



European Convention for the Protection of Human Rights and Fundamental Freedoms¹

Background²

The “European Convention on Human Rights” sets forth a number of fundamental rights and freedoms (right to life, prohibition of torture, prohibition of slavery and forced labour, right to liberty and security, right to a fair trial, no punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, right to marry, right to an effective remedy, prohibition of discrimination). More rights are granted by additional protocols to the Convention (Protocols 1 (ETS No. 009), 4 (ETS No. 046), 6 (ETS No. 114), 7 (ETS No. 117), 12 (ETS No. 177) and 13 (ETS No. 187)).

Parties undertake to secure these rights and freedoms to everyone within their jurisdiction. The Convention also establishes international enforcement machinery. To ensure the observance of the engagements undertaken by the Parties, the European Court of Human Rights in Strasbourg has been set up. It deals with individual and inter-State petitions. At the request of the Committee of Ministers of the Council of Europe, the Court may also give advisory opinions concerning the interpretation of the Con-

¹ The text of the Convention can be accessed here <<http://conventions.coe.int/treaty/en/treaties/html/005.htm>>. The text of the Convention had been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, is repealed and Protocol No. 10 (ETS No. 146) has lost its purpose.

² <<http://conventions.coe.int/Treaty/en/Summaries/Html/005.htm>>.

ventions and the protocols thereto.

Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998, the control machinery established by the Convention has been restructured. All alleged violations of human rights are referred directly to the Court. In the majority of cases the Court sits in Chambers of seven judges. It decides on the admissibility and merits of applications and if necessary undertakes an investigation. The Court will also place itself at the disposal of the parties with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto. Hearings are public unless the Court in exceptional circumstances decides otherwise.

Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases (serious questions affecting the interpretation or application of the Convention or the protocols thereto, or serious issues of general importance), request that the case be referred to the Grand Chamber. If the request is accepted, the resulting judgment of the Grand Chamber will be final. Judgments of Chambers will become final when the parties declare that they will not request that the case be referred to the Grand Chamber, or have made no request for reference three months after the date of the judgment, or, if such a request is made, when the panel of the Grand Chamber rejects the request to refer.

The parties to a case must abide by the judgments of the Court and take all necessary measures to comply with them. The Committee of Ministers supervises the execution of judgments. The Secretary General may request Parties to provide explanations on the manner in which their domestic law ensures the effective implementation of the Convention.

Concept

The Convention consists of 59 articles which divided into 3 Sections. Section I of the Convention consist of 17 articles ranged from article 2 until article 18. Section stipulates the types of human rights covered in the Convention also as a definition of the obligation set out in article 1. Section II stipulates the European Court of Human Rights which is the fundamental subject of the Convention. Any breach to the provisions set out in Section I should be tried in the European Court of Human Rights. This

Section II consists of 33 articles which ranged from article 19 until article 51. Section III stipulates miscellaneous provisions which consist of 8 articles that ranged from article 52 until article 59.

General Principles

The general principles of the Convention are:

1. That every person is subjected to human rights and protected from any human rights violation. European Union wanted to ensure that, so it created this Convention which set out obligation to all of the Conventions' contracting parties to ensure the rights and freedoms of all people in their jurisdiction.

2. The European Union realized the need to established a Court in order to ensure the implementation of the Convention. That is the reason that along with this Convention, it also established a European Human Rights Court which accept applications not only from States but also from individual parties, to ensure that every entity has the right to justice.

Main Features

The main features of the Convention are:

1. Article 1 of the Convention set out obligation to all the contracting parties to secure the rights and freedoms of all people in their jurisdiction defined in Section I of the Convention.
2. Everyone's right to life shall be protected by law (Article 2 par.1). Deprivation of life that is not in contravention of this article is when it results from the use of force which is no more than absolutely necessary: in defence of any person from unlawful violence; in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or in action lawfully taken for the purpose of quelling a riot or insurrection (Article 2 par.2).
3. No one shall be subjected to torture or to inhuman or degrading treatment or punishment (Article 3).
4. No one shall be held in slavery or servitude; required to perform forced or compulsory labour (Article 4 par.1 and 2). Forced or compulsory labour shall not include: any work in the ordinary course of detention

imposed according to the provisions of Article 5 of this Convention or during condition conditional release from such detention; any service of a military character or, in any case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service; any service exacted in case of an emergency or calamity threatening the life or well-being of the community; any work or service which forms part of normal civic obligations (Article 4 par.3).

5. Everyone has the right to liberty and security of person. No one shall be deprived of its liberty even in this following cases: the lawful detention of a person after conviction by a competent court; the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law; the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition (Article 5 par.1).
6. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him (Article 5 par.2).
7. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial (Article 5 par.3).
8. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention

- shall be decided speedily by a court and his release ordered if the detention is not lawful (Article 5 par.4).
9. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation (Article 5 par.5).
 10. Everyone is subjected to a fair trial within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice (Article 6 par.1).
 11. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law (Article 6 par.2).
 12. Everyone charged with a criminal offence has the following minimum rights: to be informed promptly, in a language which he understands the cause of the accusation against him; to have adequate time and facilities for the preparation of his defence; to defend himself in person or through legal assistance; to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; to have the free assistance of an interpreter if he cannot understand or speak the language used in court (Article 6 par.3).
 13. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed (Article 7 par.1).
 14. Everyone has the right to respect for his private and family life, his home and his correspondence (Article 8 par.1).
 15. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance (Article 9 par.1).
 16. Everyone has 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. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises (Article 10 par.1).
 17. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests (Article 11 par.1).
 18. Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right (Article 12).
 19. Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity (Article 13).
 20. Article 14 stipulates the prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
 21. Article 15 stipulates the derogation in time of emergency. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention (Article 15 par.5).
 22. Article 16 stipulates the restriction on political activity of aliens. Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.
 23. Article 17 stipulates the prohibition of the abuse of rights. 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 or at their limitation to a greater extent than is provided for in the Convention.
 24. Article 18 stipulates the limitation on use of restrictions on rights this

article is also the last article of Section I. The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

25. Article 19 marked the beginning of Section II. This article stipulates the establishment of the European Court of Human Rights which shall function as a permanent basis to ensure the realization of the Convention and its Protocols.
26. The Court shall consist of a number of judges equal to that of the High Contracting Parties (Article 20).
27. Article 21 stipulates the criteria for the judges; Article 22 stipulates the election of judges which shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority votes; Article 23 stipulates terms of office that the judges shall be elected for a period of 6 years; Article 24 stipulates the Dismissal of the judges that no judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfil the required conditions; Article 25 stipulates the registry and legal secretaries to assist the Court; Article 26 stipulates the plenary court; Article 27 stipulates Committees, Chambers and Grand Chambers; Article 28 stipulates the declaration of inadmissibility by committees; Article 29 stipulates the decisions by chambers on admissibility and merits; Article 30 stipulates the relinquishment of jurisdiction to the Grand Chamber.
28. Article 31 stipulates the powers of the Grand Chamber that the Grand Chamber shall determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and consider requests for advisory opinions submitted under Article 47 (Article 31).
29. Article 32 stipulates the jurisdiction of the Court, that the jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47, and in the event of dispute as to whether the Court has jurisdiction, the Court shall decide.
30. Article 32 stipulates the inter-State cases. Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting

Party.

