

**THE MAJOR UNIVERSAL HUMAN RIGHTS
INSTRUMENTS AND THE MECHANISMS FOR THEIR
IMPLEMENTATION**

1. Introduction

This document will provide some basic information about the extent of the substantive protection and the mechanisms for controlling the implementation of some of the major human rights treaties that exist at the universal level. Given that the number of these treaties has grown steadily in recent decades, it will only be possible, within this limited framework, to deal with those conventions that are of general scope in that they recognize a long list of rights, as well as a few conventions that have been adopted with the specific object of focusing on particularly invidious practices such as genocide, torture, racial discrimination and discrimination against women. This choice has been made on the grounds that these are the treaties that judges, prosecutors and practising lawyers are most likely to have to interpret and apply in the course of the daily exercise of their legal responsibilities. The chapter will thus first deal with the major treaties concluded within the framework of the United Nations. Second, it will deal briefly with some of the main resolutions adopted by the United Nations General Assembly, since, although they are not legally binding per se, their contents have, as a very minimum, a significant politico-moral value which constitutes an important source of guidance and inspiration to national judges, prosecutors and lawyers. Next, brief reference will be made to some instruments adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders as well as the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Lastly, this chapter will provide some basic information about the United Nations extra-conventional mechanisms for human rights monitoring, which apply to all Members States of the United Nations on the basis of their general legal undertaking "to take joint and separate action in co-operation with the Organization for the achievement of the [purpose of promoting] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion" (Art. 56 of the Charter of the United Nations read in conjunction with Art. 55(c)).

1.2 The international treaty-based control mechanisms

Each of the treaties dealt with in this chapter has a different system for its implementation, ranging from general and specific reporting procedures to quasi-judicial and judicial mechanisms involving the adjudication of complaints brought by individuals or groups of individuals, and, in some instances, even by other States. These various procedures can in many respects be said to be complementary, and, although they have slightly different immediate purposes, the overall goal of human rights protection is identical in each case. Broadly speaking, the reporting procedures have the function of making regular and systematic inventories of progress made in the implementation of the treaty obligations, with the aim of creating a dialogue between the relevant international monitoring organ and the State party concerned for the purpose of assisting the latter in introducing the adjustments to domestic law and practice required by its international treaty obligations. These reports are examined and discussed in public and in the presence of representatives of the State party. While the aim of this dialogue is of course to arrive at a general amelioration of the human rights situation obtaining in the country concerned, there is no possibility for individual relief in case of violations. There is also an ever-growing tendency for non-governmental organizations (NGOs) to be involved in the work of the various committees. These organizations are important sources of information regarding the human rights situation in the countries under examination, and they often have specialized knowledge of the legal issues dealt with in the committees. They can therefore make useful indirect contributions to the discussions. In preparing their periodic reports to the various international monitoring organs, the States parties are obliged to provide in-depth information not only about the formal state of the law

within their jurisdiction, but also about the manner of its practical application. When preparing these reports, the States parties may well also need the assistance of members of the various legal professions.¹ As to the quasi-judicial and strictly judicial procedures, these are only set in motion by a complaint (communication, petition) filed by an individual or, under some treaties, a group of individuals, or even States parties. Their specific aim is to remedy possible human rights violations in the particular case brought before the tribunals or committees with the ultimate aim, where need be, of inducing States to modify their law so as to bring it into conformity with their international legal obligations. Numerous changes in domestic law have now taken place in many countries as a result of international legal procedures, be they universal or regional. However, it is essential to stress that international procedures can never be considered to be a substitute for efficient legal procedures at the domestic level. Human rights are made a true reality at the domestic level by the domestic authorities, and, as emphasized in Chapter 1, the international complaints procedures are subsidiary to the available domestic systems for safeguarding the individual: they provide a remedy of last resort, when the internal mechanisms for ensuring an efficient protection of human rights standards have failed. The international treaty-based control mechanisms in the human rights field consist of reporting procedures and the adjudication of individual or inter-State complaints. International procedures for the protection of human rights and freedoms are subsidiary to existing procedures in the national legal system of every State. International procedures can never be considered to be a substitute for efficient domestic legal procedures for the protection of human rights.

1.3 Civil and political rights, and economic, social and cultural rights

As will be shown in further detail in Chapter 14 of this Manual, the interdependence of civil, cultural, economic, political and social rights has been emphasized by the United Nations ever since its inception. However, it is important at the outset to put to rest a frequently invoked distinction between civil and political rights, on the one hand, and economic, social and cultural rights on the other. According to this distinction, all that States basically have to do in order to respect civil and political rights is to refrain from killing, enforced disappearance, torture and other such practices; whereas in order to implement the other group of rights they have to undertake forceful positive actions. However, as has already been pointed out in Chapter 1, and as will be further demonstrated in other chapters of this Manual, there are indeed many situations which impose on States positive obligations to comply with their international legal duties in the field of civil and political rights as well. When one examines, from a purely practical point of view, the reasons why in many countries worldwide people are still being killed and subjected to other forms of unlawful treatment, it becomes abundantly clear that it is precisely because States have not taken the resolutely positive actions required in order to put an end to these practices that human rights violations persist. Rarely, if ever, do such practices go away by themselves, and for States to adopt a position of inaction is thus not an adequate and sufficient means of ensuring that they comply with their international legal obligations. States also have to undertake significant efforts both to organize free and fair elections at regular intervals and to set up and maintain an efficient, independent and impartial judiciary. This imperative need for positive action to secure compliance with international human rights obligations is an important factor to be borne in mind at all times by judges, prosecutors and lawyers in the exercise of their professional responsibilities. In order effectively to respect and ensure civil and political rights, it may not be sufficient for States simply to do nothing. States may have to take strong positive action in order to comply with their legal obligations in this field.

2. The Major United Nations Human Rights Treaties and their Implementation

2.1 The International Covenant on Civil and Political Rights, 1966, and its two Protocols, 1966 and 1989

The International Covenant on Civil and Political Rights and the Optional Protocol recognizing “the competence of the Committee to receive and consider communications from individuals” were both adopted by the General Assembly in 1966 and entered into force on 23 March 1976. The Covenant established an expert body, the Human Rights Committee, which has authority: (1) to review reports from the States parties; (2) to adopt General Comments on the meaning of the provisions of the Covenant; (3) under certain conditions to deal with inter-State communications; and lastly (4), to receive individual communications under the Optional Protocol.² On 8 February 2002 there were 148 States parties to the Covenant and 101 States parties to the First Optional Protocol.³ As of 27 July 2001, 47 States had made the declaration under article 41(1) of the Covenant whereby they recognize inter-State communications. This particular article entered into force on 28 March 1979. In 1989, the General Assembly adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. This Protocol entered into force on 11 July 1991 and as of 8 February 2002 had 46 States parties.

2.1.1 The undertakings of the States parties

Under article 2 of the International Covenant on Civil and Political Rights, each State party “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the ... Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.⁴ As emphasized by the Human Rights Committee in its General Comment No. 3, the Covenant is not, consequently, “confined to the respect of human rights, but ... States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction”, an undertaking that in principle “relates to all rights set forth in the Covenant”.⁵ The legal duty to ensure their enjoyment implies an obligation to take positive steps to see to it

_ first, that domestic laws are modified when necessary in order to comply with the State’s international legal obligations; and _ second, that these laws are indeed effectively implemented in practice by all public organs and officials, such as the courts (including administrative tribunals), prosecutors, police officers, prison officials, schools, the military, hospitals and the like.

Upon ratification of a treaty aimed at the protection of human rights and fundamental freedoms, States have a legal duty to modify their legislation so as to have it conform to their new international obligations. States have also to continue to ensure that their legal obligations are effectively implemented by all relevant organs, including all courts of law.

2.1.2 The rights recognized

Being a treaty of a legislative nature, the International Covenant on Civil and Political Rights guarantees a long list of rights and freedoms, not all of which fall within the themes covered by this Manual and which will not, therefore, be dealt with in detail. However, any existing General Comments adopted by the Human Rights Committee relating to specific articles will

be referred to in footnotes; these comments provide information about the Committee's understanding of the articles concerned. Moreover, the second volume of the Committee's annual reports to the General Assembly contains Views and decisions adopted by the Committee under the Optional Protocol, which include indispensable information for judges, prosecutors and lawyers regarding the interpretation of the terms of the Covenant.⁶

The right to self-determination

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights contain a common article 1(1) proclaiming the right of all peoples to self-determination, by virtue of which they "freely determine their political status and freely pursue their economic, social and cultural development". Furthermore, common article 1(2) provides that "all peoples may, for their own ends, freely dispose of their natural wealth and resources" and that "in no case may a people be deprived of its own means of subsistence". The right to self-determination in the widest sense is consequently considered to be a precondition for the full enjoyment of civil, cultural, economic, political and social rights. This common article can also be read in the light of the Declaration on the Granting of Independence to Colonial Countries and Peoples, which was adopted by the United Nations General Assembly at the height of the decolonization process in 1960 and which equated "the subjection of peoples to alien subjugation, domination and exploitation" to a denial of human rights and a violation of the Charter of the United Nations (operative paragraph 1). The following is a list of the extensive rights guaranteed by the International Covenant on Civil and Political Rights:

_ the right to life – art. 6;⁷ _ the right to freedom from torture or cruel, inhuman or degrading treatment or punishment, including a prohibition on being subjected to medical or scientific experimentation without one's free consent – art. 7;⁸ _ the right to freedom from slavery, the slave-trade and servitude – art. 8(1) and (2); _ the right to freedom from forced and compulsory labour – art. 8(3); _ the right to liberty and security of person, including freedom from arbitrary arrest and detention – art. 9;⁹ _ the right of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person – art. 10;¹⁰ _ prohibition of imprisonment merely on the ground of inability to fulfil a contractual obligation – art. 11; _ liberty of movement and freedom to choose one's residence – art. 12(1); _ the right to be free to leave any country, including one's own – art. 12(2); _ the right not to be arbitrarily deprived of the right to enter one's own country – art. 12(4); _ certain legal safeguards against unlawful expulsions of aliens lawfully in the territory of a State party – art. 13;¹¹ _ the right to a fair hearing in criminal and civil cases by an independent and impartial tribunal – art. 14;¹² _ freedom from ex post facto laws and the retroactive application of heavier penalties than those that could be imposed when the crime was committed – art. 15; _ the right to recognition as a person before the law – art. 16; _ the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence or to unlawful attacks on one's honour and reputation – art. 17;¹³ _ the right to freedom of thought, conscience and religion – art. 18;¹⁴ _ the right to freedom of opinion and of expression – art. 19;¹⁵ _ prohibition of war propaganda and of advocacy of national, racial, or religious hatred constituting incitement to discrimination, hostility or violence – art. 20;¹⁶ _ the right to peaceful assembly – art. 21; _ the right to freedom of association – art. 22; _ the right to marry freely, to found a family and to equal rights and responsibilities of spouses as to marriage, during marriage and at its dissolution – art. 23;¹⁷ _ the right of the child to special protection without discrimination; the right to be registered upon birth and the right to a nationality – art. 24;¹⁸ _ the right to popular participation in public affairs; the right to vote in periodic elections by universal and equal suffrage and secret ballot, as well as the

right to have access to public service – art. 25;[19](#) _ the right to equality before the law and the equal protection of the law – art. 26;[20](#) _ the right of minorities to enjoy their own culture, religion and language – art. 27.[21](#)

