intolerance alone, and that it was necessary to draft a separate convention dealing with the elimination of all forms of racial discrimination.

6 The countries which voted against were: Australia, Austria, Belgium, Bolivia, Brazil, Canada, Israel, Luxembourg, Netherlands, United Kingdom, United States and Uruguay. The countries that abstained were: China, Costa Rica, Dominican Republic, Finland, France, Haiti, Italy, Ivory Coast, Mexico and Venezuela.

Commenting on the Soviet amendment bracketing Zionism with anti-Semitism, nazism and neo-nazism, the Israel representative considered it "an affront to Israel and to the Jewish people everywhere." He defined Zionism as the Jewish national movement which had given birth to the State of Israel, endorsed by the United Nations in 1947, when the Soviet Union had associated itself with the majority, thus approving Zionism.

During the debates in the Commission and in the Third Committee it was made clear that anti-Semitism—some delegates considered it more accurate to refer to anti-Judaism—definitely came within the scope of the Convention. Some representatives indicated that it would have been preferable to condemn anti-Semitism in the Preamble, instead of dealing with it in a separated operative Article. Others questioned the use of the word anti-Semitism, since the phenomenon to which it referred dealt only with Jews and not with Semites in general. Others, while indicating their opposition to anti-Semitism, considered that it was a manifestation of religious and not racial discrimination, and that its place was therefore in the Convention on Religious Intolerance.[7]

In Part II, when dealing with the problem of the universality of the Convention, we have already mentioned the relationship between the anti-Semitic incidents in 1959–1960 and the decision to prepare the two "twin" Conventions on Racial Discrimination and Religious Intolerance. We have also indicated the general interpretation with regard to the broadness of the scope of the Convention. If not specifically mentioned, anti-Semitism is therefore clearly one of the phenomena which the Convention condemns, declares punishable and attempts to eliminate.[8]

The shift in the USSR stand may be explained in many ways. The developments around the position of the Jewish minority in Russia, as well as the increasing Soviet involvement in the Middle East conflict, obviously played a major role.[9]

While this seems to be beyond doubt, it is however regrettable that one of the most persistent manifestations of racial discrimination and prejudice in

7 The Commission on Human Rights had suggested the inclusion of a reference to anti-Semitism in the draft Convention on the Elimination of all Forms of Religious Intolerance. The Third Committee of the General Assembly, in its 1967 meeting, decided against such a reference.

8 In the Statement on Race and Racial Prejudice issued by UNESCO and prepared at a meeting of experts on race and racial prejudice in September 1967, anti-Semitism is mentioned as an example of racism.

9 On the Problem of anti-Semitism in the Convention see articles by H.D. Coleman in *Human Rights Journal,* Vol. II, 4, 1969, and R. Cohen in *Patterns of Prejudice,* Vol. 2, No. 2, March–April 1968.

the history of mankind, and precisely the one that most directly put into motion the United Nations effort that led to the Convention, should not have been mentioned, at least in the Preamble. This exclusion is still more striking since it was agreed to mention *apartheid* in the Preamble, in addition to a special article on it.

The reasons for the exclusion are clearly political. The Arab States feared that a condemnation of anti-Semitism could be interpreted as support for the State of Israel. The obviously purely political Soviet manoeuvre equating Zionism with nazism created then a situation in which a big majority vote prevented the incorporation of the Article on anti-Semitism.

CHAPTER 4

Measures of Implementation

1 Drafting of the Articles on Implementation

Part II of the Convention (Articles 8 to 16) refers to measures of implementation.[1] Such measures are an essential part of the Convention and without them, as some representatives stated, the Convention would not differ too much from a Declaration and would remain "a dead letter" or a "paper tiger." But the Convention did not create a far-reaching machinery and implementation measures that could ensure universal protection against violations of the rights it proclaims. It represents progress compared to all other U.N. instruments in this respect, but it is less effective than the European Convention on Human Rights or the ILO system.

The Sub-Commission had before it a proposal submitted by Judge José Ingles (Philippines)[2] based on the draft International Covenants on Human Rights prepared by the Commission on Human Rights,[3] with modifications inspired by the 1962 Protocol to the UNESCO Convention. The Sub-Commission only discussed Article I of the proposed measures of implementation, and decided that this text should become Article X of the Convention.

The Sub-Commission also adopted a resolution on additional measures of implementation, transmitting to the Commission on Human Rights a preliminary draft "as an expression of the general views of the Sub-Commission on additional measures of implementation which will help to make the draft International Convention…more effective."

The Commission on Human Rights did not examine the proposed Article X because of lack of time, and it recommended to the Economic and Social

1 Cf. the abundant literature, i.a.: *Proceedings of the Nobel Symposium on the International Protection of Human Rights*, Oslo, 1967; E. Schwelb, "Civil and Political Rights:, The International Measures of Implementation," in *A.J.I.L.*, Vol. 62, No. 4, 1968, p. 827, and "Some Aspects of the Measures of Implementation of the International Covenant on Economic, Social and Cultural Rights," in *Human Rights*, Vol. 1–3, September 1968, p. 377. See, also, Part IV, Chapter I, note 1.

2 E/CN.4/Sub.2/L.321.

3 The articles on implementation in the Covenants as finally adopted by the General Assembly in 1966 differ from the draft prepared by the Commission. We refer later to some of its provisions, considerably weaker than the Commission's draft.

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Council the submission of the text of Article X to the General Assembly, with the records of the discussion thereon.

The need for a strong system of measures of implementation, including the right of individual petition against violations of the Convention, was stressed during the debate in the Commission.

While the Third Committee began the discussion of the Articles on measures of implementation it had before it the proposed Article X and the preliminary draft of additional measures of implementation. The representative of the Philippines submitted nineteen Articles on measures of implementation,[4] based mainly on the documents prepared by the Sub-Commission. Several amendments were suggested to the Philippine proposal, including one from Ghana[5] containing a comprehensive system of measures of implementation.