31. Article 34 stipulates individual applications that The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.
32. Article 35 stipulates the admissibility criteria. Article 36 stipulates the third party intervention; Article 37 stipulates the striking out of applications. Article 38 stipulates the examination of the case and friendly settlement proceedings.
33. Hearing shall be in public unless the Court in exceptional circumstances decides otherwise; documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise (Article 40).
34. If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party (Article 41).
35. Judgments of Chambers shall become final in accordance with Article 44 par.2 (Article 42). Article 43 stipulates the referral to the Grand Chamber; Article 44 stipulates the final judgments.
36. The Court may give advisory opinion on legal questions concerning the interpretation of the Convention and its protocol. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention (Article 47 par.1 and 2).
37. The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made there under (Article 51). This article also marked the end of Section II which stipulates the Court.

38. Article 52 marked the beginning of Section III, it stipulates the inquiries by the Secretary General; Article 53 stipulates safeguard for existing human rights; Article 54 stipulates the power of the Committee of Ministers; Article 55 stipulates exclusion of other means of dispute settlement; Article 56 stipulates territorial application.

39. Article 58 stipulates denunciation; Article 59 stipulates signature and ratification.

Dispute Settlement

Dispute arises shall be settled in the European Human Rights Court as explained by Section II of this Convention. The Court shall consist of a number of judges equal to that of the High Contracting Parties (Article 20). There shall be Committee, Chambers and Grand Chambers (Article 27) to assess depend on the necessity. Article 31 stipulates the powers of the Grand Chamber that the Grand Chamber shall determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and consider requests for advisory opinions submitted under Article 47 (Article 31). The Court also received individual application as stipulated in Article 34, that The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right. The Court may give advisory opinion on legal questions concerning the interpretation of the Convention and its protocol. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention (Article 47 par.1 and 2).

Entry into Force

The Convention entered into force on 3 September 1953.

Related Regulations

Regulations in relation to this Convention are Universal Declaration of Human Rights 1948, Protocol No.3 (ETS No.45), Protocol No.5 (ETS No.55), Protocol No.8 (ETS No.118), Protocol No.2 (ETS No.44), Protocol No.11 (ETS No.155), Protocol No.9 (ETS No.140), Protocol No.9 (ETS No.140), Protocol No.10 (ETS No.146).

(Ni Putu Anggraeni)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³

Background

Since the Second World War, a considerable number of international instruments have been adopted which formally prohibit torture and inhuman or degrading treatment or punishment. However, for the most part these instruments lack machinery capable of effectively enforcing compliance with the obligations they create; even where such machinery exists, the control exercised tends to be of a post facto nature. Under these circumstances, attention has increasingly been focused on methods of a preventive nature, capable of attacking the phenomenon of torture at its roots.

The precise origins of the Convention can be traced back to a proposal made in 1976 by the Swiss banker, Jean-Jacques Gautier.⁴ In a report prepared at the request of the Swiss government, he proposed the preparation of a Convention establishing a system of visits by independent experts to all places of detention.⁵ His inspiration was clearly the activities of the International Committee of the Red Cross, but the new Convention he envisaged would be of far wider scope.

Gautier's proposal was given legal form in a draft Optional Protocol to the then draft United Nations Convention against torture and other cruel,

³ <http://www2.ohchr.org/english/law/cat.htm>

⁴ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en

⁵ Loc.cit.

inhuman or degrading treatment or punishment⁶. The text was prepared by the Swiss Committee against Torture (an Organisation founded by Gautier) and the International Commission of Jurists, and was formally submitted to the United Nations Commission on Human Rights on 6 March 1980 by Costa Rica⁷. Then, a report by the French parliamentarian, Mr Noël Berrier, the Assembly of the Council of Europe adopted, in 1983, Recommendation 971 on the protection of detainees from torture and from cruel, inhuman or degrading treatment or punishment; appended to the Recommendation was a draft European Convention on the subject, clearly modelled on the Costa Rican draft Optional Protocol.⁸ There followed almost four years of debate at intergovernmental level, which ended in the Convention's opening for signature on 26 November 1987.

Concept

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international human rights instrument, under the purview of the United Nations, that aims to prevent torture around the world. The Convention requires states to take effective measures to prevent torture within their borders, and forbids states to return people to their home country if there is reason to believe they will be tortured. The text of the Convention was adopted by the United Nations General Assembly on 10 December 1984 and, following ratification by the 20th state party, it came into force on 26 June 1987. 26 June is now recognised as the International Day in Support of Torture Victims, in honour of the Convention⁹. To date, 142 nations are parties to it, with another nine having signed but not yet ratified.

General Principles

The main principle of this Convention is fair trial. It means that every person shall be regarded as innocent until he found guilty. Therefore, he shall have the right to entering a fair and non discriminatory trial. This

Convention also applies the principle of prompt and impartial principle, as can be shown in article 12. It means that every person committed to crimes shall have a prompt and impartial proceeding; he shall have the right to speak, and to grant freedom.

Main Features

1. Article 1 of this Convention defines the definition of torture. Torture shall means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Moreover, article 1. 2 stated this definition shall not be use in wider application.
2. Article 2, 4, and 5 explain the obligations of state. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Besides, there are no exceptional circumstances whatsoever (a state of war or a threat of war, internal political instability or any other public emergency) can be use to aside this Convention.
3. Article 3 stated that the principle of non refolement or granting the asylum shall not prejudice the application of this Convention. Therefore, No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
4. According to article 8, the offenses in this Convention shall be deemed to be included as extraditable offenses in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offenses in every extradition treaty to be concluded between them. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed

⁶ Loc.cit.

⁷ Loc.cit.

