1. An Overview of International Human Rights and Humanitarian Law Development and Their Protection Mechanisms

In this section, we provide a brief overview of the historical and conceptual development of international human rights and humanitarian law. For the student of international human rights and humanitarian law, it is important to note the political, social, and economic conditions giving rise to the conception of international law and the definitional limits imposed by that conception. To this end, we sketch an outline of this development with certain extralegal themes in mind: the nation-state, war, and international transactions. In the next section, we provide an overview of the history, organization, and operation of *present* international human rights and humanitarian law mechanisms of protection.

1.1. The Historical and Conceptual Development of International Human Rights and Humanitarian Law

The "law of nations" (*jus gentium*) is now called "international law." However, the phrase "international law" (*jus inter gentes*) is misleading because it falsely suggests a body of law that only governs relations between nations, and international human rights law most often governs *intra*national matters. *Jus inter gentes* is only a subset of the law of nations. Indeed, the phrase "international law" was not coined until 1780 by Jeremy Bentham. Further contributing to the unfortunate use of the word "international law" is that the word "nation" has become conflated with the meaning of "state," suggesting falsely that international law does not protect and impose duties on a state's own nationals. "Nation" means "people," and a "state" is a particular kind of political body that is defined as such according to its relation with other states. A state sometimes – but not always – is a political organization of a people. Sometimes a state encompasses several peoples. The conflation of "nation" and "state" probably can be attributed to the emergence of independent "nation-states" that resulted from the dismantling of the Holy Roman Empire with the Peace of Westphalia ending the Thirty Years War in 1648. These events initiated an important conceptual approach to the law of nations: international law is a law of nations – not of individuals. On a theoretical level, this conception was strengthened by the use of Roman law by clerks running the chancelleries of these newly emerging nation-states. These clerks earlier had studied law at universities in Padua, Bologna, and Paris where there had been a revival of the study of Roman law that placed primacy on the state's interests – not the individual's.

However, the quasi-private dimension of international law remained and contributed greatly to the growth of the law of nations. One important area of this law was the *lex mercatoria*, and this body of international trade law developed through state-private

commercial leagues, such as the Hanseatic League. To reduce transaction costs associated with violations of commercial customs, it was necessary to normalize these practices through treaties.

Rationalization efforts. With the growing number of treaties and customs, legal scholars undertook efforts to rationalize this growing corpus of international law. The first prominent school of thought used natural law (*jus naturale*). The leading natural law scholars were Hugo Grotius (1583–1645), Francisco de Vitoria (1486?–1546), Francisco Suarez (1548–1617), and Samuel Pufendorf (1632–1694). Whereas Vitoria and Suarez based their natural law theories on the laws of God, Grotius had a secular theory based on universal reason rather than divine authority. In his book, De Jure Belli ac Pacis (Concerning the Law of War and Peace), Grotius argued that two of the most important principles of the law of nature were (i) restitution must be made for harm done by one party to another and (ii) promises (e.g., treaties) given must be kept (*pacta sunt servanda*). These principles are still present in today's international law.

The next school of thought was Positivism. Its leading exponents were Richard Zouche (1590–1660) and Emerich de Vattel (1714–1767). "The rise of positivism in Western political and legal theory, especially from the latter part of the 18th century to the early part of the 20th century, correspond[ed] to the steady rise of the national state and its increasingly absolute claims to legal and political supremacy."[1] This school focused on positive law as opposed to natural law. With this shift in focus came the primacy of custom and treaties as evidence of the will of nations. Natural law principles were used only where a lacuna existed as to the positive law.

The beginnings of human rights and humanitarian law. The beginnings of human rights and humanitarian law are somewhat disjointed. Human rights law clearly had a beginning in humanitarian law that is strongly associated with international law governing the justification of wars (*jus ad bellum*) and the conduct of war (*jus in bello*). Although the concept of war crimes goes as far back as the fifth century with St. Augustine's discussion of a just war in his treatise, City of God, it was not until 1268 that someone was tried and executed for beginning an unjust war.[2] Two hundred years later in 1474, twenty-seven judges of the Holy Roman Empire tried and condemned Peter von Haganbach for crimes his troops committed against civilians.