After a discussion it was suggested that members of the Committee who submitted texts should prepare a new draft which would provide a basis for the discussion in the Committee. Such a draft[6] was submitted by Ghana, Mauritania and the Philippines, and the Third Committee considered it Article by Article.

2 Contents of Part II of the Convention

The implemention system created by the Convention consists essentially of three means—a reporting procedure, an implementation machinery in the form of a Good Offices and Conciliation Committee, and the right of petition—communications in the language of Article 14—by individuals or groups within the jurisdiction of States Parties claiming to be victims of a violation by that State of any of the rights set forth in the Convention.

(a) *The Reporting Procedure. The Committee on the Elimination of Racial Discrimination*

Articles 8 to 11 deal with the Committee on the Elimination of Racial Discrimination.

Article 8, as finally adopted, follows in general, excepting paragraphs 2 and 6, the revised draft submitted by Ghana, Mauritania and the Philippines. The Committee (paragraph 1) will consist of eighteen experts of *high moral standing and acknowledged impartiality* elected by States Parties from amongst their

4 A/C.3/L.1221.

5 A/C.3/L.1274 and 1274/Rev.1.

6 A/C.3/L.1291.

nationals.[7] The word "experts" gave rise to some difficulties. It was made clear that the word was used in a broad sense as referring to experts in racial discrimination and related fields.

The experts shall serve in their *personal capacity*. This means that they will not act as plenipotentiaries—as suggested in Ghana's draft—or as agents or representatives of any government, and will not be bound by any instructions. In their election, consideration will be given to *equitable geographical distribution* and to the representation of the *different forms of civilizations* as well as of the *principal legal systems*. The intention of this paragraph, as of similar provisions in other international instruments, is that the experts should represent as many geographical parts of the world and as many political systems and cultures as possible. Such an arrangement also determines, when political considerations do not prevail, the election of members of U.N. bodies where only a small proportion of State Members can be represented.

According to the second paragraph of Article 8, the members of the Committee shall be elected, by secret ballot, from a list of persons nominated by the State Parties. Each State Party may nominate one person from among its own nationals. While supposed to be impartial experts serving in their personal capacity, the members of the Committee can, thus, only be nominated by their own national State. To what extent such a system can effectively create a body of independent thinking and acting experts, is at least dubious.

The initial election (paragraph 3) shall be held six months after the date of the entry into force of the Convention, i.e. six months from the thirtieth day after the date of the deposit of the twenty-seventh instrument of ratification or of accession. At least three months before the date of each election the Secretary-General shall invite the States Parties to submit their nominations within two months. The Secretary-General will prepare, and submit to the States Parties, a list, in alphabetical order, of all persons thus nominated, indicating the States Parties which have nominated them. The elections will be held (paragraph 4) at a meeting of States Parties convened by the Secretary-General at the Headquarters of the United Nations. 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 present and voting. Two-thirds of the States Parties shall constitute a quorum.

7 The Human Rights Committee created by the Covenant on Civil and Political Rights follows (Art. 28) the same system as the U.N. Convention. The European Convention (Art. 21) does not prevent the election of persons which are not nationals of States Parties.

The term of office of the members of the Committee will be four years (paragraph 5[a]). The term of nine of the members elected at the first election, chosen by lot, shall expire at the end of two years.

For the filling of casual vacancies (paragraph 5[b]), 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. Proposals to allow members of the Committee to nominate alternates were disregarded.

The last paragraph (6) of Article 8, establishing that States Parties shall be responsible for the expenses of the members of the Commission while they are engaged in the performance of their duties, gave rise to difficulties, and the Third Committee rejected by roll-call an amendment of Tanzania proposing that the expenses of the Committee be borne by the regular budget of the United Nations. It was alleged that it would not be in accordance with accepted practices of international law to impose upon States which were not parties to the Convention indirect responsibility for expenses incurred as a consequence of the Convention.[8]

This problem is related to the more complicated question of the nature of the Committee. If States that do not become parties to the Convention do not have to share its expenses, then the Organization should also be free of the expenses involved in the services it has to provide according to Article 10 para. 3 and Article 12 para. 5. The States Parties to the Convention decided at their meetings in 1969 that the expenses of the members of the Committee would be shared equally until July 1970. For the following year, half of the expenses would be shared equally and half on the basis of the United Nations' scale. A new scale would be calculated afterwards.

The Committee (Article 9) will consider the reports[9] that the States Parties undertake to submit to the Secretary-General on the legislative, judicial,

8 The emoluments of members of the Human Rights Committee created by the Covenant on Civil and Political Rights will be paid from United Nations resources (Art. 35).

9 The reporting system is one of the simplest and most generally accepted measures of implementation in the field of human rights. Both Covenants (Part IV), the European Social Charter and the American Convention on Human Rights provide for reporting systems. For the ILO and UNESCO procedures see U.N. Docs. E/4144 and E/4133.

By ECOSOC Resolution 624 B (XXII) of 1 August 1956, Member States of the United Nations and Specialized Agencies were asked to report every three years on developments and progress achieved in the field of human rights. In 1962, non-governmental organizations having consultative status were invited to submit comments and observations (ECOSOC Resolution 888 B. [XXXIV]. The Commission on Human Rights was to consider these reports. By ECOSOC Resolution 1074 C (XXXIX), a new system was established in 1965, inviting

administrative, or other measures that they have adopted and that give effect to the provisions of the Convention. Those reports will be submitted one year after the entry into force of the Convention for the State concerned and, thereafter, every two years and whenever the Committee so requests. They will not be reports on the general situation in the field of human rights but on adopted measures. The Committee is entitled to request further information from the States Parties. It has no authority to request such information from other sources.

The Committee shall report annually, through the Secretary-General, to the General Assembly on its activities and may make *suggestions*[10] and *general recommendations* based on the examination of the reports and information received. They will be reported to the General Assembly together with comments, if any, from States Parties.