⁸ http://www.eisil.org/index.php?t=link_details&id=460&cat=516

⁹ <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1

5. According to article 9, States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings. These kinds of assistance can be done in conformity with any treaties on mutual judicial assistance that may exist between them.
6. The enforcement measures were explained under article 10. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Therefore, this Convention shall be included in the rules or instructions issued in regard to the duties and functions of any such persons.
7. Systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction shall be undertaken by each state party to prevent any cases of torture that might happen (article 11).
8. The principle of prompt and impartial investigation. According to article 12, each state party shall ensure the implementation of prompt and impartial proceeding for any persons subjected to the crime regarding torture. The implementation of this principle shall include (article 13) the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.
9. Compensation mechanism for the victims was governed under article 14. It is stated each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a

result of an act of torture, his dependants shall be entitled to compensation. This mechanism shall not prejudice the national law.

10. Article 15 stated that any statement which is established by the government shall not be treated as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.
11. The obligation of states party also governs under article Each State Party shall undertake to prevent in any territory under article 16. They shall prevent any kinds of acts that can be categorized as cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
12. Article 17 requires the establishment of a Committee against Torture which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience. The members of the Committee shall be elected for a term of four years. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture. For the elections of the members of the Committee, it shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present

and vote. The parties can also have the initial election that shall be held no later than six months after the date of the entry into force of this Convention.

13. Article 18 provides the rights and obligations of the Committee, namely:
- a. The Committee shall elect its officers for a term of two years.
 - b. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
 - i. Six members shall constitute a quorum;
 - ii. Decisions of the Committee shall be made by a majority vote of the members present.
 - c. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
 - d. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
 - e. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.
 - f. Article 24 also gives obligation to the Committee to submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.
14. According to article 21, a State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. To settle the dispute, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in

this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission.

15. Article 22 stated a State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.
16. Final provisions. This Convention is open for signature by all States through ratification (article 25). Article 26 stipulates that this Convention is open to accession by all States. The date of entry into force shall be on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession (article 27). Article 28 stated each state can make declaration that it does not recognize the competence of the Committee.

Dispute Settlement

Article 30 stated any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court. If the state does not want to be bound by this provision, it shall make declaration at the time of signature or ratification.

Entry into Force

This Convention was signed in New York, 10 December 1984 through the resolution number 39/46 at the thirty-ninth session of the General Assembly of the United Nations. In accordance with article 27(1), this Convention was entry into force on 26 June 1987 after the twentieth ratification. Up until now, there are 146 parties of the Convention, and 76 states signatories.¹⁰

The Committee against Torture (CAT)

¹⁰ <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

It is the body of 10 independent experts that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its State parties.¹¹ All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every four years.¹² The Committee may also, under certain circumstances, consider individual complaints or communications from individuals claiming that their rights under the Convention have been violated, undertake inquiries, and consider inter-state complaints.

¹³

Moreover, the Optional Protocol to the Convention, which entered into force in June 2006, creates the Subcommittee on Prevention of Torture (SPT).¹⁴ The SPT has a mandate to visit places where persons are deprived of their liberty in the States parties. Under the Optional Protocol, States parties shall establish a independent national preventive mechanisms for the prevention of torture at the domestic level which has also a mandate to inspect places of detention. The CAT meets in Geneva and normally holds two sessions per year consisting of a three week session in April/May and another three week session in November.¹⁵ The Committee also publishes its interpretation of the content of the provisions of the Convention, known as general comments on thematic issues.¹⁶

Related Regulations

1. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
2. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
3. Optional Protocol to the Convention against Torture and Ohter Cruel,

¹¹ <http://www1.umn.edu/humanrts/instree/optprotort.html>

¹² <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/13719f169a8a4ff78025672b0050eba1?Opendocument>

¹³ Loc.cit.

¹⁴ http://www.globalgovernancewatch.org/human_rights/the-united-nations-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment

Inhuman or Degrading Treatment or Punishment

4. Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
5. Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
6. Standard Minimum Rules for the Treatment of Prisoners
7. Basic Principles for the Treatment of Prisoners
8. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
9. United Nations Rules for the Protection of Juveniles Deprived of the Liberty

(Jenny Maria Doan)

Declaration on the Rights of Indigenous People¹⁷

Background

Nowadays, there are over 370 million indigenous people in Africa, the Americas, Asia, Europe and the Pacific. They are among the most impoverished, marginalized and frequently victimized people in the world.¹⁸ The rights of the indigenous peoples around the globe are often violated due to the rapid modernization, especially their right over the ancestral lands and territories, the bases of their collective existence of their cultures and their spirituality.

One of the United Nation most important initiatives for indigenous peoples is the development of a United Nations Declaration on the Rights of Indigenous Peoples. The formulation of a Draft Declaration on the Rights of Indigenous Peoples first began in 1980s within the Working Group on Indigenous Populations. The idea originated in 1982 when the UN Economic and Social Council (ECOSOC) set up its Working Group on Indig-

¹⁵ Loc.cit.

¹⁶ Loc.cit.

¹⁷ www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

enous Populations (WGIP), established as a result of a study by Special Rapporteur José R. Martínez Cobo on the problem of discrimination faced by indigenous peoples. Tasked with developing human rights standards that would protect indigenous peoples, in 1985 the Working Group began working on drafting the Declaration on the Rights of Indigenous Peoples.

In 1993, the Working Group adopted the text of the Declaration and sent it to its superior body, the Sub-Commission on the Promotion and Protection of Human Rights, which, in turn, adopted the text in 1994 and sent it to the Commission on Human Rights for its consideration. In 1995, the Commission on Human Rights considered the text submitted by the Sub-Commission and decided to establish an Inter-sessional Working Group (Resolution of the Commission on Human Rights 1995 / 32, 3 March 1995) with the mandate to consider the text presented and draw up a draft Declaration for its consideration and adoption by the UN General Assembly within the framework of the International Decade of the World's Indigenous People (1995-2004).