2.1.3 Permissible limitations on the exercise of rights

Some of the rights listed above, such as the right to freedom of movement (art. 12(3)), the right to manifest one's religion or beliefs (art. 18(3)), the exercise of the rights to freedom of expression (art. 19(3)), to peaceful assembly (art. 21), and to freedom of association (art. 22(2)), can be limited for certain specifically defined objectives, such as national security, public order, public health and morals, or respect for the fundamental rights of others. However, the limitations can only be lawfully imposed if they are provided or prescribed by law and are also necessary in a democratic society for one or more of the legitimate purposes defined in the provisions concerned. It is true that the reference to "a democratic society" is only to be found in articles 21 and 22(2) concerning the limitations that can be imposed respectively on the exercise of the right to peaceful assembly and the right to freedom of association, whilst it is absent from the limitation provisions regarding the right to freedom of movement, the right to freedom to manifest one's religion or beliefs and the right to freedom of expression. However, it follows from an interpretation of these provisions in the light of the wider context of the Covenant itself, as well as its object and purpose, that this notion forms an intrinsic part of all limitation provisions concerned and will consequently condition their interpretation.[22](#) As pointed out in Chapter 1, the limitation provisions reflect carefully weighed individual and general interests which have also to be balanced against each other when the limitations are applied in a specific case. This means not only that the laws per se that provide for the possibility of limitations on the exercise of rights must be proportionate to the stated legitimate aim, but also that the criterion of proportionality must be respected when applied to a specific individual. The subsidiarity of the international system for the protection of human rights means, however, that it falls in the first instance to the domestic authorities to assess both the legitimate need for any restrictions on the exercise of human rights and also their necessity/proportionality. The additional international supervision of the measures taken comes into play only in connection with the examination of the States parties' reports or individual communications submitted under the First Optional Protocol. The criteria to look for in order to determine whether the exercise of a right has been lawfully limited are:

_ the principle of legality, in that the restrictive measure must be based in law; _ the principle of a legitimate aim in a democratic society; restrictions on the exercise of human rights cannot be lawfully justified under the Covenant for reasons not expressly contained therein or for purposes alien to the effective protection of human rights; _ the principle of proportionality, in that the interference with the exercise of the individual's right must be necessary for the legitimate purpose or purposes; it follows that it is not sufficient that the measure is simply reasonable or possibly advisable: it must be necessary.

2.1.4 Permissible derogations from legal obligations

The question of derogations from international legal obligations in the human rights field will be given a more thorough treatment in Chapter 16 of this Manual, but it may be useful at this early stage briefly to outline the strict conditions that govern the right of the States parties to resort to derogations from their legal obligations under article 4 of the Covenant:

_ the condition of a “public emergency which threatens the life of the nation”: the State party envisaging a derogation must be facing a situation of exceptional threat that jeopardizes the nation’s life, thus excluding minor or even more serious disturbances that do not affect the functioning of the State’s democratic institutions or people’s lives in general;

_ the condition of official proclamation: the existence of a public emergency which threatens the life of the nation must be “officially proclaimed” (art. 4(1)); as was explained during the drafting of article 4, the purpose thereof was “to prevent States from derogating arbitrarily from their obligations under the Covenant when such an action was not warranted by events”;[23](#)

_ the condition of non-derogability of certain obligations: article 4(2) of the Covenant enumerates some rights from which no derogation can ever be made even in the direst of situations. These rights are: the right to life (art. 6), the right to freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 7), the right to freedom from slavery, the slave-trade and servitude (art. 8(1) and (2)), the right not to be imprisoned merely on the ground of inability to fulfil a contractual obligation (art. 11), the prohibition of ex post facto laws (art. 15), the right to legal personality (art. 16) and, lastly, the right to freedom of thought, conscience and religion (art. 18). However, it follows from the work of the Human Rights Committee that it is not possible to conclude a contrario that, because a specific right is not listed in article 4(2), it can necessarily be derogated from. Consequently, some rights may not be derogated from because they are considered to be “inherent to the Covenant as a whole”; one such example is the right to judicial remedies in connection with arrests and detentions as set out in article 9(3) and (4);[24](#) others may also be non-derogable because they are indispensable to the effective enjoyment of the rights that are explicitly listed in article 4(2), such as the right to a fair trial for persons threatened with the death penalty.[25](#) The Committee has further held under the Optional Protocol that “the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception”;[26](#)

_ the condition of strict necessity: this condition means that the State party can only take measures derogating from its “obligations under the ... Covenant to the extent strictly required by the exigencies of the situation”; as compared to the ordinary limitation provisions dealt with above, the condition of strict necessity compels a narrow construction of the principle of proportionality, in that the legislative measures taken must as such be strictly required by the exigencies of the emergency situation; and, secondly, any individual measure taken on the basis of that legislation must likewise be strictly proportionate. It is thus necessary to consider whether the measures concerned are strictly required in order to deal with the emergency situation. The Committee has emphasized in general that “measures taken under article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened”;[27](#)

_ the condition of consistency with other international legal obligations: on the basis of this condition, the Human Rights Committee is, in principle, authorized to examine whether measures of derogation might be unlawful as being inconsistent with other international treaties, such as, for instance, other treaties for the protection of the individual or even international humanitarian law or customary international law;

_ the condition of non-discrimination: the measures of derogation may not “involve discrimination solely on the ground of race, colour, sex, language, religion or social origin” (art. 4(1) in fine). This is an important condition since it is particularly in emergency situations that there is a risk of imposing discriminatory measures which have no objective and reasonable

justification;

_ the condition of international notification: in order to avail itself of the right of derogation, a State party must, lastly, also fulfil the conditions set out in article 4(3) of the Covenant, by immediately submitting a notification of derogation to the other States parties through the Secretary-General. In this notification it must describe “the provisions from which it has derogated and ... the reasons by which it was actuated”. A second notification must be submitted “on the date on which it terminates such derogation”. General Comment No. 29, which was adopted by the Human Rights Committee in July 2001, provides more details as to the interpretation of the various conditions laid down in article 4 of the Covenant. This Comment will be dealt with in Chapter 16, which will provide a more comprehensive analysis of States’ right to derogate from their international human rights obligations in certain exceptional situations. In certain exceptional situations amounting to a threat to the life of the nation, the States parties to the International Covenant on Civil and Political Rights may derogate from their legal obligations incurred thereunder to the extent “strictly required by the exigencies of the situation”. Such derogations must also comply with the principles of non-derogable rights, non-discrimination, consistency with the State’s other international obligations and the principle of international notification.

2.1.5 The implementation mechanisms

The implementation of the Covenant is monitored by the Human Rights Committee, which consists of eighteen members serving in their individual capacity (art. 28). The monitoring takes three forms, namely, the submission of periodic reports, inter-State communications, and individual communications:

_ the reporting procedure: according to article 40 of the Covenant, the States parties “undertake to submit reports on the measures they have adopted which give effect to the rights” recognized therein and “on the progress made in the enjoyment of those rights”, first within one year of the entry into force of the Covenant for the States parties concerned, and thereafter, whenever the Committee so requests, that is to say, every five years. The reports “shall indicate the factors and difficulties, if any, affecting the implementation of the ... Covenant”, and the Committee has developed careful guidelines aimed both at facilitating the task of the States parties and rendering the reports more efficient. In July 1999 the Committee adopted consolidated guidelines for the submission of the reports of the States parties;[28](#)

_ inter-State communications: as noted in section 2.1, States parties to the Covenant may at any time declare under article 41 that they recognize “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 the present Covenant”; in other words, the possibility of bringing inter-State communications is only valid as between States parties having made this kind of declaration. During the initial stage of the proceedings, the communication is only brought to the attention of one State party by another, and it is only if the matter is not settled to the satisfaction of both States parties within a period of six months that either State party has the right to bring the matter before the Committee itself (art. 41(1)(a) and (b)). The Committee has to follow a procedure prescribed in article 41(1)(c)-(h), but, since it was never used during the first 25 years of the Committee’s existence, it will not be dealt with further here;

_ individual communications: under article 1 of the Optional Protocol, a State Party thereto “recognizes the competence of the Committee to receive and consider communications from

individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant". However, according to article 2 of the Optional Protocol, individuals claiming violations of their rights must first exhaust all remedies available to them at the domestic level; further, the Committee shall consider inadmissible any communication which is anonymous, or which it considers to amount to an abuse of the right of submission of communications or to be incompatible with the provisions of the Covenant (art. 3). If the communication raises a serious issue under the Covenant, the Committee submits it to the State party concerned, which has the possibility to submit its written explanations within a period of six months. The procedure before the Committee is therefore exclusively written and the discussions in the Committee on the communications take place behind closed doors (arts. 4-5). At the end of its consideration of a communication, the Committee adopts its "Views" thereon, which are sent both to the State party and to the individual concerned (art. 5(4)). Numerous communications have been submitted under the Optional Protocol and have in some cases led to changes in domestic legislation. The implementation mechanisms of the International Covenant on Civil and Political Rights are:

_ the reporting procedure (art. 40); _ inter-State communications (art. 41); and _ individual communications (art. 1, Optional Protocol).