The conceptual beginnings of international human rights law can be found also in natural law theory. As Professor Louis Henkin has observed:

> Individual rights as a political idea draw on natural laws and its offspring, natural rights. In its modern manifestation that idea is traced to John Locke, to famous articulations in the American Declaration of Independence and in the French Declaration of the Rights of Man and of the Citizen, and to realizations of the idea in the United States Constitution and its Bill of Rights and in the constitutions and laws of modern states.[3]

The conceptual beginning of international human rights law may also owe its existence to the *jus gentium* governing commercial transactions insofar as this law freed up the conceptual limits on international law as confined to a law between nation-states only

[1] Louis Henkin, et al., International law: Cases and Materials xxv (3d ed. 1993).
[2] Christopher L. Blakesley, *Report on the Obstacles to the Creation of a Permanent War Crimes Tribunal*, 18 Fletcher Forum of World Affairs 77 (No. 2, 1994).
[3] Louis Henkin, The Age of Rights 1 (1990).

to allow for the protection of the economic interests of individuals and commercial organizations.

It is in the nineteenth century that an integration of international human rights law and international humanitarian law that reflects and integrates the ideas, events, and conditions outlined emerges. For example, in the nineteenth century, states began to adopt the practice of outlawing the trafficking of slaves – a human rights concern. In 1868, the St. Petersburg Declaration condemned the use of "dum dum" bullets in war, thereby introducing the modern international humanitarian law on which modern international human rights law would be built. In 1898, the Convention on the Laws and Customs of Land War (the "First Hague Convention") was established as the first international codification of laws of land war.

Accordingly, one later begins to see humanitarian law cases and additional treaties. For example, in *The Paquete Habana*,[4] the U.S. Supreme Court held that the seizure of two civilian fishing boats as prizes of war was unlawful under customary international law. In 1920, the Treaty of Sevres provided for Turkey's surrender of persons responsible for the murder of an estimated six hundred thousand Armenians in 1915.

Contributing to the conceptual development of international human rights law was the international law governing the treatment of aliens and national minorities. In 1927, the United States brought an international claim on behalf of a U.S. citizen against Mexico. In *The Chattin Case*,[5] a U.S. citizen had been arrested in Mexico for embezzlement. Under a treaty between Mexico and the United States establishing a claims commission, the United States on behalf of Mr. Chattin claimed that the Mexican authorities had violated several of Chattin's due process rights as recognized under international law. The commission found for the United States (and Chattin). In another Mexican case, the commission found Mexican authorities liable for their failure to take prompt and efficient action in pursuing the murderer of a U.S. citizen working in Mexico.[6] In 1935, the Permanent Court of International Justice issued an advisory opinion finding that a Muslim-dominated Albania unlawfully had discriminated against its Greek Christian minority by closing all private schools – including Christian ones, in violation of its duty as a member of the League of Nations.

Between World Wars I and II, other humanitarian treaties were adopted. The Geneva Conventions of 1929 governed the conduct of war, and the Kellogg-Briand Pact outlawed war of aggression. In 1937, the League of Nations adopted a Convention Against Terrorism, and an optional protocol provided for the establishment of a special international criminal court to prosecute crimes of terrorism, although the convention never came into force.[7]

The World War II tribunals: A watershed in the integration of international human rights law and international humanitarian law. Ten years later, the Nuremberg and Tokyo War Crimes Tribunals would bring together these diverse strands of international law, thereby creating a somewhat more coherent international human rights and humanitarian law. During World War II, many and various gross human rights and

[4] 175 U.S. 677 (1900).

[5] *United States of America (B. E.Chattin) v. United Mexican States*, United States-Mexican Claims Commission, 4 U.N.R.I.A.A. 282 (1927).