Since its establishment in 1995, the Working Group on the Draft Declaration has met annually but although the adaptation of the draft Declaration was recommended in the First International Decade's programme of activities, this did not happen. In 2005 the mandate of the Working Group was renewed but the continued lack of progress in adopting the Universal Declaration on the Rights of Indigenous Peoples is a cause of great concern.¹⁹ The 2005 World Summit and the 2006 Fifth Session of the United Nations Permanent Forum on Indigenous Issues (UNPFII) called for the adoption of the Declaration as soon as possible. Finally, the Human Rights Council that succeeded the Commission on Human Rights adopted the Declaration in June 2006.²⁰

Concept

The Declaration is a comprehensive statement addressing the rights of indigenous peoples. It recognizes the wide range of basic human rights and fundamental freedoms of indigenous peoples. The Declaration ad-

¹⁸ <http://www.iwgia.org/sw248.asp>

¹⁹ <http://www.iwgia.org/sw8516.asp>

²⁰ <http://www.un.org/esa/socdev/unpfii/documents/FAQsindigenousdeclaration.pdf> In September 2007,

dresses both individual and collective rights, cultural rights and identity, rights to education, health, employment, language, and others. The text says indigenous peoples have the right to fully enjoy as a collective or as individuals, all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity. Indigenous peoples have the right to self-determination. By that right they can freely determine their political status and pursue their economic, social and cultural development. They have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they choose to, in the political, economic, social and cultural life of the state.²¹

The Declaration highlights the requirement for prior and informed consultation, participation and consents in activities of any kind that impact on indigenous peoples, their property or territories. It also establishes the requirement for fair and adequate compensation for violation of the rights recognized in the Declaration and establishes guarantees against ethnocide and genocide.²²

General Principles

The main general principle contained in this declaration is the non-discrimination principle. The principle emphasizes the prohibition of all forms of discrimination against indigenous people. Indigenous peoples are equal to all other peoples. They must be free from discrimination. The declaration also promotes their full and effective participation in all matters that concern them.

Other general principle is the self-determination principle. Indigenous peoples have the right of self-determination. Self-determination means the right of indigenous peoples to choose their political status and to make

²¹ Ibid.

²² <http://www.ohchr.org/english/issues/indigenous/declaration.htm>

decision about their own development. However, Self-determination can take a variety of forms.

Main Features

The Declaration on the Rights of Indigenous People consists of 46 Articles. The Main Features are:

1. Fundamental Rights (Article 1-6)

Article 1 states indigenous people have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. Indigenous peoples have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity and individuals. They should be treated equal to all other peoples and individuals. It is stated in Article 2.

According to Article 3, Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. Furthermore in Article 4, Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Other fundamental rights owned by the indigenous people is the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State. It is stipulated in Article 5. The right to a nationality of a country is also one of the fundamental rights owned by indigenous people (Article 6). Every Indigenous individual has the right to be a citizen of a country.

2. Life and Security (Article 7-10)

Article 7 of the Declaration stipulates Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. Moreover, Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to

any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8 lays down the cultural integrity of indigenous people. Indigenous peoples shall be free from cultural genocide. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. Paragraph 2 of this article sets down States to provide effective mechanisms for prevention of, and redress for:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of forced assimilation or integration;
- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Genocide itself means the physical destruction of a people, including through the removal of children. Cultural genocide refers to the destruction of a people's culture.

Based on Article 9, Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right. Article 10 states Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

3. Culture, Religion, and Language (Article 11-13)

In accordance with Article 11 of this Declaration, Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological

and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature. Furthermore, as stated in paragraph 2 of the Article 11, States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12 of the Declaration speaks about Spiritual and Religious Traditions of Indigenous People. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains. And States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Concerning to the preservation of indigenous people's languages, Article 13 states Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons. The role of States on this right is to take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings.

4. Education, Media and Employment (Article 14-17)

Article 14 stipulates Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. Children in particular have the right to all levels and forms of education of the State without discrimination. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access to an education in their own culture and language.

This Declaration, on Article 15 particularly, regulates Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information. States have the obligations to take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society. Article 16 states Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17 sets out the rights of indigenous peoples in the areas of employment. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labor law. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

5. Participation and Development (Article 18-24)

Indigenous peoples must participate in, and give their consent to, decisions on law-making that affect them. Article 18 regulates Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. States are obliged under Article 19 to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect the indig-

enous peoples.

According to Article 20, Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples deprived of their means of subsistence and developments are entitled to just and fair redress.

Article 21 stipulates Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, *inter alia*, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. In line with this right, States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Furthermore, Article 22 emphasizes Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

In exercising their right to development, Indigenous peoples have the right to determine and develop priorities and strategies of the development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions. It is stipulated in Article 23.

Regarding in health matters, as stated in Article 24, Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

6. Land and Resources (Article 25-31)

With regard to land and resources, Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard (Article 25). Regulated specifically in Article 26, Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. They also have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. Moreover in Article 27, States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28 speaks about restitution and compensation. Indigenous peoples have the right to return of land and resources taken without their consent. Where this is not possible, they shall receive just compensation in the form of land and resources. Relating to preserve the environment, Article 29 stipulates Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent, and also programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

As well, in Article 30, Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. States shall undertake effective consultations with the indigenous peoples concerned prior to using their lands or territories for military activities.

Article 31 of this Declaration sets out the right of Indigenous people to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

7. Self-Government and Indigenous Laws (Article 32-37)

As a form of self-determination, indigenous peoples have the right to self-government in relation to their own affairs, such as:

- a. The right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. (Article 32)
- b. The right to determine who their own citizens are. They have the right to decide upon the structures and membership of their organizations. (Article 33)
- c. The right to their own legal customs and traditions, as long as they accord with international human rights law. (Article 34)
- d. The right to decide the responsibilities of individuals to their communities. (35)
- e. The right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members (in particular those divided by international borders) as well as other peoples across borders. (Article 36)

Furthermore, Article 37 stipulates Indigenous peoples have the right

to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honor and respect such treaties, agreements and other constructive arrangements.

8. Implementation (Article 38-42)

In consultation with indigenous peoples according to Article 38, governments shall take measures to give effect to this Declaration. This includes making the rights recognized in the Declaration into national law so that they can be enforced by indigenous peoples. In Article 39, Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

According to Article 41, the organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, *inter alia*, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established. Furthermore in Article 42, The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

9. Understanding the Declaration (Article 43-46)

Article 43 points out the rights recognized in this Declaration constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world. Also in Article 44, the rights recognized in this Declaration apply equally to indigenous men and women.

Article 45 emphasizes that nothing in this Declaration affects other rights indigenous peoples presently hold or may get in the future. In addition, Article 46 stipulates that nothing in this Declaration allows any action against the Charter of the United Nations.

Dispute Settlement

When the infringements of their individual and collective rights occurs, Indigenous people have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights. It is stated in Article 40 of this Declaration.

Entry into Force

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly during its 62nd session at UN Headquarters in New York City on 13 September 2007. It was adopted by a majority of 143 states in favor, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine).

Related Regulation

This Declaration is connected with some regulations, such as:

- 1.The Charter of the United Nations;
- 2.The Universal Declaration of Human Rights;
- 3.The International Covenant on Economic, Social and Cultural Rights;
- 4.The International Covenant on Civil and Political Rights, as well as,
- 5.The Vienna Declaration and Programme of Action.