2.2 The International Covenant on Economic, Social and Cultural Rights, 1966

The International Covenant on Economic, Social and Cultural Rights was adopted by the United Nations General Assembly in 1966, and entered into force on 3 January 1976. On 8 February 2002 there were 145 States parties to the Covenant. The Covenant establishes a reporting procedure on the measures the States parties have adopted and the progress made in achieving the observance of the rights contained in the Covenant (art. 16). The United Nations Economic and Social Council is formally entrusted under the Covenant with the task of monitoring compliance by the States parties with their legal obligations incurred under the Covenant; but since 1987 this task has been carried out by the Committee on Economic, Social and Cultural Rights, which consequently is not, strictly speaking, a treaty organ like the Human Rights Committee.²⁹ Why are there two International Covenants? Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were first elaborated by the United Nations Commission on Human Rights and were contained in one document until it was decided, after much debate, to separate them and draft two covenants that were to be adopted simultaneously. The reason for this split was the more complex nature of economic, social and cultural rights, which required particularly careful drafting and implementation mechanisms adapted to the specific nature of those rights. In view of States' differing levels of development, the International Covenant on Economic, Social and Cultural Rights had also to provide for the possibility of progressive implementation, although this was never intended to mean that no immediate obligations would be incurred hereunder.³⁰

2.2.1 The undertakings of the States parties

Each State party to the International Covenant on Economic, Social and Cultural Rights "undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the ... Covenant by all appropriate means, including particularly the adoption of legislative measures" (art. 2(1)). Although the Covenant thus "provides for progressive realization and acknowledges the constraints due to limits of available resources", the Committee emphasized in General

Comment No. 3 that “it also imposes various obligations which are of immediate effect”. In the view of the Committee, two of these are of particular importance, namely: first, the undertaking in article 2(2) “to guarantee that the rights enunciated in the ... Covenant will be exercised without discrimination” on certain specific grounds; and second, the undertaking in article 2(1) “to take steps”, which in itself, is not qualified or limited by other considerations”.³¹ In other words, “while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant”.³²

2.2.2 The rights recognized

The following rights are recognized in the International Covenant on Economic, Social and Cultural Rights. Wherever the Committee has adopted General Comments relevant to the understanding of these rights, they will be referred to in a footnote.

_ the right to work, including the right to gain one’s living by work freely chosen or accepted – art. 6; _ the right to enjoy just and favourable conditions of work, including fair remuneration for work of equal value without distinction of any kind – art. 7; _ the right to form trade unions and join the trade union of one’s choice – art. 8; _ the right to social security, including social insurance – art. 9; _ protection and assistance to the family; marriage to be freely entered into; maternity protection; protection and assistance to children and young persons – art. 10; _ right to an adequate standard of living, including adequate food,³³ clothing and housing,³⁴ and to the continuous improvement of living conditions – art. 11; _ the right to the highest attainable standard of physical and mental health – art. 12; _ the right to education – art. 13;³⁵ _ the undertaking to develop detailed plans of action where compulsory primary education is not yet secured – art. 14;³⁶ _ the right to take part in cultural life, to enjoy the benefits of scientific progress and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author – art. 15.

2.2.3 Permissible limitations on rights

The International Covenant on Economic, Social and Cultural Rights contains a general limitation in article 4, whereby the State may subject the enjoyment of the rights guaranteed by the Covenant “only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”. Furthermore, limitations relating to the exercise of specific rights are also contained in article 8(1)(a) and (c), where the exercise of the right to form and join trade unions, as well as the right of trade unions to function freely, may be subjected to no restrictions other than “those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others”. From the travaux préparatoires relating to article 4 it is clear that it was considered important to include the condition that limitations had to be compatible with a democratic society, that is to say, “a society based on respect for the rights and freedoms of others”;³⁷ otherwise, it was suggested, the text might instead “very well serve the ends of dictatorship”.³⁸ Unlike the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights does not contain any provision permitting derogations from the legal obligations incurred thereunder. It is therefore logical that none of the rights contained in this Covenant has been made specifically

non-derogable. However, as noted by a member of the Committee on Economic, Social and Cultural Rights, “the specific requirements that must be met in order to justify the imposition of limitations in accordance with article 4 will be difficult to satisfy in most cases”.³⁹ In particular, for a limitation to be compatible with article 4, it would have to be “determined by law”, “compatible with the nature of these rights”, and solely designed to promote “the general welfare in a democratic society”.⁴⁰

The enjoyment of the rights guaranteed by the International Covenant on Economic, Social and Cultural Rights may be subjected only to such limitations as are: _ determined by law; _ compatible with the nature of these rights; and _ aimed at promoting the general welfare in a democratic society. The International Covenant on Economic, Social and Cultural Rights contains no provision allowing for derogations from the legal obligations incurred thereunder.

2.2.4 The implementation mechanism

Under article 16 of the Covenant, the States parties undertake to submit “reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized” therein, and it is the United Nations Economic and Social Council that is formally entrusted with monitoring compliance with the terms thereof (art. 16(2)(a)). However, since the early arrangements for examining the periodic reports were not satisfactory, the Council created, in 1985, the Committee on Economic, Social and Cultural Rights as an organ of independent experts parallel to the Human Rights Committee set up under the International Covenant on Civil and Political Rights.⁴¹ The Committee consists of eighteen members who serve in their individual capacity. As is the case with the Human Rights Committee, the reports submitted by the States parties are considered in public meetings and in the presence of representatives of the State party concerned. The discussion “is designed to achieve a constructive and mutually rewarding dialogue” so that the Committee members can get a fuller picture of the situation prevailing in the country concerned, thereby enabling them to make “the comments they believe most appropriate for the most effective implementation of the obligations contained in the Covenant”.⁴² Following an invitation by the Economic and Social Council, the Committee on Economic, Social and Cultural Rights began adopting General Comments “with a view to assisting the States parties in fulfilling their reporting obligations”.⁴³ The General Comments are based on the experience gained by the Committee through the reporting procedure, and draw the attention of the States parties to insufficiencies revealed, and also suggest improvements to that procedure. Lastly, the General Comments are aimed at stimulating the activities of the States parties as well as of the international organizations and specialized agencies concerned to achieve “progressively and effectively the full realization of the rights recognized in the Covenant”.⁴⁴ So far, attempts at drafting an additional protocol for the purpose of creating an individual complaints procedure have proved unsuccessful. The implementation mechanism under the International Covenant on Economic, Social and Cultural Rights consists exclusively of a reporting system.

2.3 The Convention on the Rights of the Child, 1989, and its two Optional Protocols, 2000

Although children are also protected by the general treaties for the protection of the human being, it was considered important to elaborate a convention dealing specifically with children’s particular needs. After ten years of work, the Convention on the Rights of the Child was adopted by the General Assembly in 1989 and entered into force on 2 September 1990. On 8 February 2002 there were 191 States parties to the Convention. Within just a few years of its adoption the Convention had been almost universally ratified, and has begun to have an important impact on the decisions of domestic courts. The guiding principle throughout this

Convention is that “in all actions concerning children ... the best interests of the child shall be a primary consideration” (art. 3(1); emphasis added).⁴⁵ The Convention establishes a Committee on the Rights of the Child “for the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the ... Convention” (art. 43(1)). On 25 May 2000, the General Assembly further adopted two Optional Protocols to the Convention, namely, the Optional Protocol on the sale of children, child prostitution and child pornography, and the Optional Protocol on the involvement of children in armed conflict. The first Optional Protocol entered into force on 18 January 2002, that is, three months after the deposit of the tenth instrument of ratification or accession (art. 14(1)), while the second Optional Protocol entered into force on 13 February 2002 after the same conditions had been fulfilled (art. 10(1)).⁴⁶ As of 8 February 2002 these Protocols had respectively 17 and 14 ratifications.

2.3.1 The undertakings of the States parties

As in the two International Covenants, the States parties to the Convention on the Rights of the Child generally undertake to “respect and ensure the rights set forth in the ... Convention to each child within their jurisdiction without discrimination of any kind” (art. 2(1)), and to “take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members” (art. 2(2)). As in all human rights treaties dealt with in this Manual, the principle of non-discrimination is also a fundamental principle with regard to the rights of the child and it conditions the interpretation and application of all the rights and freedoms contained in the Convention. In its General Guidelines Regarding the Form and Contents of Periodic Reports, adopted in October 1996, the Committee on the Rights of the Child gave detailed instructions to the States parties as to required contents of the periodic reports with regard to each specific legal obligation, such as the right to non-discrimination and the specific rights dealt with below.⁴⁷ The States parties to the Convention on the Rights of the Child must respect and ensure the rights guaranteed thereby without discrimination of any kind. The guiding principle throughout the Convention is that the best interests of the child must be a primary consideration.

2.3.2 The rights recognized

The Convention recognizes a long and detailed list of rights that must be respected and ensured to the child at all times, that is to say, to “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (art. 1). However, the rights guaranteed will here be reflected only in general terms:

_ the child’s right to life and maximum survival and development – art. 6; _ the child’s right to registration at birth, to a name, a nationality, and, to the extent possible, “to know and be cared for by his or her parents” – art. 7; _ the child’s right to an identity, including nationality, name and family relations – art. 8; _ the right of the child not to be separated from his or her parents against their will unless “such separation is necessary for the best interests of the child” – art. 9(1); _ the duty of States to facilitate family reunification by permitting travel into or out of their territories – art. 10; _ duty to combat illicit transfer and non-return of children abroad – art. 11; _ duty to respect the views of the child and the right of the child “to be heard in any judicial and administrative proceedings affecting” itself – art. 12; _ the child’s right to freedom of expression – art. 13; _ the child’s right to freedom of thought, conscience and religion – art. 14; _ the child’s right to freedom of association and to freedom of peaceful assembly – art. 15; _ the child’s right to legal protection against arbitrary and unlawful

interference with his or her privacy, family, home or correspondence and the right not to be subjected to “unlawful attacks” on his or her honour or reputation – art. 16; _ the child’s right of “access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health” – art. 17; _ recognition of the principle that both parents have common and primary responsibility for the upbringing and development of the child and that the “best interests of the child will be their basic concern” – art. 18(1); _ the child’s right to protection against all forms of violence and abuse – art. 19; _ the child’s right to special protection and assistance when deprived of his or her family – art. 20; _ whenever adoption is recognized or permitted, States parties “shall ensure that the best interests of the child shall be the paramount consideration” – art. 21; _ rights of refugee children – art. 22; _ rights of the mentally or physically disabled child – art. 23; _ right of the child to the “highest attainable standard of health” and to health services – art. 24; _ the right of the child placed in care to “periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement” – art. 25; _ the child’s right to benefit from social security, including social insurance – art. 26; _ the child’s right to an adequate standard of living – art. 27; _ the child’s right to education (art. 28) and the aims of that education (art. 29);⁴⁸ _ the right of children belonging to ethnic, religious or linguistic minorities, as well as the right of children of indigenous origin, to enjoy their own culture, religion and language – art. 30; _ the child’s right to rest and leisure – art. 31; _ the child’s right to protection against economic exploitation and hazardous work – art. 32; _ the child’s right to protection against the illicit use of drugs and psychotropic substances – art. 33; _ the child’s right to protection “from all forms of sexual exploitation and sexual abuse” – art. 34; _ the prevention of the abduction and sale of, or traffic in, children – art. 35; _ the child’s right to protection against all other forms of exploitation prejudicial to any aspects of its welfare – art. 36; _ the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment, including capital punishment – art. 37(a); _ the child’s right not to be deprived of his or her liberty arbitrarily and unlawfully – art. 37(b); _ the child’s right to humane treatment whilst deprived of his or her liberty – art. 37(c); _ the child’s right to legal safeguards in connection with deprivation of liberty – art. 37(d); _ the child’s right in armed conflicts to respect for the relevant rules of international humanitarian law – art. 38(1); _ the child’s right to appropriate measures to promote physical and psychological recovery and social integration in case of any form of neglect, exploitation or abuse – art. 39; _ principles of juvenile justice – art. 40.