[6] *United States v. Mexico (Laura M. B. Janes)*, United States and Mexico General Claims Commission, 1926, [1927] Opinions of the Commissioners 108, 4 U.N. Rep. Int'l Arb. Awards 82.

[7] C. Oliver, The International Legal System 910 (4th ed. 1995).

humanitarian law violations were perpetrated by both the Allies and Axis powers. However, many atrocities were not covered by the laws of war. These atrocities included Nazi Germany's discrimination against and mass murder of Jews, the Romani, homosexuals, and communists. The U.S. government interned Japanese Americans in concentration camps, an action upheld by the Supreme Court in *Korematsu v. United States*, 323 U.S. 214 (1944). These human rights violations were not covered by the laws of war insofar as they constituted a state's mistreatment of its own citizens, persons believed by many at the time not to be covered by international legal protection.

In the summer of 1945, Allied leaders met in London to discuss the establishment of a war crimes tribunal. Consequently, the Allies signed the London Agreement and Charter[1] that provided for establishing an ad hoc tribunal for prosecution of German war criminals. This tribunal was called the International Military Tribunal (IMT) or Nuremberg War Crimes Tribunal.

Before this agreement, alternative fora were entrusted with the responsibility of trying war criminals. These tribunals were not displaced by the IMT. These trials took place before, during, and after the time of the Nuremberg trials. The most significant of these were the "Subsequent Proceedings" authorized by Control Council Law No. 10 that took place in the U.S. Zone of Occupied Germany. During these proceedings, about two hundred Nazi doctors, lawyers, SS leaders, generals, and diplomats were tried. There were other courts that tried Nazi war criminals as well: local courts throughout Germany, or elsewhere in Europe, and both British and American military courts-martial.

The Allies thought, however, that the IMT was necessary for the prosecution of other Nazi war criminals because the Allies feared that these criminals would escape punishment under domestic law. For example, some of the crimes were committed in a number of European jurisdictions, and it was unclear which country had a better claim to jurisdiction. The IMT's international jurisdiction mooted such jurisdictional issues. Also, many of the courts of the occupied nations used domestic law that allowed an affirmative defense of obedience to superior orders. However, under the London Charter, the IMT disallowed the defense of obeying orders.

In addition to charging defendants with violations of the laws of war, the IMT punished new categories of offenses. The London Charter established other crimes than those earlier identified in The Hague Conventions. These were crimes against peace, conspiracy to commit crimes against peace, and crimes against humanity. The assertion that a person could be held criminally liable under international law for conspiracy was controversial because there was no analogous criminal liability in the civil law traditions of two members of the Allied Powers – France and the Soviet Union. The last of these crimes, crimes against humanity, had some grounding in The Hague Conventions. In the London Charter, they were defined as:

> murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.[2]

[1] (United States, Soviet Union, Great Britain, France) Agreement signed at London August 8, 1945, 59 Stat. 1544, E.A.S. No. 472 (hereafter London Charter).

[2] *Id.* at art. 6(c).

This marked a watershed in the conceptual and institutional development of international human rights and humanitarian law. The treaty law creating and governing the IMT wove together all the different and separate strands of the nascent international human rights and humanitarian law: *jus in bello*, individual standing (and liability), the international arbitrational law governing the treatment of aliens, the international law prohibiting discrimination against national minorities, customary international law outlawing slavery, and even the use of natural law for recognizing international crimes where customary international law arguably had been less than clear.

The Nuremberg trial lasted eleven months. The IMT tried twenty-two individuals and six organizations. Of those tried, the IMT sentenced twelve individuals (including Fritz Sauckel, Arthur Seyss-Inquart, Martin Bormann, Julius Streicher, and Herman Goering) to death by hanging and imprisoned seven others at the Allies' Spandau prison outside Berlin. Three of the six Nazi and German governmental organizations were found guilty as well.