The Committee (Article 10) will adopt its own rules of procedure and elect its officers, for a term of two years. The Secretariat of the Committee shall be provided by the Secretary-General and its meetings will, normally, be held at Headquarters. The word "normally," adopted as an amendment introduced by Tanzania, indicates that, when necessary and possible, the Committee may also hold meetings at other places.

(b) *Inter-State Complaints*

Article 11 deals with complaints of one State Party against another.[11] The word "complaint," although originally proposed, is not used. The article says that if a State Party considers that another State Party is not giving effect to the provisions of the Convention, it may bring the matter to the attention of the Committee. The Committee will transmit the communication to the State

States to supply information in a three-year cycle covering the different kinds of rights. These reports were to be published and sent to the Sub-Commission on Prevention of Discrimination and the Protection of Minorities for study. ECOSOC Resolution 1230 (XLII) established new arrangements for dealing with the reports. For the reporting system of the United Nations and the failure of the Commission on Human Rights and of the Sub-Commission in the performing of their tasks, see Professor John Humphrey's above mentioned Report to the 53rd Conference of the International Law Association, pages 5 *et seq*.

10 An amendment, by Sudan, to delete the word "suggestions" and, thus, weaken even more the powers of the Committee, was rejected by a big majority in the Third Committee. Of course, the suggestions and general recommendations can only be made, in this system, to the States Parties and not to the General Assembly.

11 On inter-State complaints procedure, see Art. 41 and 42 of the Covenant on Civil and Political Rights; Art. 24 of the European Convention; Art. 45 of the American Convention; Art. 26 of the ILO Constitution and Art. 12 of the UNESCO Protocol.

Party concerned. Within three months the receiving State shall submit to the Committee written explanations or statements clarifying the matter and remedy, if any, that may have been adopted by the State.

If the matter is not adjusted to the satisfaction of the parties, 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, giving notice to the Committee and also to the other State. The Committee (paragraph 3) will only deal with a matter referred to it in accordance with such procedure 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 provision created difficulty. Tanzania proposed the deletion of the whole of paragraph 3. This was rejected by the Third Committee. The Committee also decided to retain the word "domestic" after Tanzania asked for a separate vote on it.

The use of the words *generally recognized principles of international law* also caused problems. Some delegations requested clarification of the method to be used to ascertain that "all available remedies" had been invoked and exhausted. The Israeli representative suggested placing the burden of proof of such exhaustion on the receiving State.[12] The Third Committee solved this problem with the closing sentence in paragraph 3, according to which this determination will not be the rule where the application of the remedies is "unreasonably" prolonged.[13]

The exhaustion of all available domestic remedies is a generally accepted principle, whose consideration is outside the scope of this study and which is intended to close the door to legal adventures. It is incorporated in Article 26 of the European Convention,[14] Article 14 of the UNESCO Protocol, and in the 1969 American Convention.

12 The Israel representative, Judge Ben-Ito, suggested the addition of a sentence on the following lines: "It will be presumed that all available domestic remedies have been exhausted unless the receiving State proves to the satisfaction of the Committee that domestic remedies exist which have not yet been used."

13 The same formulation is used in the Covenant on Civil and Political Rights (Art. 41).

14 For the interesting European practice with regard to the principle of exhaustion of domestic remedies, see H. Golsong, Implementation of International Protection of Human Rights, *Rec. des Cours* of the Hague Academy of International Law, 1963, III, pp. 1–151; J.E. S. Fawcett, Human Rights and Domestic Jurisdiction, in *The International Protection of Human Rights*, London, 1967, pp. 286–308. For the principle in the Convention, see P. Schaffer and D. Weisbrodt in *Human Rights Journal*, II.4, 1969, p. 632.

When dealing with the matter referred to it, the Committee (paragraph 4) may call upon the States Parties concerned to supply any other relevant information. The States Parties concerned shall be entitled (paragraph 5) to send a representative to take part in the proceedings of the Committee while the matter is under consideration. He will have no voting rights.

(c) *The Conciliation Procedure*

Articles 12 and 13 refer to the *ad hoc* Conciliation Commission, which the Chairman of the Committee on the Elimination of Racial Discrimination will appoint after the Committee has obtained and collated all the information it thinks necessary in a dispute.

The Commission (Article 12, 1[a]) will comprise five persons who may or may not be members of the Committee, and who shall be appointed with the unanimous consent of the parties to the dispute. Its *good offices* shall be made available to the States concerned, with a view to an *amicable solution* to the matter, on the basis of respect for the Convention. If the States Parties to the dispute fail to reach agreement on all or part of the composition of the Commission within three months, the vacancies shall be filled by election, by a two-thirds majority vote by secret ballot of the Committee, from among its own members (paragraph 1[b]). Mexico proposed in the Third Committee that sub-paragraph 1[b] be deleted, but its proposal was rejected. The sub-paragraph is obviously inadequately worded.

According to Article 12, the members of the Commission shall serve in their personal capacity, and shall not be nationals of the Parties to the dispute or of a State not Party to the Convention. The Commission shall elect its own Chairman and adopt its own rules of procedure. Its meetings will normally be held at Headquarters, or at any other convenient place as determined by the Commission. The Secretariat provided for the Committee will also serve the Commission. The expenses of the members of the Commission will be shared equally by the States Parties to the dispute, in accordance with estimates by the Secretary-General. A proposal by Tanzania that the expenses of the Commission be borne by the regular budget of the United Nations was rejected. But (Article 12, paragraph 7) the Secretary-General will be empowered to pay those expenses, if necessary, before reimbursement by the States Parties.[15]

The last paragraph (8) of Article 12 provides that the information obtained and collated by the Committee shall be made available to the Commission,

15 A proposal of Mexico and Tanzania to delete this paragraph was rejected. See above, the remarks on the financial implications of the work of the Committee.

and the Commission may call upon the States concerned to supply any other relevant information.