(Jeska Daslita)

Charter of Fundamental Rights of the European Union²³

Background²⁴

The Charter of Fundamental Rights of the European Union (EU) summarises the common values of the EU Member States and brings together in a single text the traditional civil and political rights as well as economic and social rights. Its purpose is set out in the preamble: “it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.”

In June 1999 the Cologne European Council concluded that the fundamental rights applicable at EU level should be consolidated in a charter to give them greater visibility. The Heads of State or Government believed that the charter should contain the general principles set out in the Council of European Convention of 1950 and those derived from the constitutional traditions common to the Member States, as well as the fundamental rights that apply only to the Union’s citizens and the economic and social rights contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers. It would also reflect the principles derived from the case law of the Court of Justice and the European Court of Human Rights.

The Charter was drawn up by a Convention consisting of the representatives of the Heads of State or Government of the Member States, one representative of the President of the European Commission, members of the European Parliament and members of national parliaments. Formally adopted in Nice in December 2000 by the Presidents of the European Parliament, the Council and the Commission, it constitutes a political undertaking that has no binding legal effect.

In the Lisbon Treaty amending the Treaties, the Charter is given binding effect by the insertion of a phrase conferring on it the same legal value as the Treaties. To this end, the Charter was proclaimed a second time in

²³ The document can be downloaded here <http://www.europarl.europa.eu/charter/pdf/text_en.pdf>

²⁴ Taken from <http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/l33501_en.htm>

December 2007.

For the first time, a single document brings together all of the rights previously to be found in a variety of legislative instruments, such as national laws and international conventions from the Council of Europe, the United Nations and the International Labour Organisation. By making fundamental rights clearer and more visible, the Charter helps to develop the concept of citizenship of the European Union and to create an area of freedom, security and justice. It enhances legal certainty as regards the protection of fundamental rights, where in the past such protection was guaranteed only by the case law of the Court of Justice and Article 6 of the EU Treaty.

The Charter has been repeatedly cited in the opinions of the Advocates-General and has on several occasions influenced the conclusions of the Court of Justice of the European Communities. The opinions of the Advocates-General are not binding on the Court, but suggest legal solutions that are likely to influence it. In some cases the reference to the Charter has been marginal, but in other the Advocates-General have used it to interpret fundamental rights, though noting that it is not legally binding. The Charter's lack of legal status does not mean, however, that it has no effect. Advocates-General Tizzano, Léger and Mischo have stated that "the Charter has undeniably placed the rights which form its subject-matter at the highest level of values common to the Member States." For the first time, in its ruling of 27 June 2006 concerning the Directive on family reunification (Case C-540/03), the Court of Justice made explicit reference to the Charter and stressed its importance.

In its report on the state of fundamental rights in the European Union (2000) (2000/2231(INI)), the European Parliament recommended the creation of a network of experts in fundamental rights to assess the application of each of the rights set out in the Charter. The network was created in September 2002 and on 31 March 2003 it produced its first report on the situation of fundamental rights in the European Union and its Member States in 2002. This is a summary of the national reports by each of the experts and contains recommendations for the institutions and the Member States. The network was financed as a "preparatory action" under Article 49 of the Financial Regulation (Council Regulation No 1605/2002) that terminated in September 2006 since such an action is limited to three years and cannot be renewed.

Concept

The Charter contains a preamble and 54 Articles, grouped in seven chapters:

- Chapter I: **Dignity** (human dignity, the right to life, the right to the integrity of the person, prohibition of torture and inhuman or degrading treatment or punishment, prohibition of slavery and forced labour);
- Chapter II: **Freedom** (the right to liberty and security, respect for private and family life, protection of personal data, the right to marry and found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and the right to engage in work, freedom to conduct a business, the right to property, the right to asylum, protection in the event of removal, expulsion or extradition);
- Chapter III: **Equality (equality before the law, non-discrimination, cultural, religious and linguistic diversity, equality between men and women, the rights of the child, the rights of the elderly, integration of persons with disabilities)**;
- Chapter IV: **Solidarity (workers' right to information and consultation within the undertaking, the right of collective bargaining and action, the right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people at work, family and professional life, social security and social assistance, health care, access to services of general economic interest, environmental protection, consumer protection)**;
- Chapter V: **Citizens' rights (the right to vote and stand as a candidate at elections to the European Parliament, the right to vote and stand as a candidate at municipal elections, the right to good administration, the right of access to documents, the ombudsman, the right to petition, freedom of movement and residence, diplomatic and consular protection)**;
- Chapter VI: **Justice (the right to an effective remedy and a fair trial, the presumption of innocence and the right of defence, principles of legality and proportionality of criminal offences and penalties, the right not to be tried or punished twice in criminal proceedings for the same**

criminal offence);

· Chapter VII: General provisions

In general, the rights referred to apply to everyone. However, the Charter also refers to categories of persons with special needs (children, the elderly, people with a disability). Chapter V also examines the specific situation of European citizens, referring to certain rights already mentioned in the treaties (freedom of movement and residence, the right to vote, the right to petition) and introducing the right to good administration.

Recognising the changes that have occurred in society, the Charter includes not only the traditional rights (right to life, freedom of expression, right to an effective remedy, etc.), but also rights that were not included in the Council of Europe Convention of 1950 (data protection, bioethics, etc.). In line with certain national legislation, it also recognises ways of founding a family other than marriage and no longer refers to marriage between men and women, but simply marriage.

General Principles

The general provisions serve to establish links between the Charter and the European Convention on Human Rights and to determine the scope of the Charter. The Charter applies to the European institutions, subject to the principle of subsidiarity, and may under no circumstances extend the powers and tasks conferred on them by the Treaties. The principles of the Charter also apply to the Member States (to central, regional and local authorities) when they are implementing Community law. The Court of Justice had already confirmed the duty of Member States to respect fundamental rights (see, for example, the judgment in Case C-292/97).

Main Features

Main features of this Charter are:

1. Human dignity is inviolable. It must be respected and protected (Article 1).
2. Everyone has the right to life. No one shall be condemned to the death penalty, or executed (Article 2).
3. Everyone has the right to respect for his or her physical and mental integrity (Article 3 par.1).