As can be seen, these rights not only cover the more traditional human rights standards found, for instance, in the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, but they have also been expanded and refined and are drafted so as to respond specifically to the varying needs of the many young people who continue to suffer various forms of hardship. According to article 1 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the “States Parties shall prohibit the sale of children, child prostitution and child pornography as provided by the ... Protocol”. Article 2 of the Protocol explains the notions of “sale of children”, “child prostitution” and “child pornography”, while article 3 lists the acts which must, as a minimum, be “fully covered” by the States parties’ criminal law. Other provisions provide details as to the duty of the States parties to establish jurisdiction over the relevant offences, and to provide assistance in connection with investigations or criminal or extradition proceedings, seizure and confiscation, international cooperation, and in other areas (arts. 4-11). The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict raises the age for direct participation in hostilities to 18 years, and imposes on the States parties an obligation to “ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces” (arts. 1 and 2).

According to article 3 of the Protocol the States parties shall also “raise the minimum age for the voluntary recruitment of persons into their national armed forces” from that of 15 years of age which is authorized in article 38(3) of the Convention itself; those States which allow the voluntary recruitment of persons under 18 years of age, shall inter alia ensure that “such recruitment is genuinely voluntary” and “carried out with the informed consent of the person’s parents or legal guardians” (art. 3(a) and (b)).

2.3.3 Permissible limitations on the exercise of rights

The Convention on the Rights of the Child contains no general limitation provision and only three articles provide for the right to impose limitations on the exercise of rights, namely, the exercise of the right to freedom of expression (art. 13(2)), the right to freedom to manifest one’s religion and beliefs (art. 14(3)), and the right to the freedoms of association and peaceful assembly (art. 15(2)). In all these provisions the limitative measures must be based in law and be necessary for the stated purposes. Only in relation to the exercise of the right to freedom of association and assembly is it expressly stated that the measures concerned must also be “necessary in a democratic society”. Although the Convention contains few limitation provisions, many of the undertakings of the States parties are linked to the term appropriate”, which is, of course, open to interpretation. However, it is an interpretation that must in all circumstances be conditioned by “the best interests of the child”. Another factor that may have to be taken into consideration by States in this connection is the balance between the interests of the child itself and “the rights and duties” of his or her parents (cf. arts. 3(3) and 5). Lastly, the Convention on the Rights of the Child contains no derogation provision, and it can therefore be concluded that the Convention was intended to be applied in its entirety even in exceptional crisis situations. The Convention on the Rights of the Child contains no general limitation provision. Specific limitation provisions are linked only to the exercise of the freedom of expression, the freedom to manifest one’s religion and belief and the freedoms of association and peaceful assembly. In general, the interpretation of the terms of the Convention must primarily aim at the best interests of the child but should take into account the rights and duties of his or her parents.

2.3.4 The implementation mechanism

The system of implementation of the Convention on the Rights of the Child (arts. 42-45) is similar to the reporting procedures under the two International Covenants and it will therefore suffice to refer here to what has already been stated above. Like the other Committees, the Committee on the Rights of the Child has also issued Guidelines for reports to be submitted by States parties under the Convention.[49](#)

2.4 The Convention on the Prevention and Punishment of the Crime of Genocide, 1948

The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the General Assembly on 9 December 1948 and entered into force on 12 January 1951. As of 26 April 2002 it had 135 States parties. The Convention does not create any specific implementation mechanism, but, as will be seen below, leaves the implementation to the Contracting Parties themselves.

2.4.1 The undertakings of the States parties

“The Contracting Parties confirm that genocide, whether committed in time of peace or in

time of war, is a crime under international law which they undertake to prevent and to punish” (art. I; emphasis added). To this end, they also “undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the ... Convention and, in particular, to provide effective penalties for persons guilty of genocide” or of conspiracy to commit, incitement or attempt to commit, or complicity in, the crime of genocide (art. V read in conjunction with art. III). The fact that the Contracting Parties “confirm” in article I of the Convention that genocide is “a crime under international law” is evidence that they considered the principles underlying the Convention to be already binding on them under international customary law. As noted in Chapter 1 of this Manual, this was also the view expressed by the International Court of Justice in its 1951 Advisory Opinion on Reservations to the Convention on Genocide, in which it held that “the principles underlying the Convention are principles which are recognized ... as binding on States, even without any conventional obligation”.⁵⁰ However, the reliance in the Convention on national courts to repress an international crime proves that, in 1948, many problems remained to be solved with regard to the question of international criminal jurisdiction;⁵¹ and it was not until the indiscriminate killings in parts of the former Yugoslavia and in Rwanda in the 1990s that the concept of universal jurisdiction over international crime began to become a true reality (see further subsection 2.4.3).

2.4.2 The legal scope of the Convention

The legal scope of the Convention is limited to the prevention and punishment of the crime of genocide which is defined in article II as meaning “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group”. The following acts are punishable: genocide, conspiracy to commit, direct or indirect incitement and attempt to commit genocide, as well as complicity in genocide (art. III). Moreover, persons committing any of these acts are punishable “whether they are constitutionally responsible rulers, public officials or private individuals” (art. IV). The Genocide Convention was thus an important confirmation of the principle spelled out in the Nuremberg Charter that in some cases individuals have international responsibility under international law which transcends partisan national interests and obligations of obedience.

2.4.3 International crimes: recent legal developments The principle of individual criminal responsibility for particularly serious acts was given new life when the Security Council decided, by resolution 808 (1993), “that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991”. By resolution 827 (1993), the Security Council next approved the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY). As amended in 1998, the Statute empowers the Tribunal to prosecute grave breaches of the Geneva Conventions of 1949, violations of the laws and customs of war, genocide, and crimes against humanity, namely, murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds, as well as “other inhumane acts” – a legal definition of crime that allows the Tribunal to consider also other kinds of large-scale human rights abuses not specifically listed in the Statute (arts. 1-5). The International Tribunal and the national courts have concurrent jurisdiction over the relevant crimes, although the former “shall have primacy over” the latter

(art. 9 of the ICTY Statute). In order to deal with the serious violations of humanitarian law committed in Rwanda between 1 January and 31 December 1994, the Security Council similarly created the International Criminal Tribunal for Rwanda (ICTR) by resolution 955 (1994). The Statute of the Tribunal was adopted by that same resolution. The Tribunal has the power to prosecute persons having committed the following crimes: genocide, crimes against humanity of the same kind as those listed above with regard to the ICTY, as well as violations of article 3 common to the Geneva Conventions of 1949 and of Additional Protocol II (arts. 2-4 of the ICTR Statute). It may also deal with the prosecution of these crimes committed by Rwandan citizens in the territory of neighbouring States (art. 7 of the Statute). The difference between the prosecution powers of the two Tribunals is due to the fact that the war in the former Yugoslavia was considered to be an armed conflict of an international character, whilst the crisis situation in Rwanda was principally a non-international armed conflict. Lastly, on 17 July 1998, the Rome Statute of the International Criminal Court was adopted by the United Nations Conference of Plenipotentiaries by a non-recorded vote of 120 to 7 with 21 abstentions.⁵² The establishment of this international, permanent and independent judicial body was to end impunity for acts of genocide, crimes against humanity, war crimes and, on certain conditions, the crime of aggression (art. 5 of the Statute). The Court will be competent to try natural persons irrespective of their official capacity, but will not have jurisdiction over legal persons such as States and corporations (arts. 25 and 27). Further, as with the monitoring organs set up under the general human rights treaties, the International Criminal Court is subsidiary in nature, since, according to article 17 of its Statute, it will prosecute crimes only in cases where the State concerned is unwilling or unable genuinely to carry out the investigation or prosecution provided for in article 17(1)(a) and (b). It is for the International Court itself to determine, on the basis of specific criteria, the “unwillingness” or “inability” of a State to investigate or prosecute in a particular case (art. 17(2) and (3)). The International Criminal Court, or, ICC as it is generally known, will come into existence after 60 States have ratified the Statute (art. 126). As of 11 April 2002, the Statute had been ratified by 66 States and it entered into force on 1 July 2002.⁵³ The Convention on the Prevention and Punishment of the Crime of Genocide aims at the prevention and punishment of genocide, including conspiracy to commit, incitement and attempt to commit, or complicity in, the crime of genocide. The principles underlying the Convention are, however, binding on all States irrespective of any conventional obligation. The new International Criminal Court provides the first international, permanent and independent judicial body for the purpose of ending impunity for acts of genocide, crimes against humanity, war crimes and, on certain conditions, the crime of aggression.

2.5 The International Convention on the Elimination of All Forms of Racial Discrimination, 1965

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the United Nations General Assembly on 21 December 1965 and entered into force on 4 January 1969. As of 8 April 2002 it had 161 States parties. The Convention established a Committee on the Elimination of Racial Discrimination which monitors the implementation of the Convention. The Committee adopts, when necessary, General Recommendations concerning specific articles or issues of special interest. These recommendations will be referred to whenever relevant.