The third Committee rejected a proposal of Tanzania to add a new paragraph providing that the recommendations of the Commission shall be made public but not necessarily the evidence received by it *in camera*.

The whole Article 12 was adopted by eighty-one votes to none, with six abstentions, in a roll-call vote requested by Mexico. The abstaining countries were Japan, Mexico, Sudan, United Arab Republic, Tanzania and Venezuela.

Article 13 deals with the results of the work of the Commission. When the Commission has fully considered the matter, it shall submit to the Chairman of the Committee a report embodying its findings on all questions of facts relevant to the issue between the parties, and containing such recommendations as it may think proper for the amicable solution of the dispute. The report of the Commission will be communicated by the Chairman of the Committee to each of the States Parties to the dispute, and 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, which are, of course, not mandatory for them.

After the afore-mentioned period, the Chairman of the Committee shall communicate the report of the Commission and the declarations of State Parties concerned to the other States Parties.

All the communications to the States Parties to the dispute, as well as to the States Parties to the Convention are, consequently, made by the Chairman of the Committee. The Commission is limited in its relationship with the States Parties to the request for the relevant information mentioned in Article 12, paragraph 8, *in fine*.

Conciliation procedures for inter-State complaints are included in the Covenants on Civil and Political Rights (Article 42) in the UNESCO Protocol (Article 17), in the European Convention (Article 28 *et seq.*) and in the American Convention (Article 48 *et seq.*).

(d) *The Right of Petition by Individuals or Groups*

The right of petition—communications[16] in the language of the Convention—by individuals or groups of individuals, is recognized by Article 14, the longest

16 As the Italian representative in the Third Committee indicated, the use of the word "communication" and not of the word "petition" was not merely a verbal precaution, since the measures envisaged, as the proposed treatment for such "communications," were "very moderate" (A/C.3/SR.1357, p. 9).

in the whole Convention and a key Article in the set of measures of implementation.

Article 14 was achieved with difficulty. The first text discussed was the one prepared by Ghana, Mauritania and the Philippines. A group of Latin American representatives proposed amendments to paragraph 2 to 5 of that text and a first revised new text[17] was later submitted by Argentina, Chile, Colombia, Costa Rica, Ecuador, Ghana, Guatemala, Mauritania, Panama, Peru and the Philippines. Lebanon proposed several amendments to this new text and, with a view to taking into account these amendments as well as opinions expressed during the discussion, Argentina, Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Ghana, Guatemala, Mauritania, Panama, Peru and the Philippines presented a second revised text,[18] to which the Committee still adopted amendments.

Article 14 creates an optional system. As the representative of Ghana pointed out, it was necessary to reconcile the "sincere wish of many delegations to use the right of petition and communication as an effective weapon against discrimination" with the fact that many States "were jealous of their sovereignty and were reluctant to acknowledge that right."[19]

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 the State Party, of any of the rights set forth in the Convention. If a State Party has not made such a declaration, no communication concerning that State shall be received by the Committee.

The significance of the recognition of the right of individual petition, or of petition by groups of individuals, even on an optional basis, is obvious. If such a right is not recognized, only States could complain when individual rights were violated. Historical experience shows that States are more than reluctant to complain against violations committed by other States—be the relations among them friendly or unfriendly—unless the rights of their own citizens are involved. Such complaints would be a source of international conflict, and would be denounced as interference in the domestic affairs of States, The recent European experience, which shows instances of State complaints, like those of the Netherlands, Norway and Sweden against Greece, which seem to be free of political motivations, is not enough to dispel the doubts in this field.

17 A/C.3/L.1308.

18 A/C.3.1308/Rev.1.

19 A/C.3/SR.1355, p. 10.

"Depolitization" can only be ensured if the right of action does not lie solely with States.[20]

While in the optional system no State can be forced to make the declaration recognizing the right of individual petition, international public opinion could certainly influence individual States inducing them to make such declarations. In any event, the Convention is a step forward.

The individual right of petition is recognized in the Optional Protocol to the Covenant on Civil and Political Rights, which restricts it only to individuals and does not grant it to organizations. Article 25 of the European Convention allows any person, nongovernmental organization or group of individuals to address petitions to the Secretary-General of the Council of Europe, if the State Party has recognized the competence of the Commission for such complaints. The American Convention provides that any person or group or nongovernmental entity legally recognized may lodge petitions or complaints (Article 44).

We have already mentioned the United Nations machinery created by ECOSOC Resolution 888 B (XXXIV), its failure and the criticism raised against it, as well as the new procedure recommended by the Commission on Human Rights.[21] A proposal of Costa Rica to create an office of a U.N. High Commissioner for Human Rights is on the agenda of the United Nations.[22] The High Commissioner would have access to all communications concerning human rights addressed to the United Nations, including complaints by individuals and groups.

The first paragraph of Article 14, as indicated, refers to communications from *individuals* or *groups of individuals*. There were proposals to refer to nongovernmental organizations, but the words *groups of individuals* are quite general and comprehensive. Those individuals or groups should be *within the jurisdiction* of the accused State.

Petitioners have not the right to submit their complaints to the Committee before going through a preliminary domestic procedure, established in paragraphs 2 to 5.[23] According to this procedure, which was not followed by the Optional Protocol to the Covenant, a State which makes a declaration recognizing the competence of the Committee to receive communications

20 Golsong, *op. cit.*, p. 141.

21 See above, footnote 9.

22 See ECOSOC Resolution 1237 (XLII).

23 Saudi Arabia (see A/C.3/L.1297) wanted the individual petitions to be dealt with only by a domestic "National Committee," whose decisions could be appealed before a "national tribunal." The amendment was withdrawn.

from individuals or groups of individuals, *may* establish or indicate a body, within its national legal order, which shall be competent to receive and consider petitions from individuals or groups of individuals. The use of the word *may* again underlines the optional character of the system. The petition should be from individuals or groups within the jurisdiction of the State, who claim to be victims of a violation of any of the rights set forth in the Convention.