4. No one shall be subjected to torture or to inhuman or degrading treatment or punishment (Article 4).
5. No one shall be held in slavery or servitude; or be required to perform forced or compulsory labour (Article 5 par.1 and 2).
6. Trafficking in human beings is prohibited (Article 5 par.3).
7. Everyone has the right to liberty and security of person (Article 6).
8. Everyone has the right to respect for his or her private and family life, home and communications (Article 7).
9. Everyone has the right to the protection of personal data concerning him or her (Article 8 par.1).
10. The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights (Article 9).
11. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance (Article 10 par.1).
12. Everyone has 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. The freedom and pluralism of the media shall be respected (Article 11).
13. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests (Article 12 par.1).
14. The arts and scientific research shall be free of constraint. Academic freedom shall be respected (Article 13).
15. Everyone has the right to education and to have access to vocational and continuing training (Article 14 par.1).
16. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation (Article 15 par.1).
17. The freedom to conduct a business in accordance with Union law and national laws and practices is recognized (Article 16).

18. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest (Article 17 par.1).
19. The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties'). (Article 18).
20. Collective expulsions are prohibited. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment (Article 19).
21. Everyone is equal before the law (Article 20).
22. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited (Article 21 par.1).
23. The Union shall respect cultural, religious and linguistic diversity (Article 22).
24. Equality between women and men must be ensured in all areas, including employment, work and pay (Article 23 par.1).
25. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity (Article 24 par.1).
26. The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life (Article 25).
27. The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community (Article 26).
28. Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices (Article 27).
29. Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action (Article 28).
30. Everyone has the right of access to a free placement service (Article 29).
31. Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices (Article 30).
32. Every worker has the right to working conditions which respect his or her health, safety and dignity (Article 31 par.1).
33. The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education (Article 32).
34. The family shall enjoy legal, economic and social protection. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child (Article 33).
35. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices (Article 34 par.1).

36. Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities (Article 35).
37. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State, in which he or she resides, under the same conditions as nationals of that State (Article 39 par.1).
38. Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State (Article 40).
39. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union (Article 41 par.1).
40. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium (Article 42).
41. Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role (Article 43).
42. Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament (Article 44).
43. Every citizen of the Union has the right to move and reside freely within the territory of the Member States (Article 45 par.1).
44. Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State (Article 46).

45. Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article (Article 47).
46. Everyone who has been charged shall be presumed innocent until proved guilty according to law (Article 48).
47. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable (Article 49 par.1).
48. No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law (Article 50).
49. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties (Article 51 par.1).
50. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others (Article 52 par.1).
51. Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions (Article 53).

52. Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein (Article 54).

Entry into Force

The Charter of Fundamental Rights of the European Union enshrines certain political, social, and economic rights for European Union citizens and residents, into European Union law. It was drafted and officially proclaimed in 2000, but its legal status was then uncertain and it did not have full legal effect until the entry into force of the Treaty of Lisbon on 1 December 2009.

Under the Charter the European Union (EU) must act and legislate consistently with the Charter and the EU's courts will strike down EU legislation which contravenes it. The Charter only applies to member states when they are implementing EU law and does not extend the competences of the EU beyond the competences given to it elsewhere in the treaties.

(Ni Putu Anggraeni)

International Convention on the Elimination of All Forms of Racial Discrimination²⁵

Background²⁶

The adoption of the Convention started as a reaction to an epidemic of swastika-painting and other “manifestations of anti-Semitism and other forms of racial and national hatred and religious and racial prejudices of a similar nature” which occurred in many countries in the winter of 1959-1960. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, which happened to be in session at that time (January 1960), adopted a resolution in which it condemned these manifestations

²⁵ <http://www2.ohchr.org/english/law/cerd.htm>

²⁶ Egon Schwelb, *The International Convention on the Elimination of All Forms of Racial Discrimination*, *The International and Comparative Law Quarterly*, Vol. 15, No. 4 (Oct., 1966), pp. 997-1000

as violations of principles embodied in the Charter and in the Universal Declaration of Human Rights and in which it took the initiative to have factual information on the events, their underlying causes and motivations, and the reaction to them collected with a view to recommending the most effective measures which can be taken against these manifestations.

The action proposed by the Sub-Commission was approved by its superior bodies, including the General Assembly. When, at its 1961 session, the Sub-Commission proceeded to evaluate the data which had been assembled, it was suggested that the General Assembly should be encouraged to undertake the preparation of an international convention which would impose specific legal obligations on the parties to prohibit manifestations of racial and national hatreds. What was then contemplated was an instrument of far narrower scope than what eventually became the Convention of 1965.

The question of manifestation of racial prejudice and national and religious intolerance was again considered by the General Assembly at its seventeenth session in 1962. In the course of the proceedings a number of African States, later joined by others, proposed in the Third Committee of the General Assembly the adoption of a resolution by the original version of which the General Assembly would have decided to prepare an international convention on the elimination of all forms of racial discrimination. Some delegations favoured the preparation of a declaration instead of a convention. It was also proposed that the instrument or instruments to be prepared should aim at the elimination of religious as well as racial discrimination. The seventeenth session eventually decided that two separate to separate the problem of “religious intolerance” from that of “racial discrimination”. The opposition to coverage of religious as well as racial discrimination had come from some of the Arab delegations; it reflected the Arab-Israeli conflict. In addition, many delegations, particularly those from Eastern Europe, did not consider questions of religion to be as important and urgent as questions of race.

The United Nations Declaration on the Elimination of All Forms of Racial Discrimination was proclaimed on November 20, 1963. On the same day the General Assembly requested the Economic and Social Council to have the Commission on Human Rights give absolute priority to the preparation of the Racial Discrimination Convention. On July 30, 1964, the Economic and Social Council submitted the Commission's draft to the

General Assembly, which could take up its consideration only at its twentieth (1965) session because its nineteenth (1964) session was paralyzed as a result of the dispute over the financing of peace-keeping operations and the application of Article 19 of the Charter. At the twentieth session the Assembly's Third Committee devoted forty-three meetings, held between October 11 and December 15, 1965, to the consideration of the draft and unanimously approved the Convention and the accompanying resolution which opened it for signature and ratification.²⁴ The General Assembly approved the Convention in plenary meeting on December 21, 1965.

Concept

The Convention on the Elimination of All Forms of Racial Discrimination (CERD) specifies the measures that States must undertake to eliminate racial discrimination. The Convention also established the monitoring body, the Committee on the Elimination of Racial Discrimination.

Under the Convention, States parties are pledged not to engage in act or practice of racial discrimination against individuals, groups of persons or institutions, and to ensure that public authorities and institutions do likewise. Sponsoring, defending or supporting racial discrimination by persons or organizations is prohibited. State parties are also obliged to review government, national and local policies and to amend or repeal laws and regulations which create or perpetuate racial discrimination. They have to encourage integrationist or multiracial organizations and movements and other means of eliminating barriers between races, as well as to discourage anything which tends to strengthen racial division.²⁷

General Principles

The general principles comprised in this Convention are:

1. The non-discrimination principle. State Parties of this Convention are urged to undertake some measures to eliminate of all forms of racial discrimination.
2. The equality before the Law principle. it is stated in preamble 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.