2.5.1 The undertakings of the States parties

For the purposes of the Convention, “the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the

political, economic, social, cultural or any other field of public life” (art. 1(1); emphasis added). However, “special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals ... in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided [that they do not] lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved” (art. 1(4); emphasis added).⁵⁴ The States parties to the Convention “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races” (art. 2(1)). To this end, they undertake, in particular, _ “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” – art. 2(1)(a); _ “not to sponsor, defend or support racial discrimination by any persons or organizations” – art. 2(1)(b); _ to “take effective measures to review” public policies at all levels and to amend legislation which has “the effect of creating or perpetuating racial discrimination wherever it exists” – art. 2(1)(c); _ to “prohibit and bring to an end, by all appropriate means, ... racial discrimination by any persons, group or organization” – art. 2(1)(d); _ “to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division” – art. 2(1)(e). The States parties shall further “assure to everyone within their jurisdiction effective protection and remedies” against acts violating a person’s human rights contrary to the Convention, as well as the right to seek from domestic tribunals “just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination” (art. 6). Lastly, they undertake, in particular, “to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination...” (art. 7).

2.5.2 The field of non-discrimination protected

The States parties undertake not only to prohibit and eliminate racial discrimination, but also “to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights” (art. 5): _ the right to equal treatment before the tribunals and all other organs administering justice – art. 5(a); _ the right to security of person – art. 5(b); _ political rights, such as the right to participate in elections, to take part in the Government and in the conduct of public affairs and to have equal access to public service – art. 5(c); _ other civil rights, such as the right to freedom of movement and residence, the right to leave any country, including one’s own, and to return to one’s own country, the right to nationality, the right to marriage and choice of spouse, the right to own property alone as well as in association with others, the right to inherit, the right to freedom of thought, conscience and religion, the right to freedom of opinion and expression, the right to peaceful assembly and association – art. 5(d); _ economic, social and cultural rights, and in particular the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration, the right to form and join trade unions, the right to housing, the right to public health, medical care, social security and social services, the right to education and training, the right to equal participation in cultural activities – art. 5(e); and _ the “right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks” – art. 5(f). As pointed out by the Committee itself in General Recommendation XX, the enumeration of political, civil, economic, social and cultural rights in article 5 is not exhaustive and the right not to be subjected to racial

discrimination in the enjoyment of rights may be invoked also in the exercise of rights not expressly mentioned therein. In other words, apart from requiring a guarantee that the exercise of human rights shall be free from racial discrimination, article 5, “does not of itself create [human rights,] but assumes the existence and recognition of these rights”, such as those derived from the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on human rights. This also means that, whenever the States parties impose restrictions on the exercise of the rights enumerated in article 5, they “must ensure that neither in purpose nor effect is the restriction incompatible with article 1 of the Convention as an integral part of international human rights standards”.⁵⁵ It follows, consequently, that the limitations authorized under other human rights treaties are indirectly included in article 5 of the Convention on the Elimination of All Forms of Racial Discrimination, and that, conversely, the notion of racial discrimination as defined in article 1 of this Convention is inherent in the international law of human rights as such. Although, according to article 1 of the Convention, the prohibition of racial discrimination relates to fields “of public life”, the Committee on the Elimination of Racial Discrimination has explained that “to the extent that private institutions influence the exercise of rights or the availability of opportunities, the State party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination”.⁵⁶

2.5.3 The implementation mechanism

The Convention created the Committee on the Elimination of Racial Discrimination, which consists of eighteen members serving in their personal capacity (art. 8) and has the task of monitoring the implementation of the terms of the Convention. Like the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination has a three-pronged implementation mechanism consisting of periodic reports, inter-State communications and communications from individuals, which will be briefly described below. Furthermore, the Committee adopts, when necessary, General Recommendations concerning specific articles or issues of special interest. Below is a general description of the monitoring mechanisms:

_ the reporting procedure: the States parties undertake to submit, within one year of the entry into force of the Convention for the State concerned, an initial report, and, thereafter, every two years or whenever the Committee so requests, a report on the legislative, judicial, administrative or other measures taken to give effect to the provisions of the Convention (art. 9(1)). Like the other Committees, the Committee on the Elimination of Racial Discrimination has adopted special guidelines on the form and contents of the reports submitted by the States parties; _ inter-State complaints: any State party which considers that another State party is not giving effect to the provisions of the Convention “may bring the matter to the attention of the Committee” (art. 11(1)). Unlike the case of the International Covenant on Civil and Political Rights, no special declaration is needed to recognize this competence of the Committee to receive inter-State communications; the Committee will however only deal with the matter if it has not first been settled to the satisfaction of both parties. Where the Committee is seized of the case, the Convention foresees the appointment of an ad hoc Conciliation Commission, which shall make its good offices “available to the States concerned with a view to an amicable solution of the matter on the basis of respect for” the Convention (art. 12(1)(a)). When the Commission has considered the matter, it shall submit to the Chairman of the Committee “a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute” (art. 13(1)). The States parties can accept or reject the recommendations of the Conciliation Commission (art. 13(2)); _ individual

communications: a State party may also at any time declare that it considers the Committee competent “to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention” (art. 14(1)). Article 14 entered into force on 3 December 1982, and, as of 17 August 2001, 34 of the States parties had made such a declaration.[57](#)

The International Convention on the Elimination of All Forms of Racial Discrimination prohibits such discrimination in the enjoyment of human rights in all fields of public life. States parties must however also ensure that, whenever private institutions influence the exercise of rights or the availability of opportunities, the result has neither the purpose nor the effect of creating or perpetuating racial discrimination. The Convention is implemented at the international level through: (1) a reporting procedure; (2) inter-State complaints; and (3) individual communications.

2.6 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Although outlawed by all the major human rights treaties, the widespread practice of torture was considered to require more detailed legal regulation and more efficient implementation machinery. It was therefore decided to draft a Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the United Nations General Assembly on 10 December 1984. It entered into force on 26 June 1987, and, as of 8 April 2002, there were 128 States parties to the Convention. The Convention created an expert body, the Committee against Torture, to supervise the implementation of the obligations of the States parties.

2.6.1 The undertakings of the States parties

According to the Convention, “the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. However, “it does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions” (art. 1). Next, the Convention requires that “each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” (art. 2(1); emphasis added). It further specifies that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture” (art. 2(2); emphasis added). This is simply a restatement of already existing international human rights law, given that the right to freedom from torture is made non-derogable in the major relevant treaties, including the International Covenant on Civil and Political Rights. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment makes it clear that “an order from a superior officer or a public authority may not be invoked as a justification of torture” (art. 2(3)). In other words, the principle of individual responsibility for acts of torture is clearly established.

2.6.2 The legal scope of the Convention

The following provisions of the Convention detail the responsibilities of the States parties to prevent, punish, and remedy acts of torture. However, only some of the legal obligations will be outlined here, and in general terms:

_ “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” – art. 3(1); _ “each State Party shall ensure that all acts of torture are offences under its criminal law” and the same shall apply to attempts to commit torture and acts that constitute “complicity or participation in torture”. It shall, moreover, “make these offences punishable by appropriate penalties which take into account their grave nature” – art. 4(1) and (2); _ the States parties shall take the measures necessary to exercise their jurisdiction over the preceding offences and to submit the person alleged to have committed acts contrary to article 4 of the Convention to the “competent authorities for the purpose of prosecution” (arts. 5-7) and they shall moreover “afford one another the greatest measure of assistance in connection with criminal proceedings brought” in respect of any of these offences -art. 9; _ “the offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties”, which also “undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them” – art. 8; _ the States parties shall further “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” – art. 10(1); _ for purposes of prevention of torture, the States parties “shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form” of deprivation of liberty – art. 11; _ “each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed ... ” – art. 12; _ each State party shall further ensure that any alleged victim of torture “has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities” – art. 13; _ “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” – art. 14; _ “each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made” – art. 15; and finally, _ each State party also undertakes “to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1” of the Convention – art. 16. As is clear from this general description of the legal obligations incurred under this Convention, the question of torture and other cruel, inhuman or degrading treatment or punishment and the State’s actual response thereto is highly relevant to judges, prosecutors and lawyers, who must at all times be prepared to look for signs of the existence of such unlawful acts.

2.6.3 The implementation mechanism

The Committee against Torture, the independent ten-member expert body (art. 17(1)) set up to supervise the implementation of the Convention has, like all the other treaty Committees dealt with in this chapter, the task of considering the periodic reports submitted by the States parties, but can also, when the States parties have made declarations to this effect, receive and consider communications from States parties and individuals. Whilst, as will be seen

below, the Convention authorizes the Committee to visit a country where torture is practised only with the consent of the State party concerned, efforts have been made since 1991 to draft an optional protocol to the Convention which would establish a preventive system of regular visits to places of detention. Although the participants in the World Conference on Human Rights unanimously called for the early adoption of this optional protocol,⁵⁸ no agreement has yet been reached on the contents thereof.⁵⁹ In general terms, the monitoring procedures can be described as follows: _ the reporting procedure: the States parties are under an obligation to submit reports on the measures they have taken to give effect to their undertakings under the Convention within one year after its entry into force and thereafter every four years or when the Committee so requests (art. 19(1)). In order to facilitate the elaboration of the reports, the Committee has adopted general guidelines on the form and content of both the initial and periodic reports;⁶⁰ _ activities of the Committee under article 20: this article is specific to the Convention against Torture and provides that, "if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party", it "shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned" (art. 20(1)). However, the States parties may, when signing or ratifying the Convention or when acceding to it, declare that they do not recognize this competence of the Committee (art. 28(1)). As of 18 May 2001 a total of nine States parties had made such a declaration.⁶¹ The documents and proceedings relating to the Committee's functions under this article are confidential, although "the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report" to the States parties and to the General Assembly (art. 20(5));⁶² _ inter-State communications: as of 18 May 2001, 43 States parties had declared that they recognize 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 the Convention (art. 21(1)).⁶³ The Committee will consider the communication only if the matter has not been settled to the satisfaction of both States parties. The procedure is confidential and 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". To this end it can set up an ad hoc conciliation commission. If no friendly solution is reached in the case, the Committee shall draw up a report which shall merely contain a "brief statement of the facts" of the case (art. 21(1)); _ individual communications: lastly, the Committee may receive communications from individuals claiming to be victims of a violation of the Convention if the State party concerned has expressly recognized its competence to do so (art. 22(1)). As of 18 May 2001, 40 States parties had made a declaration to this effect.⁶⁴ The Committee shall however consider inadmissible any communication which is anonymous, or which it considers to be an abuse of the right of submission of communications or which is incompatible with the terms of the Convention (art. 22(2)). Before considering a communication the Committee must also, inter alia, ascertain that the individual has exhausted all available domestic remedies, unless the application of remedies is unreasonably prolonged or is unlikely to bring effective relief to the alleged victim (art. 22(5)(b)). Whilst the documents and proceedings relating to individual communications are confidential, the views of the Committee are communicated to the parties and also made available to the public. The same also generally holds true with regard to the Committee's decisions whereby it declares communications inadmissible.⁶⁵ Many of the Committee's views and decisions are contained in its annual report to the General Assembly. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment confirms the well-established rule in international law that no circumstances whatever, not even wars or other public emergencies, can justify recourse to torture or other forms of ill-treatment. An order from a superior cannot be invoked as a justification of torture. The Convention is implemented at the international level through: (1) a reporting procedure;

(2) the Committee's special activities under article 20; (3) inter-State communications; and (4) individual communications.