A pre-requisite for the submission of such petitions is that the individuals or groups should have exhausted "other available local remedies." This should be interpreted as a reference to the normal internal legal order of the State.

The declaration made by the State, and the name of any body established or indicated in accordance with the prescribed procedure, 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. Any State Party may withdraw a declaration at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee. Again the optional nature of the system is clearly determined.

The body established or indicated shall keep a register of petitions, 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*.

It is only when the petitioner fails to obtain satisfaction from the body established or indicated by the State Party, or when such a body does not exist, that he will have the right to communicate the matter to the Committee, within six months time. The Committee will then (paragraph 6(a)), *confidentially*, bring any communication referred to it to the attention of the State Party alleged to be violating any provision of the Convention. The identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent, a rule that can hardly be observed in practice, and which is likely to be an obstacle to the clarification of the complaint. Its justification is the protection of the personal security of the petitioner.

The Committee shall not receive anonymous communications. The receiving State will have three months to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

The Committee (paragraph 7) will consider the communications in the light of all information made available to it by the State Party concerned and by the petitioner. No communication will be considered unless the Committee has ascertained that the petitioner has exhausted *all available domestic remedies*.

This shall not be the rule where the application of the remedies is unreasonably prolonged.[24]

Paragraph 7(b) of Article 14 says that the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.[25]

The Committee shall include in its annual report, mentioned in Article 9, a summary of the communications received and, where appropriate, a summary of the explanations and statements of the States Parties concerned and its own suggestions and recommendations.

The last paragraph of Article 14, paragraph 9, introduced as an amendment by Sweden, provides that the Committee shall be competent to exercise its functions only when at least ten States Parties to the Convention are bound by declarations recognizing its competence.

(e) *Petitions of Inhabitants of Colonial Territories*

Article 15, which deals with petitions of inhabitants of Trust and Non-Self-Governing Territories, raised many difficulties. It had its origin in a draft Article XIII *bis* proposed by Sudan, the United Arab Republic and the United Republic of Tanzania, to be inserted after Article XIII in the three-States draft. It was intended to make clear that no provisions in the Convention shall prevent the Committee established under Article 8 from accepting petitions from inhabitants of non-independent territories. A first revised text, referring to the Declaration on the Granting of Independence to Colonial Countries and Peoples, was submitted by Mauritania, Sudan, the United Arab Republic and the United Republic of Tanzania.[26]

Second and third revised texts[27] were submitted jointly by twenty-two Afro-Asian countries, and further amended. An amendment of the United Republic of Tanzania to add a new paragraph, empowering the Committee to receive comments, complaints, statements, or other communications directly from the inhabitants of the territories mentioned in paragraph 2(a), was rejected in a roll-call vote, taken at the request of the United States of America, by

24 The comments made on Art. 11(3) are applicable to Art. 14, paragraph 7(a). The Optional Protocol to the Covenant on Civil and Political Rights (Art.5) also expressly prevents consideration of communications that are being examined under another international procedure.

25 This sub-paragraph, proposed as an amendment by Lebanon, was adopted in a roll-call vote, by 43 votes to 12, with 34 abstentions.

26 A/C.3.1307/Rev.1.

27 A/C.3/L.1307/Rev. 2 and 3.

forty-three votes to twenty-five. A roll-call was also taken at the request of the representative of the United Kingdom, on paragraph 2(a). It was adopted by seventy-six votes to three and twelve abstentions.[28]

The whole Article 15 was adopted in a roll-call vote, requested by Tanzania, by eighty-three votes to two (Portugal and United Kingdom), with six abstentions (Austria, Belgium, Canada, France, United States of America and Upper Volta).

Paragraph 1 of Article 15 is intended to eliminate the doubts of those who alleged that this Article could be interpreted as a way of agreeing to the perpetuation of colonialism. That paragraph, which should be referred to Article 87 of the Charter,[29] says that *pending* the achievement of the objectives of the General Assembly resolution concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provision of the 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.

Paragraph 2 caused several problems. The discussion in the Third Committee centred around the question of the right of the Committee to receive direct petitions from the inhabitants of colonial territories. The solution adopted was that the Committee 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 the Convention, in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which the Declaration on the Granting of Independence applies, relating to matters covered by the Convention which are before these bodies.

The Committee shall also receive from the competent bodies of the United Nations copies of the reports concerning legislative, judicial, administrative or other measures directly related to the principles and objectives of the Convention applied by the Administering Powers within the mentioned territories. The Committee shall express opinions and make recommendations to these bodies. In its report to the General Assembly the Committee will include a summary of the petitions and reports it has received from United Nations

28 Australia, Portugal and the United Kingdom voted against and Belgium, Bolivia, Brazil, Canada, Colombia, Costa Rica, France, Iceland, New Zealand, Thailand, USA and Upper Volta abstained.

29 Art. 87 of the Charter allows the General Assembly and the Trusteeship Council to accept petitions and examine them in consultation with the administering authority.

bodies, and the expressions of opinions and recommendations of the Committee related to them. The Committee shall also request from the Secretary-General all information relevant to the objectives of the Convention, and available to him, regarding the mentioned territories.

Critics of Article 15 asserted that it is of a discriminatory nature. For the representative of the United Kingdom Article 15 would establish two categories, one of States which did not have colonial responsibilities and would have an option in the matter of petitions and a second one, of States with colonial responsibilities, that would constitute a sort of international second class, and its inhabitants would form a superior class. The consequence would be a higher standard of human rights in colonial territories than in the territories of States recognized as fully independent.[30] In the note expressing a reservation to Article 15, the United Kingdom also indicated that the Article purported to establish a procedure applicable to the dependent territories of States, whether or not those States have become parties to the Convention.