A year after the IMT was established, Gen. Douglas MacArthur, Supreme Allied Commander for the Pacific Theater, established an equivalent tribunal in Tokyo by military order. This tribunal was called the International Military Tribunal for the Far East (IMT-FE). The IMT-FE was very similar to its counterpart in Nuremberg regarding subject-matter jurisdiction. As with the IMT, the IMT-FE had jurisdiction over crimes against humanity, crimes against peace, conspiracy, and other war crimes.[3]

The aftermath of World War II. It has been argued that the Tokyo and Nuremberg trials did not reflect justice but only "victors' vengeance." However, as Professor Ian Brownlie has observed, "whatever the state of law in 1945, Article 6 of the Nuremberg Charter has since come to represent general international law."[4] And, the United Nations (UN) General Assembly subsequently unanimously adopted a resolution affirming "the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal."[5]

After the end of World War II, three intergovernmental organizations were established: the United Nations (1945), the Council of Europe (1949), and the Organization of American States (1948). All three organizations promulgated human rights and humanitarian legal standards and adopted treaties that established protection mechanisms. One of the UN's first contributions was to provide auspices for formulating the basic normative structure of international human rights law. This undertaking took the form of drafting a series of authoritative texts that set forth an agreed corpus of substantive rights: the

[3] Besides these tribunals, there were other military commissions responsible for prosecuting violations of the law of war. *See, e.g., In re Yamashita*, 327 U.S. 1, 347 (1946) (recognizing "command responsibility" for failure of a Japanese general to stop war atrocities committed by his troops). Following World War II, there have been some important domestic cases addressing humanitarian law. The foremost case was *Attorney-General of Israel v. Eichmann*, 36 Int'l L. Rep. 5 (1968) (District Ct. Jerusalem 1961), in which the former Nazi leader in charge of the "Final Solution" was prosecuted under Israeli law. Another notable case was *United States v. Calley*, 48 C.M.R. 19 (U.S. Ct. Military App. 1973), 48 C.M.R. 19 (U.S. Ct. Military App. 1973), in which a U.S. soldier was convicted of murdering civilians in the My Lai village during the Vietnam War. And, in *Matter of Demjanjuk*, 603 F. Supp. 1468 (N.D. Ohio 1985), an alleged Treblinka concentration camp guard was extradited to Israel to stand trial; however, he subsequently was found not guilty by an Israeli court and ordered to be allowed to return to the United States.

[4] Ian Brownlie, Principles of Public International Law 562 (4th ed. 1990).

[5] *Id.*

foundational documents were the Universal Declaration of Human Rights (1948); the International Covenant on Economic, Social, and Cultural Rights (1966); and the International Covenant on Civil and Political Rights (1966). Together these are often referred to as the Universal Bill of Human Rights. Subsequently, a series of legal instruments were adopted addressing more focused human wrongs and offering the protection of law to vulnerable targets of abuse. These included instruments relating to genocide, racial discrimination, women, children, refugees, victims of torture, and indigenous peoples. Most recently, the UN has established the International Criminal Tribunals for the Former Yugoslavia and Rwanda and the International Criminal Court.

However, regional organizations had been more successful in protecting human rights than the UN because both the United States and the Soviet Union used charges of human rights violations as a political tool to discredit the other. Accordingly, the Council of Europe adopted the European Convention on Human Rights in 1950, which established the European Commission and Court of Human Rights. The Organization of American States adopted the American Declaration on the Rights and Duties of Man in 1948 and the American Convention on Human Rights in 1969 and established the Inter-American Commission and Court of Human Rights. In Africa, the Organisation of African Unity has established the African Commission and Court of Human and Peoples' Rights, charged with enforcing the African Charter on Human and Peoples' Rights.

In the following section, we discuss in greater detail these and other subsequent developments in international human rights and humanitarian law and their enforcement mechanisms.

1.2. Overview of International Protection Mechanisms: History, Organization, and Operations

We now will examine the major international human rights and humanitarian adjudicative and other enforcement mechanisms.