2.7 The Convention on the Elimination of All Forms of Discrimination against Women, 1979, and its Protocol, 1999

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1981. As of 8 April 2002 it had 168 States parties. The Convention establishes an independent expert body, the Committee on the Elimination of Discrimination against Women, to monitor the implementation of the Convention. On 6 October 1999 the General Assembly further adopted, without a vote, an Optional Protocol to the Convention, thereby making it possible for the Committee, inter alia, to receive and consider communications from women or groups of women who consider themselves to be victims of gender discrimination within the jurisdiction of those States that have ratified or acceded to the Protocol. This Protocol entered into force on 22 December 2000, and as of 8 April 2002 had 30 States parties.

2.7.1 The undertakings of the States parties

For the purposes of the Convention the term "discrimination against women" means "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (art. 1; emphasis added). The prohibition on discrimination against women is thus not limited to the traditional categories of human rights, but goes beyond them to other fields where discrimination might occur. Furthermore, it is not limited to the public field but also extends to areas of private life. It is noteworthy, however, that "temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention"; however, such measures "shall be discontinued when the objectives of equality of opportunity and treatment have been achieved" (art. 4). The States parties "agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake", in particular (art. 2): _ to embody the principle of equality of men and women in their national laws and to ensure the practical realization of this principle; _ "to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women"; _ to establish effective legal protection of the equal rights of women through national tribunals or other public institutions; _ "to refrain from engaging in any act or practice of discrimination against women"; _ "to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise"; and _ "to repeal all national penal provisions which constitute discrimination against women ". The subsequent articles provide further details as to the undertakings of the States parties to eliminate discrimination against women, which, inter alia, comprise the following obligations:

_ "to modify the social and cultural patterns of conduct of men and women ... which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" (art. 5(a)); _ "to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases" (art. 5(b)); _ to take all appropriate measures to suppress all forms of traffic in women and

exploitation of prostitution of women (art. 6), eliminate discrimination against women in political and public life (arts. 7 and 8⁶⁶), in the fields of education (art. 10), employment (art. 11) and health care (art. 12); in the areas of economic and social life (art. 13); as well as against women in rural areas (art. 14(2)).

2.7.2 The specific legal scope of the Convention

Whilst many articles in the Convention are framed as general legal obligations on the States parties to “take appropriate measures” to eliminate discrimination against women, some at the same time specify the particular rights which must be ensured on a basis of equality of men and women. Thus, for instance: _ with regard to education, women have the right, inter alia, to the same conditions for career and vocational training and the same opportunities for scholarships and other grants – art. 10; _ the right to work, to the same employment opportunities, to free choice of profession and employment, to equal remuneration,⁶⁷ to social security and to protection of health – art. 11; _ the right to family benefits, to bank loans, mortgages and other forms of financial credit and to participate in recreational facilities, sports and all aspects of cultural life – art. 13; _ the right of rural women to participate in the elaboration and implementation of development plans, to have access to adequate health care facilities, to benefit directly from social security programmes, to obtain all types of training and education, to organize self-help groups, to participate in all community activities, to have access to agricultural credit and loans, and to enjoy adequate living conditions – art. 14. Lastly, the Convention specifically imposes a duty on the States parties to “accord to women equality with men before the law” as well as identical legal capacity in civil matters (art. 15(1) and (2)); and also obliges States parties to ensure them, on a basis of equality of men and women, a number of rights relating to marriage and the family (art. 16). The Convention on the Elimination of All Forms of Discrimination against Women thus covers all major fields of active life in society and can also serve as a useful tool for judges, prosecutors and lawyers in examining questions of equality between men and women under national legislation.

2.7.3 The implementation mechanisms

The monitoring mechanisms established under the Convention and its 1999 Protocol can briefly be described as follows: _ the reporting procedure: the Convention per se has an implementation mechanism that is less developed than those created by the treaties dealt with above in that it is limited to a reporting procedure, with the States parties undertaking to send a report to the Committee on the Elimination of Discrimination against Women, indicating the factors and difficulties they encounter in fulfilling their obligations under the Convention, within one year after the entry into force of the Convention, and thereafter every four years, or when the Committee so requests (art. 18). The Committee has adopted guidelines for the submission of periodic reports with the object of assisting the States parties in complying with their treaty obligations, and, as of June 1999, it had also adopted 24 General recommendations under article 21 of the Convention;⁶⁸ the recommendations can concern either specific provisions of the Convention or what are called “cross-cutting” themes.⁶⁹ The work of the Committee on the Elimination of Discrimination against Women has been rendered more difficult by the fact that the Convention limits its meeting time to a maximum of two weeks annually (art. 20), whilst the meeting times of other treaty bodies have not been limited by the respective treaties. In its General Recommendation No. 22, the Committee thus proposed that the States parties amend article 20 “so as to allow it to meet annually for such duration as is necessary for the effective performance of its functions under the Convention”;⁷⁰ _ individual communications: Since the entry into force on 22 December 2000 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination

against Women, the Committee has been competent to consider petitions from individual women or groups of women having exhausted all their domestic remedies. Petitions can also be submitted on behalf of individuals or groups of individuals, with their consent, unless it can be shown why consent was not received (art. 2). The Optional Protocol also entitles the Committee to conduct confidential enquiries into grave or systematic violations of the Convention (art. 8). The Convention on the Elimination of All Forms of Discrimination against Women has provided a legal framework that has stimulated work in favour of increased equality between women and men in many parts of the world. The Convention on the Elimination of All Forms of Discrimination against Women provides a comprehensive legal framework for the elimination of discrimination against women in their enjoyment of human rights and fundamental freedoms in both the public and the private fields. At the international level the Convention is implemented through (1) a reporting procedure and (2) a system of individual communications.

3. Other Instruments Adopted by the United Nations General Assembly

This section will highlight a few of the most relevant resolutions adopted by the General Assembly in the field of human rights, many of which will be dealt with specifically in some detail in other chapters of this Manual. As explained in Chapter 1, resolutions adopted by the General Assembly do not, as such, constitute legally binding obligations, but, depending on the circumstances of their adoption, they can provide useful evidence of customary international law.⁷¹ As a minimum, resolutions adopted by the General Assembly carry strong moral and political force and can be regarded as setting forth principles broadly accepted within the international community.⁷² Consequently, they can also provide important guidance to the domestic legal professions, in situations, for instance, where either international or domestic law is not sufficiently clear on a particular issue. The following resolutions are among those that are of particular significance for judges, prosecutors and lawyers in the exercise of their professional responsibilities. However, it is advisable to exercise care in seeking guidance, particularly from some of the older resolutions, since States may have become bound by stricter legal standards, either under their own domestic law, or under international conventions. As will be seen, many of these resolutions deal with the treatment of persons deprived of their liberty, including juveniles, and aim at eradicating torture and other kinds of inhuman treatment.

3.1 The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief proclaims “the right to freedom of thought, conscience and religion”, and includes, inter alia, the freedom to have a religion or whatever belief of one’s choice, and to manifest this religion or belief either individually or in community with others (art. 1). It further provides that “no one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief” (art. 2(1)). States “shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief” and shall “make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination” (art. 4).

3.2 The Basic Principles for the Treatment of Prisoners, 1990

According to the Basic Principles for the Treatment of Prisoners, 1990, “all prisoners shall be treated with the respect due to their inherent dignity and value as human beings”, and shall

not be subjected to discrimination on various grounds (Principles 1 and 2). “Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party”, the rights set out in other United Nations covenants (Principle 5). Prisoners shall have the right to take part in cultural activities and education and be enabled to undertake “meaningful remunerated employment” (Principles 6 and 8). The Basic Principles also provide that efforts should be undertaken and encouraged to abolish solitary confinement as a punishment (Principle 7).

3.3 The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988, is a comprehensive statement of 39 principles, which cannot be invoked to restrict the rights of persons deprived of their liberty recognized by other national or international sources of law on the ground that they are not contained in this Body of Principles (Principle 3 and General Clause). The Body of Principles emphasizes, in particular, questions of effective control of all forms of detention including judicial or other review of the continued detention. It further provides details as to conditions of arrest, the notification of arrest or transfer to a different place of detention to the family or other persons, the right of a person deprived of his or her liberty to communicate with family and legal counsel, interrogations, impartial visits to places of detention to supervise the observance of laws and regulations and, for instance, the question of remedies to challenge both the lawfulness of the deprivation of liberty and the treatment to which the person has been subjected whilst deprived of his or her liberty.

3.4 The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990, emphasize that imprisonment for juveniles “should be used as a last resort” (Rule 1), and provide extensive guidance with regard to the rights of juveniles within the justice system, for instance, in connection with arrest or detention and when they are awaiting trial. They also regulate the management of juvenile facilities, inter alia with regard to record keeping, the physical environment and accommodation, education, vocational training and work, recreation, religion, medical care, limitations of physical restraint and the use of force, disciplinary procedures, as well as inspection and complaints.

3.5 The Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982

The Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982, is a brief set of six principles which emphasize the duty of all health personnel charged with the medical care of prisoners and detainees to provide them with the same protection of their physical and mental care as is afforded to those who are not deprived of their liberty (Principle 1). It is thus “a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment” (Principle 2). It is also

a contravention of medical ethics, inter alia, for physicians, to “apply their knowledge and skills ... to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees” (Principle 4(a)) and “to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria” as being necessary for certain specifically identified purposes (Principle 5).