The difference of treatment between persons under trusteeship and citizens of the administering countries also existed before the adoption of the Convention. The Trusteeship Council, the Fourth Committee of the General Assembly and the Special Committees like the Committee of 24 on Colonialism and on Apartheid, conceded hearings to petitioners from other than Trust Territories, creating a "double standard" according to which complaints directed against colonial governments or against the South African government were widely publicized, while complaints submitted by individuals against their own governments in general were merely filed with the Secretariat and summarized for the Human Rights Commission.[31]

This "double standard" was maintained in the Convention and was, according to its supporters, "necessary and justified on both legal and practical grounds."[32] The legal justification could be found in the fact that the Charter devotes a separate chapter to the non-independent territories "because it had been felt that their inhabitants needed the special protection of the world community." As a practical matter, while racial discrimination existed in independent as well as in non-independent territories, it was practised most severely and felt most strongly in the non-independent territories.

30 A/C.3/SR.1363, p. *Th*11.

31 John Carey, "The United Nations' Double Standard on Human Rights Complaints," *The American Journal of International Law*, October 1966, p. 792–803, and *U.N. Protection of Civil and Political Rights*, Syracuse Univ. Press, New York, 1970.

32 The Yugoslav representative in the Third Committee, A/C.3/SR.1363.

(f) *Legal Nature of the Committee*

When dealing with the financial implications of the establishment of the Committee on the Elimination of Racial Discrimination, we have referred already to the question of its legal nature. The rejection of the Tanzania amendment, proposing that the expenses of the Committee be borne by the United Nations, as well as the rejection (by fifty-five votes to twenty-two, with seventeen abstentions) of another Tanzania amendment, proposing to replace the name of the Committee by "the United Nations Committee on Racial Discrimination," seem to indicate that a majority considered that the Committee was not to be an organ of the United Nations in the technical sense of the word. In the discussion in the Third Committee it was even said that the Committee could not amend the Charter creating new organs of the United Nations.[33]

On the other hand, Articles 8, paragrahs 3 and 4, Article 9, Article 10, paragraphs 3 and 4, Article 12, paragraphs 4, 5, 6 and 7, Article 14, paragraphs 3 and 4 and Article 15, paragraphs 2(a) and (b) show the close relationship between the Committee and the Organization in general. The reports to be submitted to the General Assembly according to Article 9, paragraph 2 are particularly conclusive.

The Human Rights Committee created by Part IV of the Covenant on Civil and Political Rights is also not defined as an organ of the United Nations. Its relationship to the Organization is, however, still closer. Its members will receive emoluments from United Nations sources, on terms to be decided by the General Assembly (Art. 35). They, as well as the members of the *ad hoc* conciliation commissions, will be entitled to the facilities, privileges and immunities of "experts on mission for the United Nations" (Art. 43).

It is difficult to assume that the omission in the Convention of an Article like Article 43 of the Covenant should have the effect of depriving the members of the Committee on the Elimination of Racial Discrimination of the immunities and privileges of experts on mission for the Organization, exposing them to a treatment based merely on courtesy. Of more significance, as a matter of principle, would be the difference as far as the financing of the two Committees is concerned.

Schwelb, taking up this matter, believes[34] that the Committee and the Commission are organs which form part of the Organization, in the same way as, for instance, the various drugs control organs or the International Bureau for Declarations of Death. He does not consider decisive the argument on

33 The Italian representative, A/C.3/SR.1352.

34 *Op. cit.*, p. 1048 ff. See, *infra*, Part IV, Chapter V.

financing and indicates that, naturally, the General Assembly is entitled to establish subsidiary organs. He suggests as a solution that the Committee be brought into relationship with the United Nations as a specialized agency under Articles 57 and 63 of the Charter.

A similar discussion took place with regard to the nature of the Commission and the Court within the European system.[35] As for the Inter-American system, the Commission was considered as an "autonomous entity" until the 1967 amendment of Article 112 of the Charter of the OAS which incorporated the Commission as one of the *organs* of the Organization.

3 Recourse to Other Procedures

Article 16 states that the provisions of the 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 in conventions adopted by, the United Nations and its specialized agencies. They shall also 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.

This Article is based on the text submitted by Ghana, Mauritania and the Philippines and was adopted after incorporating amendments proposed by New Zealand and Lebanon and accepted by the sponsors. A similar rule is contained in Article 44 of the Covenant on Civil and Political Rights.

The principle established in this Article should be interpreted liberally. If States Parties would prefer to have recourse to other procedures in force between them, the Convention would not be an obstacle to this. The same applies in the case of individuals or groups who prefer to seek international remedies other than the right of petition established in Articles 14 or 15, for instance individuals or groups of individuals within the jurisdiction of States bound by the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Convention created an organ that is entitled to examine complaints, hear the States involved, and refer a case to the European Court of Justice. This procedure goes further than the one created by the Convention on the Elimination of all Forms of Racial Discrimination, and complaining individuals within the jurisdiction of States

35 Golsong, *op. cit.*, p. 65.

that are parties to both Conventions could prefer the more comprehensive system.[36]

The Convention would not prevent persons within the jurisdiction of American States from submitting communications to the Inter-American Commission on Human Rights, which will take cognizance of these communications for information purposes. The Commission was created in 1960 as an autonomous entity of the Organization of American States, and was incorporated into its Charter in 1967, as one of the organs of the Organization. The Commission dealt with thousands of communications and, while it lacks enforcement power, it is a valuable even if imperfect instrument for the protection of human rights on a regional basis. A more comprehensive system of protection of human rights exists in America since the adoption, by the Inter-American Specialized Conference on Human Rights in San Jose, Costa Rica, 7–22 November 1969, of the American Convention on Human Rights, prepared by the Inter-American Council of Jurists. It includes, in addition to the Commission, a Court.[37]

If the violation of the Convention is of such a nature that it is also covered by the ILO Convention Regarding Discrimination in Employment and Occupation, adopted in 1958, States Parties as well as employers' and workers' associations have recourse to the procedure whereby formal complaints can be filed against the violating State. Such complaints can be ultimately referred to the International Court of Justice and, if the State in question fails to comply with the Court's decision, the Governing Body can ask the International Labour Conference to make the necessary recommendations.