3. The Exhaustion of local remedies principle. Article 14 Paragrah 2 of this Convention states every individual must have exhausted all the local remedies in his/her country, before filing complaint to the Committee on the Elimination of Racial Discrimination.

Main Features

The Convention consists of a preamble and twenty-five articles. It is divided into three parts:

1. Part I (Article 1-7)

This part obligates State Parties to eliminate of all forms of racial discrimination and to promote understanding among all races. Article 1 of this Convention gives the definition of "racial discrimination". It is defined as 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.

According to Article 2, State Parties shall condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms". It also obliges State parties to promote understanding among all races. To achieve this, the Convention requires the State Parties undertakes:

- a. 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. not to sponsor, defend or support racial discrimination by any persons or organizations;
- c. to review existing policies, and amend or revoke those that cause or perpetuate racial discrimination;
- d. to 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. 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.

Furthermore in Article 3 and Article 4, States Parties shall condemn particularly racial segregation and apartheid and also 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. They shall undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction and to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination.

In compliance with Article 2, Article 5 of the Convention does not only oblige States Parties to prohibit and to eliminate racial discrimination in all its forms but also to guarantee the right of everyone especially the enjoyment of the following rights, such as, the right to equal treatment before the tribunals and all other organs administering justice, the right to security of person and protection by the State, political rights, Economic and social right, the right of access to any place or service, and other civil rights.

Article 6 obliges parties to provide “effective protection and remedies” through the courts or other institutions for any act of racial discrimination. This includes a right to a legal remedy and damages for injury suffered due to discrimination. While Article 7 obliges parties to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, to combat racial prejudice and encourage understanding and tolerance between different racial, ethnic and national groups.

2. Part II (Article 8-16)

Part II Calls for the establishment of a Committee on the Elimination of Racial Discrimination and sets forth a mechanism for implementation of the Convention including the submission of periodic reports documenting compliance with the provisions of the Convention by all State Parties.

Article 8 through Article 10 of the Convention establishes the Committee on the Elimination of Racial Discrimination and authorizes it to make general recommendations to the United Nations General Assembly. Article 11-13 regulates the dispute resolution mechanism between parties, while Article 14 establishes an individual complaints mechanism to the Committee.

3. Part III (Article 17-25)

This Part III governs ratification, entry into force, and amendment of the Convention. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, and subject to ratification (Article 17). This Convention shall be open to accession by any State which has signed the Convention (Article 18).

According to Article 20, The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Article 21 governs the denunciation of the Convention done by a State Party, while Article 23 regulates the revision of the Convention. Moreover, Article 24 stipulates the Secretary-General of the United Nations shall inform all States concerning accession, ratification, date of entry into force, Communications, declarations, and also denunciation of this Convention. Finally, This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations (Article 25).

Entry into Force

The convention was adopted and opened for signature by the United Nations General Assembly on December 21, 1965. In accordance with Article 19, it was entered into force on January 4, 1969, 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. As of October 2009, it had 85 signatories and 173 parties.

Dispute Settlement

Articles 11 through 13 of the Convention establish a dispute resolution mechanism between parties. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, the Committee will establish an ad hoc Conciliation Commission to investigate and make recommendations on the matter. Article 22 further allows any dispute over the interpre-

tation or application of the Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, to be referred to the International Court of Justice.

Article 14 of the Convention provides an individual complaint mechanism. Parties may at any time recognize the competence of the Committee on the Elimination of Racial Discrimination to consider complaints from individuals or groups who claim their rights under the Convention have been violated. Complainants must have exhausted all domestic remedies in their country, before taking the complaint to the Committee.

Related Regulations

Several Regulations related to the International Convention on the Elimination of All Forms of Racial Discrimination are:

1. Charter of the United Nations
2. Universal Declaration of Human Rights
3. Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960
4. Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960
5. The Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organization in 1958,
6. The Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960

(Jeska Daslita)

Convention on the Prevention and Punishment of the Crime of Genocide²⁸

²⁷ <http://www.pdhre.org/conventionsum/cersum.html>

²⁸ <http://www.hrweb.org/legal/genocide.html>

Background

The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly in December 1948 as General Assembly Resolution 260. It defines genocide in legal terms, and as the result of years of campaigning by lawyer Raphael Lemkin, who coined the term by reference to the Simele massacre, the Holocaust, and the Armenian Genocide²⁹, mostly happened during the Second World War. All participating countries are advised to prevent and punish actions of genocide in war and in peacetime.

The Convention defines genocide as any of a number of acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group.

The Convention also declares that there shall be no immunity. Persons committing this crime shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals. Furthermore, the Convention stipulates that persons charged with genocide shall be tried by a competent tribunal of the State in the territory in which the act was committed or by such international penal tribunal as may have jurisdiction with respect to the Contracting Parties. The crime of genocide is a justifiable offence under the Rome Statute of the International Criminal Court (17 July 1998, not yet in force)³⁰.

Concept

This Convention is a major pillar in the evolving framework of international humanitarian rules, declares genocide a crime under international law. It condemns genocide, whether committed in time of peace or in time of war, and provides a definition of this crime³¹. Moreover, the prescribed punishment is not subject to the limitations of time and place.

²⁹ Ervin Staub. *The Roots of Evil: The Origins of Genocide and Other Group Violence*. Cambridge, UK: Cambridge University Press. pp. 8

³⁰ *Ibid.*

Unlike other human rights treaties, the Genocide Convention does not establish a specific monitoring body or expert committee³². It stipulates that any Contracting Party may call upon the competent organs of the United Nations to take such action under the United Nations Charter, which they consider appropriate for the prevention and suppression of acts of genocide. Thus, the matter may be brought before the International Court of Justice which may order interim measures of protection. At present, one such case is pending before the International Court of Justice.

Entry into Force

The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly in December 1948 as General Assembly Resolution 260. It was entry into force on 12 January 1951.³³ Up until now, there are 140 states that became parties to the Convention.³⁴ Several states have made their reservation in the provision of granting immunity from prosecution for genocide without the consent of the concern states. This reservations was made by Bahrain, Bangladesh, India, Malaysia, the Philippines, Singapore, the United States, Vietnam, Yemen, and Yugoslavia.³⁵

General Principles

The main principles on this convention are: 1. the principle of non discriminatory. It shall mean that any persons committed to genocides shall be punishing. 2. This Convention also applies the principle of non-retroactive, means this Convention also applies to the date before it is enter into force.