1.2.1. United Nations Mechanisms

The UN's human rights and humanitarian enforcement mechanisms are either UN treaty- or UN Charter-based. The difference between treaty- and Charter-based organizations is important on a very pragmatic level. Charter-based organizations are supported by UN members dues; treaty-based organizations are funded only on a voluntary basis by the states parties to the treaty.

Within the UN enforcement system, there are diverse organs, such as courts/tribunals, committees, special procedural mechanisms, working groups, rapporteurs, experts, and representatives. The only true courts/tribunals at present are the following:

- International Court of Justice ("The Hague" or ICJ)
- International Criminal Court (ICC)
- International Criminal Tribunal for the Former Yugoslavia (ICTY)
- International Criminal Tribunal for Rwanda (ICTR)

Tribunals and courts that have been established or proposed under agreements between the UN and national authorities (so-called hybrid tribunals) include the following:

- Special Court for Sierra Leone
- Crime Panels of the District Court of Dili and Court of Appeals ("East Timor Tribunal")
- UN Interim Administration Mission in Kosovo (UNMIK) "Regulation 64" Panels in the Courts of Kosovo
- Extraordinary Chambers in the Court of Cambodia

These tribunals will be addressed in Section 1.2.3.

The ICJ only considers cases between countries and/or intergovernmental organizations (e.g., World Health Organization, UNICEF). Individuals or nongovernmental organizations (NGOs) cannot bring cases to the ICJ. The International Criminal Court, the International Criminal Tribunals for Yugoslavia and Rwanda, and the other hybrid criminal courts only consider cases prosecuted by their respective prosecutors. Individuals cannot bring private prosecutions. However, these criminal tribunals do consider *amicus curiae* briefs from NGOs and other nongovernmental entities.

There are other adjudicative bodies with quasi-judicial powers that have been established by treaty. These are

- Human Rights Committee
- Committee on the Elimination of Racial Discrimination
- Committee Against Torture
- Committee on the Elimination of Discrimination Against Women

Before these bodies, individuals can bring cases against state's parties to the respective treaties creating these bodies. However, these quasi-judicial bodies can only "recommend" certain measures. They cannot "order" state's parties to comply with their findings. Other UN bodies or procedures have little or no adjudicative power. However, recently the UN Working Group on Detention has begun issuing legally reasoned decisions to develop the international law governing detention.

The opinions issued by these quasi-judicial bodies do provide declaratory relief that is essential for developing the corpus of international human rights and humanitarian law for the UN Security Council and other tribunals with stronger remedial powers. Such "soft law" has "hard law consequences" through other international enforcement mechanisms.

In the following, we briefly describe those bodies and procedures that have been frequently used by human rights and humanitarian law advocates.

1.2.1.1. UN Treaty-Based Tribunals

Although there are numerous human rights and humanitarian declarations, standards, and treaties, presently only five treaties have established either a court or a quasi-judicial body for considering cases: (1) the Treaty of Rome (or ICC Statute) that established the International Criminal Court; (2) the International Covenant on Civil and Political Rights (ICCPR) with its Optional Protocol that established the Human Rights Committee; (3) the Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment that established the Committee Against Torture; (4) the Convention on the Elimination of All Forms of Racial Discrimination that established the Committee on the Elimination of Racial Discrimination; (5) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women established the Committee

on the Elimination of Discrimination Against Women. We will examine only those mechanisms that have individual complaint procedures. Despite the interstate complaint procedure available under these three systems, no state had lodged a complaint against another under these systems as of 1995.[1]

International Criminal Court. In July 1998, the Treaty of Rome ("Statute of the International Criminal Court") was adopted. The ICC was established when the Treaty of Rome came into force on July 1, 2002. The ICC has jurisdiction over the crimes of genocide, crimes against humanity, war crimes, and the crime of aggression.[2] The UN conference that established the ICC declined to give the ICC jurisdiction over crimes of terrorism or illegal drug trafficking.