In the case of discrimination in the field of education, States Parties to the UNESCO Convention Against Discrimination in Education have recourse to the system of the Protocol Instituting a Conciliation and Good Offices Commission. The Commission will draw up a report indicating, where a solution is not reached, its recommendation that the International Court of Justice be requested to give an advisory opinion on any legal question connected with a matter laid before the Commission.

36 A rich literature exists on the European Convention on Human Rights and the organs created. See, *inter alia*, H. Golsong, *op. cit.*; F. Monconduit, *op. cit.*; K. Vasak, *La Convention Européenne des Droits de l'Homme*, Paris 1964; A. McNulty, "The Practice of the European Commission of Human Rights," in *Howard Law Journal*, Symposium on the International Law of Human Rights, Spring 1965.

37 For the Inter-American system of Human Rights see this writer's "Human Rights in Latin America," in *Patterns of Prejudice*, Vol. 2, No. 1, London, January–February 1968, and D.V. Sandifer, "Human Rights in the Inter-American System," *Howard Law Journal*. Spring 1965. The Convention will come into force upon ratification by 11 of the 23 Member States of the OAS.

We have already compared the implementation system of the Convention with that of the Covenants and the Optional Protocol to the Covenant on Civil and Political Rights. Schwelb[38] remarks that Article 16, while making available to States Parties "other procedures" for settling a dispute, is silent on a similar recourse available to individuals. He is of the opinion, however, that it cannot have been the intention of the General Assembly and of the States Parties to affect the rights of the individual arising from other instruments.

This seems to be the correct interpretation. Particularly after the adoption of the Covenants, it is apparent that no single machinery for the implementation of the several human rights instruments can at this stage be created. Different machineries do exist, on the double level of different fields covered and the regional and universal level. None of these machineries goes far enough, and it could not have been the intention of the United Nations members, when drafting the Convention on Racial Discrimination, to impose a restrictive interpretation to Article 16.

38 *Op. cit.*, p. 1048.

CHAPTER 5

Final Clauses—Reservations

Part III of the Convention (Articles 17 to 25)[1] is devoted to final clauses. Suggestions for final clauses were submitted to the Third Committee by its officers, and were based on a working paper on final clauses[2] prepared by the Secretary-General.

1 Signature and Ratification

Article 17 has two paragraphs. According to paragraph 1 the 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 to become a party to this Convention.

Paragraph 2 says that the Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General.

The text finally adopted follows closely the one submitted to the Third Committee by its Officers, who had before them seven alternative clauses suggested in the working paper prepared by the Secretary-General. Poland, considering that it was legally not justified in limiting participation in the Convention only to those States mentioned in paragraph 1, proposed to replace it by a text opening the Convention for signature "by *all* States." The amendment was voted on by roll-call and rejected by forty-one votes to thirty-two, with eighteen abstentions. Those opposing the Polish amendment invoked the other U.N. humanitarian conventions, such as those on the Suppression of the Traffic in Persons, on Political Rights of Women, on the Recovery Abroad, on Maintenance and on Slavery, which also contain the same restrictions.[3] It was also said that many State Members would be unwilling to become parties to the Convention if, by doing so, they would have to enter into treaty relations with entities they did not recognize as States.

Several countries expressed reservations to Article 17, paragraph 1—as well as to Article 22—because of the restrictions as to who may become a party to the Convention.

1 For the full text, see Appendix 1.

2 E/CN.4/L.679.

3 The Covenants on Human Rights adopted in 1966 contain identical clauses.

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2 Accession

According to Article 18, paragraph 1, the Convention shall be open to accession by any State referred to in Article 17, paragraph 1. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General (paragraph 2).

Article 18 corresponds to the text suggested by the Officers of the Third Committee, who had before them three alternative texts included in the document prepared by the Secretary-General. Poland proposed to replace paragraph 1 by a text opening the Convention to accession "by any State which has not signed it." The amendment was rejected in a roll-call vote by 43 to 29, with 19 abstentions. The clause as a whole was also voted on by a roll-call and adopted by seventy-six votes to twelve, with three abstentions.

3 Entry into Force

Article 19 deals with entry into force. The Convention was to 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. 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 of accession.

The final text differs from that prepared by the Officers of the Committee. It requires the deposit of twenty-seven instruments of ratification or accession, instead of twenty as foreseen in the Officers' draft. The Secretary-General, in his working paper, suggested five alternative texts on the number of ratifications and accessions and on the time limits required for entry into force. The reason why the sponsors of the final text wanted the Convention to enter into force after the deposit of the twenty-seventh rather than the twentieth instrument of ratification or of accession, was that they considered it necessary to leave the States Parties more freedom of choice in appointing the eighteen experts of the Committee on the Elimination of Racial Discrimination.

4 Reservations

Article 20, on reservations, is one of the most controversial in the Convention, and was adopted at the General Assembly after the Third Committee had decided not to have such a clause.

Paragraph 1 refers to the procedure. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become parties to the Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

Paragraph 2 deals with reservations incompatible with the *object and purpose* of the Convention. Such a reservation shall not be permitted, nor shall a reservation be allowed the effect of which will inhibit the operation of any of the bodies established by the Convention. The Article does not define what kind of reservations should be considered incompatible with the *object* and *purpose* of the Convention, but determines that a reservation shall be considered incompatible or inhibitive *if at least two-thirds of the States Parties to the Convention object to it*.

According to paragraph 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.

When the Secretary-General submitted his working paper with alternative final clauses, he drew the attention of the Commission on Human Rights to General Assembly resolution 598 (VI), of 12 January 1952, in which the Assembly recommended that organs of the United Nations should, when preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations. The Secretary-General proposed three alternative texts, the most extreme of which excluded the possibility of reservations to the Convention.