Main Features

This Convention consists with 19 articles, the main features are :

17. Article 1 of this Convention confirms that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.
18. The definition of genocide is given in article 2. Genocide means any of the following acts committed with intent to destroy, in whole or in

part, a national, ethnical, racial or religious group, as such:

1. Killing members of the group;
 2. Causing serious bodily or mental harm to members of the group;
 3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 4. Imposing measures intended to prevent births within the group;
 5. Forcibly transferring children of the group to another group.
19. Moreover, article 3 of this Convention also give the certain acts that shall be punishable, namely :
 1. Genocide;
 2. Conspiracy to commit genocide;
 3. Direct and public incitement to commit genocide;
 4. Attempt to commit genocide;
 5. Complicity in genocide.
 20. This Convention clearly defines that persons committing genocide or any of the other acts enumerated in previous article shall be punished. Moreover, the Convention does not differentiate whether that person constitutionally responsible rulers, public officials or private individuals (article 4).
 21. The responsibility of the Contracting Parties provides in article 5. They shall undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article 3.
 22. According to article 6, there are two ways of trial in regard of genocide. The persons charged with genocide or any of the other acts enumerated in this Convention shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.
 23. Article 7 provides the provision regarding to extradition. Genocide and the other acts enumerated in this Convention shall not be considered as political crimes for the purpose to grant any kind of asylum. Therefore, the Contracting Parties pledge themselves in such

- cases to grant extradition in accordance with their laws and treaties in force.
24. Article 8 allows any Contracting Party to call upon the competent organs of the United Nations. They can take such actions under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in this Convention.
 25. Settlement of disputes. Article 9 stated the disputes between the Contracting Parties relating to the interpretation, application or fulfillment of this Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.
 26. Final provisions. According to article 10, the Convention shall be signed on 9 December 1948 and it shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations (article 11). Moreover, article 12 clearly stated that this Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.
 27. Article 16 provides about revision mechanism. The revision shall be made upon a request of any Contracting Party by means of a notification in writing addressed to the Secretary-General. Then, The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.
 28. The Secretary-General of the United Nations also has several obligations as shown in article 17. He shall notify all Members of the United Nations and the non-member States contemplated in Article 11 of the following:
 1. Signatures, ratifications and accessions received in accordance with Article 11;
 2. Notifications received in accordance with Article 12;
 3. The date upon which the present Convention comes into force in accordance with Article 13;
 4. Denunciations received in accordance with Article 14;
 5. The abrogation of the Convention in accordance with Article 15;

6. Notifications received in accordance with Article 16.

29. The depository of this Convention shall be the United Nations. In article 18, it said the original of this Convention shall be deposited in the archives of the United Nations. It also shall be registered by the Secretary-General of the United Nations on the date of its coming into force (article 19).

International Criminal Tribunal for Rwanda (TPIR)

It is an international court established in November 1994 by the United Nations Security Council through Resolution number 955.³⁶ This international tribunal was established in order to judge people responsible for the Rwandan Genocide and other serious violations of the international law in Rwanda, or by Rwandan citizens nearby states, between 1 January and 31 December 1994.

In 1995 it became located in Arusha, Tanzania under Resolution 977.³⁷ (From 2006, Arusha also became the location of the African Court on Human and Peoples' Rights). Through several resolutions, the Security Council called on the Tribunal to complete its investigations by end of 2004, complete all trial activities by end of 2008, and complete all work in 2012.³⁸

The tribunal has jurisdiction over genocide, crimes against humanity and war crimes, which are defined as violations of Common Article Three and Additional Protocol II of the Geneva Conventions (dealing with war crimes committed during internal conflicts). So far, the Tribunal has finished 21 trials and convicted 29 accused persons.³⁹ Another 11 trials are in progress. 14 individuals are awaiting trial in detention; but the prosecutor intends to transfer 5 to national jurisdiction for trial. 13 others are still at large, some suspected to be dead.⁴⁰ The first trial, of Jean-Paul Akayesu, began in 1997. Jean Kambanda, interim Prime Minister, pleaded guilty. According to the ICTR's Completion Strategy, in accordance with Security Council Resolution 1503, all first-instance cases were to have completed trial by the end of 2008 and all work is to be completed by 2010.⁴¹

The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia

It is more commonly referred to as the International Criminal Tribu-

nal for the former Yugoslavia or ICTY, is a body of the United Nations established to prosecute serious crimes committed during the wars in the former Yugoslavia, and to try their perpetrators. The tribunal is an ad hoc court which is located in The Hague, the Netherlands.

The Court was established by Resolution 827 of the United Nations Security Council, which was passed on 25 May 1993.⁴² It has jurisdiction over four clusters of crime committed on the territory of the former Yugoslavia since 1991: grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crime against humanity. The maximum sentence it can impose is life imprisonment. The Tribunal aims to complete all trials by the middle of 2011 and all appeals by 2013, except for the trial of Radovan Karadžić which is expected to end in 2012 and the appeal to be heard by February 2014.⁴³

The Tribunal has indicted 161 individuals, and has already completed proceedings with regard to 100 of them: five have been acquitted, 48 sentenced (seven are awaiting transfer, 24 have been transferred, 16 have served their term, and one died while serving his sentence), 11 have had their cases transferred to local courts. Another 36 cases have been terminated (either because indictments were withdrawn or because the accused died, before or after transfer to the Tribunal)⁴⁴. Until November 2008, there were eight ongoing trials and a further four cases in the pre-trial stage. Ten further cases are at the appeals stage and two accused, Ratko Mladić and Goran Hadžić, are still at large.⁴⁵ In this Tribunal, Slobodan Milošević was the first sitting head of state indicted for war crimes.⁴⁶ Other “high level” indictees included Milan Babić, President of the Republika Srpska Krajina; Ramush Haradinaj, former Prime Minister of Kosovo; Radovan Karadžić, former President of the Republika Srpska; Ratko Mladić, former Commander of the Bosnian Serb Army and Ante Gotovina, former General of the Croatian Army.

Related Regulations

1. International Criminal Court Statute
2. Universal Declaration of Human Rights
3. International Covenant on Economic, Social and Cultural Rights
4. International Covenant on Civil and Political Rights
5. Optional Protocol to the International Covenant on Civil and Political

Rights

6. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity
7. Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity

(Jenny Maria Doan)