3.6 The Code of Conduct for Law Enforcement Officials, 1979

The Code of Conduct for Law Enforcement Officials, 1979, is aimed at all officers who exercise police powers, especially the powers of arrest and detention (art. 1 with Commentary). “In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons” (art. 2). In particular, they “may use force only when strictly necessary and to the extent required for the performance of their duty” (art. 3) and may not “inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment”. Furthermore, such acts cannot be justified by superior orders or exceptional circumstances such as a state of war or other public emergencies (art. 5). Lastly, among other obligations, “law enforcement officials shall not commit any act of corruption” and “shall rigorously oppose and combat all such acts” (art. 7).

3.7 The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), 1990

The United Nations Standard Minimum Rules for Non-custodial Measures, 1990, also called The Tokyo Rules, “provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment”, and are “intended to promote greater community involvement in the management of criminal justice” and “to promote among offenders a sense of responsibility towards society” (General Principles 1.1 and 1.2). The Rules cover all stages from pre-trial, through the trial, sentencing and post-sentencing stages, and further deal, inter alia, with the implementation of non-custodial measures (Principles 5-14).

3.8 The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 1990

The United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990, also called the Riyadh Guidelines, aim at the prevention of juvenile delinquency by pursuing “a child-centred orientation” whereby “young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control” (Fundamental Principle 3). The Guidelines, which should be interpreted and implemented within the framework of other existing relevant international standards such as the International Covenants and the Convention on the Rights of the Child, deal with questions of general prevention (Guideline 9), socialization processes (Guidelines 10-44), social policy (Guidelines 45-51), legislation and juvenile justice administration (Guidelines 52-59), and research, policy development and coordination (Guidelines 60-66).

3.9 The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985

The Standard Minimum Rules for the Administration of Juvenile Justice 1985, also called the Beijing Rules, set forth detailed principles on the treatment of juveniles in the administration of justice, together with commentaries thereon. The rules deal with the age of criminal responsibility, the aims of juvenile justice, the rights of juveniles, the protection of privacy, investigation and prosecution, adjudication and disposition, non-institutional and institutional treatment, and also with research, planning, policy formulation and evaluation.

3.10 The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

The first part of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, contains rules on access to justice and fair treatment of victims of “acts or omissions that are in violation of criminal laws operative within the Member States, including those laws proscribing criminal abuse of power” (Principles 4 and 1 read together). It further regulates the right to restitution, compensation and assistance for victims of crime (Principles 8-17). Lastly, it deals with the situation of victims of “acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights” (Principle 18). In this respect “States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support” (Principle 19).

3.11 The Declaration on the Protection of All Persons from Enforced Disappearance, 1992

The Declaration on the Protection of All Persons from Enforced Disappearance, 1992, provides that “no State shall practise, permit or tolerate enforced disappearances” (art. 2(1)) and that “each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction” (art. 3). It further provides that “no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance” and that “any person receiving such an order or instruction shall have the right and duty not to obey it” (art. 6(1)). Furthermore, “the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances”, including situations where the State is facing “a threat of war, a state of war, internal political instability or any other public emergency” (art. 9(1) read in conjunction with art. 7; emphasis added). Such crisis situations cannot in any circumstances be invoked to justify disappearances (art. 7).

3.12 The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (“The Declaration on Human Rights Defenders”), 1998

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998, the so-called Declaration on Human Rights Defenders, was elaborated over a 13-year period, and is of particular significance in that it underscores the right of everyone, “individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” (art. 1). It underlines States’ “prime responsibility and duty to protect, promote and implement all human rights” (art. 2), and inter alia defines existing norms concerning the right

“to participate in peaceful activities against violations of human rights and fundamental freedoms” (art. 12(1)). Each person has, moreover, a right “to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment” of those rights and freedoms (Art. 12(3); emphasis added). By resolution 2000/61, the United Nations Commission on Human Rights decided to request the Secretary-General to appoint a special representative to “report on the situation of human rights defenders in all parts of the world and on possible means to enhance their protection in full compliance with the Declaration” (operative paragraph 3).

4. Instruments adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders

Interpretative guidance as to the meaning of international legal standards can also be sought in the following non-binding instruments which were adopted by the various United Nations Congresses on the Prevention of Crime and the Treatment of Offenders: _ Standard Minimum Rules for the Treatment of Prisoners, 1955; _ Basic Principles on the Independence of the Judiciary, 1985; _ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990; _ Basic Principles on the Role of Lawyers, 1990; and _ Guidelines on the Role of Prosecutors, 1990. However, since these instruments will be examined in some depth in other chapters of this Manual, they will not be dealt with further in this chapter.

5. United Nations Extra-Conventional Mechanisms for Human Rights Monitoring

In addition to the international treaty mechanisms, the United Nations has established what are referred to as “special procedures” to deal with especially serious human rights violations and to review petitions from individuals and NGOs. These procedures, which are established within the framework of the United Nations Commission on Human Rights, are aimed at establishing constructive cooperation with the Governments concerned in order to redress violations of human rights. There are basically two categories, namely, the thematic and country procedures on the one hand, and the 1503 procedure on the other.

5.1 Special procedures I: Thematic and country mandates [73](#)

Over the past few decades the United Nations Commission on Human Rights and the Economic and Social Council have established a number of extra-conventional mechanisms or special procedures, which are created neither by the Charter of the United Nations nor by a treaty. These extra-conventional mechanisms, which also monitor the enforcement of human rights standards, have been entrusted to working groups of experts acting in their individual capacity or individuals designated as special rapporteurs, special representatives or independent experts. The mandate and tenure of the working groups, special rapporteurs, independent experts or special representatives of the Secretary-General depend on the decision of the Commission on Human Rights or of the Economic and Social Council. In general, however, their mandate is to examine, monitor and publicly report either on the human rights situation in a specific country or territory – the so-called country mandates – or on specific types of human rights violations worldwide – the thematic mechanisms or mandates. These mechanisms are of paramount importance for monitoring universal human rights standards and address many of the most serious human rights violations in the world, such as extrajudicial, summary or arbitrary executions, enforced or involuntary disappearances, arbitrary detention, internally displaced persons, the independence of judges

and lawyers, violence against women, the sale of children, the right to development, adequate housing, education, and human rights defenders. The central objective of all these special procedures is to improve the implementation of international human rights standards at the national level. However, each special procedure has its own specific mandate, which has sometimes also evolved according to specific circumstances and needs. These mechanisms base their activities on allegations of human rights violations received from various sources, such as the victims or their relatives and local or international NGOs. Information of this kind may be submitted in various forms, such as letters and faxes, and may concern individual cases, as well as details of situations of alleged human rights violations. These special mechanisms submit well-founded cases of human rights violations to the Governments concerned for clarification. The results are subsequently reflected in the public reports submitted by the mechanisms to the Commission on Human Rights and other competent United Nations organs. Moreover, whenever the information received attests to the imminence of a serious human rights violation, such as an extrajudicial execution or involuntary disappearance, the thematic or country-specific mechanisms may address an urgent message to the Governments concerned requesting clarifications on the case and appealing to the Government to take the necessary steps to guarantee the rights of the alleged victim. They may also request an immediate visit to the country concerned.⁷⁴ The purpose of these appeals is to strengthen human rights protection in situations giving rise to immediate concern; and, as emphasized in a report on the rationalization of the work of the Commission, adopted by consensus by the Commission itself during its fifty-sixth session, "Governments to which urgent appeals are addressed should understand the gravity of the concern that underlies these appeals and should respond as quickly as possible".⁷⁵ These appeals are intended to be preventive in character and do not prejudice the final conclusion in the case concerned. Cases that are not clarified are made public through the report of the special mechanisms to the Commission on Human Rights or to other competent United Nations bodies.

5.2 Special procedures II: The 1503 complaints procedure

In response to the large number of communications submitted to the United Nations each year alleging the existence of gross and systematic violations of human rights, the Economic and Social Council has adopted a procedure for dealing with such communications. This is known as the 1503 procedure, pursuant to the adoption of resolution 1503 of 27 May 1970. However, although based on individual petitions and more comprehensive submissions by NGOs, it does not deal with individual cases but seeks to identify situations of grave violations of human rights affecting large numbers of people. As from the year 2000, this confidential procedure, which originally comprised three stages, will be composed of a two-stage procedure involving, in the first place, a Working Group on Communications comprising five independent members of the Sub-Commission on the Promotion and Protection of Human Rights, as well as a Working Group on Situations consisting of five members of the Commission on Human Rights nominated by the regional groups. The Commission itself then holds two closed sessions to consider the recommendations of the Working Groups on Situations.⁷⁶ The 1503 dossier remains confidential at all times, unless the Government concerned has indicated that it wishes it to be made public. Otherwise, only the names of the countries having been examined under the 1503 procedure, and of the countries no longer being dealt with thereunder, are made public by the Chairperson of the Commission.⁷⁷

In addition to the international treaty-based mechanisms, the United Nations has established special procedures aimed at dealing with particularly serious human rights violations. These procedures are aimed at creating cooperation with the Governments concerned for the

purpose of redressing such violations. These procedures consist of thematic and country procedures involving working groups and special rapporteurs, special representatives or independent experts. They also include the 1503 complaints procedure, which seeks to identify situations of grave violations of human rights affecting large numbers of people.

6. Concluding Remarks

As can be seen from the basic information contained in this chapter, international human rights treaties and numerous resolutions adopted by the various organs of the United Nations contain detailed standards for the protection of the human person, including a variety of monitoring mechanisms to improve the efficiency of the actual implementation of these standards at the domestic level. The examples to be given in subsequent chapters will show that these legal instruments have in fact contributed to important legal developments for the purposes of enhancing the protection of individuals. Naturally, the universal human rights standards presented in this chapter, as interpreted by the competent monitoring organs, also provide indispensable guidance to the domestic legal professions in their own work to protect individuals at all times against various encroachments upon their rights. Moreover, these universal standards are complemented by regional standards adopted in Africa, the Americas and Europe. These various universal and regional legal standards often coexist at the domestic level, and, depending on the issues involved, domestic judges may have to consider both sets of rules and principles. Finally, it is important to bear in mind that neither the universal nor the regional law for the protection of the human person is static, but that they evolve in step with the new human needs that continue to emerge in society. Since this adaptation is often effected by means of interpretation, it is indispensable for judges, prosecutors and lawyers to keep themselves continuously informed about these legal developments so as to be able to contribute to maximizing the protection of the individual at the domestic level.