The Officers of the Third Committee submitted a text dealing with reservations to any Article of the Convention. Poland proposed a different text that did not permit reservations to Articles 1, 2, 3, 4 and 5. Ghana, Mauritania and the Philippines also proposed to prohibit reservations to Articles 8 to 14. Finally, the Third Committee adopted, by twenty-five votes to nineteen, with thirty-four abstentions, a proposal of Canada to delete the whole clause on reservations.

The reservation clause, as finally adopted, was introduced in the General Assembly on 21 December, the day when the Convention was adopted, as an amendment submitted by a large group of Afro-Asian States.[4] It was adopted by a vote of eighty-two to four, with twenty-one abstentions.

The delegate of Ghana, introducing the amendment, said that the absence of such a clause "could conceivably nullify the effect of the Convention *ab*

4 A/L.479.

initio."[5] After the adoption of the clause, the delegate of Colombia, declaring that his country would not ratify the Convention because of Article 4, criticized the amendment on reservations. Mexico announced that it would abstain from voting on the draft Convention as a whole because of the reservation clause, but later reversed its position and voted in favour of the Convention. France, stating that it was the right of each State to decide on the acceptability of ratifications with reservations, opposed the two-thirds clause, which introduces "political elements" likely to inhibit the purposes of the Convention. Argentina opposed, too, the reservations clause, which her representative considered "hastily" adopted, while Britain, though voting for the reservations clause, maintained her objections to Article 15. The USA considered that it would have been better for the Convention not to contain an Article on reservations and that, if there had to be one, it should provide for a judicial decision on the question of compatibility of a reservation.

The system adopted by the Convention permits, consequently, reservations, but they may not be *incompatible* with the *object* and *purpose* of the Convention, nor may they *inhibit* the operation of any of the bodies established by it. A two-thirds majority will have the power to determine when a reservation should be considered incompatible or inhibitive.[6]

No clause on reservations is contained in the Covenants on Human Rights adopted in 1966, nor in the ILO Convention on Discrimination in Respect of Employment and Occupation. By Article 9 of the UNESCO Convention Against Discrimination in Education, reservations to the Convention are not to be permitted.

5 Denunciation

According to Article 21, a State Party may denounce the Convention by written notification to the Secretary-General. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. The clause, as adopted, follows the text submitted by the Officers of the Third Committee, who had before them four alternative texts.

5 A/PV.1406, p. 6.

6 For the difficulties created by the Advisory Opinion of the International Court of Justice of 21 May 1951, on the question of reservations to the Convention on Genocide, see Nehemiah Robinson, *The Genocide Convention*, ed. Institute of Jewish Affairs, New York 1960, pp. 35–39.

6 Settlement of Disputes

Article 22 deals with the settlement of disputes between two or more States Parties over the interpretation or application of the Convention. When such disputes are not settled by negotiation or by the procedures expressly provided for in the Convention, the dispute shall be referred, at the request of any of the Parties, to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

The Third Committee had before it a draft submitted by its Officers, who considered alternative texts suggested by the Secretary-General, including examples of clauses on arbitration, interpretation and settlement of disputes. The draft was amended, without objection, after a proposal of Ghana, Mauritania and the Philippines to introduce the phrase "or by the procedure expressly provided for in the Convention." The Committee rejected a proposal of Poland intended to prevent what its representative called "the tacit recognition of the compulsory jurisdiction of the Court." The term "compulsory jurisdiction" is, however, "misleading to the extent that it causes the voluntary nature of the acceptance of the jurisdiction to be overlooked."[7]

According to the system adopted, it suffices if *any* of the parties to a dispute requests that it be referred to the International Court. Poland's rejected proposal was intended to replace the word "any" by "all." The supporters of the clause as adopted made it clear that the consent of the parties was in any event given upon ratification of the Convention, and that it would be much more difficult to obtain the consent of States when a dispute already existed than when the Convention was opened for signature.

Several countries expressed reservations to Article 22, considering that the consent of all parties to a dispute is necessary for referring it to the International Court of Justice. The reasons given in each case are summarized in Part IV, 2, when dealing with declarations and reservations.

7 Revision

Any State Party may at any time request the revision of the Convention, according to Article 23. The State who wants to request such a revision shall address a notification in writing to the Secretary-General. The General Assembly shall decide upon the steps, if any, to be taken in respect of such a request.

7 Shabtai Rosenne, *The World Court*, A.W. Sijthoff, Leyden 1962, p. 76.

The adopted text follows the one submitted by the Officers of the Third Committee. The Committee decided to retain the whole text after a separate vote had been taken, at the request of France, on the second sentence. The French delegate indicated that a decision on a request for revision of the Convention should be taken by the States Parties alone, and not by the General Assembly. The sentence was retained by forty-seven votes to twenty-one, with twenty-three abstentions.

8 Notifications

Article 24 imposes upon the Secretary-General the duty to inform all States referred to in Article 17, paragraph 1, 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.

The final text does not refer expressly to reservations, as did the text submitted by the Officers of the Third Committee.

9 Authentic Text

According to Article 5, the Chinese, English, French, Russian and Spanish texts of the Convention are equally authentic. The Convention shall be deposited in the archives of the United Nations and the Secretary-General shall transmit certified copies to all States "belonging to any of the categories mentioned in Article 17, paragraph 1." A Polish proposal to delete the words transcribed in quotes was rejected in the Third Committee.

10 Omitted Clauses

The Third Committee did not adopt two final clauses submitted by its Officers. One declared that the Convention shall apply also to non-self-governing, trust, colonial or other non-metropolitan territories for the international relations of which any State Party is responsible. The second clause dealt with the cases of

a Federal or non-unitary State. Poland proposed to delete both clauses, and the Third Committee so decided. The proposed federal clause was deleted by a vote of sixty-three to seven, with sixteen abstentions. The territorial application clause was deleted by a vote of seventy-six votes to three, with eight abstentions.