Notes

1. As to how to draft these reports, see *Manual on Human Rights Reporting*, published by the United Nations, the United Nations Institute for Training and Research (UNITAR) and the United Nations Centre for Human Rights, 464 pp. (hereinafter referred to as *Manual on Human Rights Reporting*).

2. For more information about the International Covenant on Civil and Political Rights and its reporting procedure, see Fausto Pocar, "The International Covenant on Civil and Political Rights", in *Manual on Human Rights Reporting*, pp. 131-235. 3. For an update of ratifications see *Status of Ratifications of the Principal International Human Rights Treaties* at the following UN web site: www.unhchr.ch.

4. It should be noted that, as is indicated by the words "such as", and as will be further explained in Chapter 13 of this Manual, this list of prohibited grounds of discrimination is not exhaustive.

5. General Comment No. 3 (Article 2) in UN doc. HRI/GEN/1/Rev.5, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies* (hereinafter referred to as *United Nations Compilation of General Comments*), p. 112, para. 1; emphasis added. The texts of the General Comments are also published in the *Human Rights*

Committee's annual reports; their text can also be found at the following UN web site: www.unhchr.ch.

6. In the earlier years of the Committee's existence, its annual reports to the General Assembly consisted of a single volume, containing both an account of the discussions of the periodic reports and the Views and decisions adopted under the Optional Protocol.

7. General Comment No. 6, in United Nations Compilation of General Comments, pp. 114-116 and General Comment No. 14, *ibid.*, pp. 126-127.

8. General Comment No. 7, *ibid.*, pp. 116-117, which is replaced and further developed by General Comment No. 20, *ibid.*, pp. 139-141.

9. General Comment No. 8, *ibid.*, pp. 117-118. 10. General Comment No. 9, *ibid.*, pp. 118-119, which is replaced and further developed by General Comment No. 21, *ibid.*, pp. 141-143. 11. General Comment No. 15, *ibid.*, pp. 127-129.

12. General Comment No. 13, *ibid.*, pp. 122-126.

13. General Comment No. 16, *ibid.*, pp. 129-131.

14. General Comment No. 22, *ibid.*, pp. 144-146.

15. General Comment No. 10, *ibid.*, pp. 119-120.

16. General Comment No. 11, *ibid.*, pp. 120-121.

17. General Comment No. 19, *ibid.*, pp. 137-138.

18. General Comment No. 17, *ibid.*, pp. 132-134. 19. General Comment No. 25, *ibid.*, pp. 157-162. 20. On the question of non-discrimination in general see, in particular, General Comment No. 18, *ibid.*, pp. 134-137.

21. As to the duty of the States parties to ensure the equal rights of men and women, see also General Comment No. 4, *ibid.*, p. 113, which has been replaced by General Comment No. 28 (Article 3 – Equality of rights between men and women), *ibid.*, pp. 168-174. 21 General Comment No. 23, *ibid.*, pp. 147-150.

22. See Anna-Lena Svensson-McCarthy, *The International Law of Human Rights and States of Exception – With Special Reference to the Travaux Préparatoires and Case-Law of the International Monitoring Organs* (The Hague/Boston/London, Martinus Nijhoff Publishers, 1998), pp. 112-114, in particular the reasoning on p. 113.

23. UN doc. E/CN.4/SR.195, p. 16, para. 82; explanation given by Mr. Cassin of France. 24. See in particular the reply of the Human Rights Committee to the request by the Sub-Commission on Prevention of Discrimination and Protection of Minorities that the Committee consider a draft protocol for the purpose of strengthening the right to a fair trial, UN doc. GAOR, A/49/40(vol. I), pp. 4-5, paras. 22-25. 25. Cf. article 6(2) which provides that the death penalty cannot be imposed "contrary to the provisions of the present Covenant"; as to the case-law,

see e.g. Communication No. 16/1977, *D. Monguya Mbenge v. Zaire* (views adopted on 25 March 1983), GAOR, A/38/40, p. 139, para. 17. The requirement concerns “both the substantive and the procedural law in the application of which the death penalty was imposed”.

26. Communication No. 263/1987, *M. González del Río v. Peru* (views adopted on 28 October 1992, at the 46th session), GAOR, A/48/40 (vol. II), p. 20, para. 5.2; emphasis added.

27. General Comment No. 5, in *United Nations Compilation of General Comments*, p. 114, para. 3.

28. See UN doc. CCPR/C/66/GUI.

29. For more information about the International Covenant on Economic, Social and Cultural Rights and the reporting procedure, see Philip Alston, “The International Covenant on Economic, Social and Cultural Rights”, in *Manual on Human Rights Reporting*, pp. 57-129. 30. For more details on the debates in this respect, see Chapter 14, subsection 2.2.

31. See General Comment No. 3 (The nature of States parties’ obligations (art. 2. para. 1), in *United Nations Compilation of General Comments*, p. 18, paras. 1 and 2. 32. *Ibid.*, p. 18, para. 2. 33. General Comment No. 12 (The right to adequate food – art. 11), *ibid.*, pp. 66-74. 34. General Comment No. 4 (The right to adequate housing – art. 11(1)), *ibid.*, pp. 22-27, and see also General Comment No. 7 (The right to adequate housing – art. 11(1): forced evictions), *ibid.*, pp. 49-54. 35. General Comment No. 13 (The right to education – art. 13), *ibid.*, pp. 74-89. 36. General Comment No. 11 (Plans of action for primary education – art. 14), *ibid.*, pp. 63-66. 37. See UN doc. E/CN.4/SR.235, p. 9, statement by Mr. Ciasullo of Uruguay.

38. See *ibid.*, p. 20 and also p. 11, statement by Mr. Eustathiades of Greece. 39. See Philip Alston, “The International Covenant on Economic, Social and Cultural Rights”, in *Manual on Human Rights Reporting*, p. 74. 40. *Ibid.*, loc. cit.

41. *Ibid.*, p. 117. See also pp. 118-119. For the terms of the resolution creating the Committee, see ECOSOC res. 1985/17 of 28 May 1985.

42. *Ibid.*, p. 121.

43. See UN doc. E/2000/22 (E/C.12/1999/11), p. 22, para. 49.

44. *Ibid.*, p. 22, para. 51.

45. For an extensive explanation of the meaning of the terms of the Convention, see *Implementation Handbook for the Convention on the Rights of the Child*, prepared for UNICEF by Rachel Hodgkin and Peter Newell, UNICEF, 1998, 681 pp. (hereinafter referred to as UNICEF Implementation Handbook). 46. See text and date of entry into force of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography: <http://www.unhchr.ch/html/menu2/dopchild.htm> and, as to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict: <http://www.unhchr.ch/html/menu2/6/protocolchild.htm>

47. General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties under Article 44, Paragraph 1(b), of the Convention, adopted by the Committee on the Rights of the Child at its 343rd meeting (thirteenth session) on 11 October 1996, published in UNICEF Implementation Handbook, pp. 604-618.

48. During its twenty-third session held in January 2000, “the Committee decided to engage in the drafting process of a general comment on article 29 of the Convention (aims of education), in view of the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance”; see UN doc. CRC/C/94, Report on the twenty-third session of the Committee on the Rights of the Child, p. 103, para. 480.

49. See *supra*, note 47.

50. See *supra*, Chapter 1, section 2.4.2.

51. Ian Brownlie, *Principles of Public International Law* (Oxford, Clarendon Press), 3rd edn., pp. 562-563.

52. See the following web site: <http://www.icj.org/icc/iccdoc/mficc.htm>, p. 1. For the text of the Rome Statute of the International Criminal Court, see UN doc. A/CONF.183/9.

53. See UN web site www.un.org/law/icc/index/html.

54. For the reporting obligations of the States parties under these provisions, see General Recommendation XXIV concerning article 1 of the Convention, in UN doc. GAOR, A/54/18, Annex V, p. 103.

55. United Nations Compilation of General Comments, pp. 188-189, paras. 1 and 2. 56. *Ibid.*, p. 189, para. 5.

57. UN doc. GAOR, A/56/18, p. 10, para. 2.

58. UN doc. A/CONF.157/23, Vienna Declaration and Programme of Action, p. 22, para. 61. 59. See resolution E/CN.4/RES/2000/35 adopted by the Commission on Human Rights on 20 April 2000 on Draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; an open-ended Working Group is attempting to draft the protocol.

60. UN docs. CAT/C/4/Rev.2 (as to the initial reports) and CAT/C/14/Rev.1 (as to the periodic reports). For more information about the initial reporting procedure under this Convention, see also Joseph Voyame, “The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, in *Manual on Human Rights Reporting*, pp. 309-332.

61. UN doc. GAOR, A/56/44, Annex II, p. 79.

62. UN doc. GAOR, A/54/44, p. 24, para. 231. 63. UN doc. GAOR, A/56/44, Annex III, pp. 80-81.

64. *Ibid.*, loc. cit.

65. UN doc. GAOR, A/54/44, p. 25, para. 236.

66. General Recommendation No. 8 (Implementation of article 8), in United Nations Compilation of General Comments, p. 206.

67. General Recommendation No. 13 (Equal remuneration for work of equal value), *ibid.*, p. 210. 68. For more information as to the reporting procedure under this Convention, see Zagorka Ilic, "The Convention on the Elimination of All Forms of Discrimination against Women", in Manual on Human Rights Reporting, pp. 265-308. For the guidelines, see UN doc. CEDAW/C/7/Rev.3, Guidelines for Preparation of Reports by States Parties.

69. For a list of the General Recommendations adopted by the Committee, see the UN web site: <http://www.un.org/womenwatch/daw/cedaw/recommendations.htm>.

70. See General Recommendation No. 22 (Amending article 20), United Nations Compilation of General Comments, pp. 232-233.

71. See further *supra*, Chapter 1, section 2.4.2.

72. See Human Rights: A Basic Handbook for UN Staff, United Nations, Office of the United Nations High Commissioner for Human Rights/United Nations Staff College Project, p. 5.

73. The information in this section has been drawn partly from Human Rights: A Basic Handbook for UN Staff, United Nations, Office of the High Commissioner for Human Rights/United Nations Staff College Project, pp. 49-53.

74. See UN doc. E/CN.4/2000/112, Report of the Intersessional Open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, p. 8, para. 26.

75. *Ibid.*, p. 9, para. 28.

76. For further details on the 1503 procedure as modified, see *ibid.*, pp. 11-12, paras. 35-41.

77. *Ibid.*, p. 12, para. 41.