The UN Security Council or a state party to the Treaty of Rome can refer a case to the ICC prosecutor for investigation. The prosecutor also can initiate an investigation *propio motu*. On the basis of the information gathered by the prosecutor, the ICC's pretrial chamber makes a decision about admissibility. There is also an appeals chamber. In 2004, the ICC prosecutor began investigating international crimes committed in the Democratic Republic of Congo, Central African Republic, and Uganda.

Human Rights Committee. The UN Human Rights Committee was established by the ICCPR in 1976. Its major function is to interpret the ICCPR, which lists many different fundamental rights. Besides examining reports on human rights conditions in particular countries and issuing advisory opinions called "General Comments," the Committee also considers "communications" from individuals in closed meetings under the Optional Protocol to the ICCPR. The eighteen-member committee meets three times a year in Geneva (twice) and New York (once).

Only complaints (called "communications") from person(s) (called "authors") subject to the jurisdiction of a state that is a party to the Optional Protocol can be considered. Of the approximately 130 states parties to the ICCPR, over eighty are parties to the Optional Protocol. If the author's communication is sent to the state party for comment, the author will have an opportunity to reply to the state's comments. The Committee places authors and states parties on equal footing throughout its proceedings.

There is an initial admissibility stage in which the Committee examines the communication to determine whether it has jurisdiction. During this admissibility stage, the Committee examines several issues. As in many international adjudicative systems, the complainant must both exhaust domestic remedies, and the complaint cannot be considered if the same situation involving the same parties is being investigated under another international procedure. Furthermore, the state must have been a state party at the time of the alleged ICCPR violation. The Committee usually takes twelve to eighteen months to declare a communication admissible or inadmissible.

If a communication is found admissible, the Committee then examines the merits of the case. The examination of the merits of the case may take a year or two, depending on the degree of cooperation by states parties and the authors of complaints in submitting all the information needed by the Committee. However, as a matter of practice, oftentimes

[1] Henry J. Steiner & Philip Alston, International Human Rights in Context: Law, Politics, Morals 560 (1996).

[2] Art. 5(1), Statute of the International Criminal Court, U.N Doc. A/CONF.183/9 (17 July 1998).

the Committee examines both the admissibility and merits of the case contemporaneously because the state party addresses both admissibility issues and the merits of the case in its initial comments to the author's complaint.

Subsequently, the Committee makes legal and factual findings on the communication. These findings are called "views." Decisions are usually made by consensus even though members can demand the taking of a vote. If the state party is found to have violated its legal obligations under the ICCPR, the Committee makes a "recommendation" to the state party to correct the matter. Although during the proceedings of the case, parties may not disclose publicly the identity of the parties, after the session at which the findings are adopted parties can publicly be disclosed. The views and recommendations are reproduced in the Committee's annual report to the General Assembly.

Interim protection before the Committee adopts its view is provided by the Committee under Rule 86 of its Regulations. For example, the Committee has advised against a threatened expulsion, for the suspension of a death sentence, or the need for an urgent medical examination.

Because the Committee has no independent fact-finding functions, it can consider only written information made available by the parties. There are no oral hearings. Allegations and counterallegations must be specific and not couched in general terms. In a number of cases dealing with the right to life, torture, and ill-treatment, as well as arbitrary arrests and disappearances, the Committee has established that the burden of proof cannot rest alone on the person who is complaining of the violation of rights and freedoms.

At first, the Human Rights Committee did not receive many communications in part due to the fact that there had been a tacit understanding with human rights NGOs that they would not deluge the Committee with communications. However, in the latter part of the 1980s, growing public awareness of the Human Rights Committee's work under the Optional Protocol multiplied the number of communications it received. In all, 728 communications from individuals involving fifty-two countries have been examined by the Committee as of November 1996. Of these 728 communications, the Committee ruled on the merits in 239 cases and found 181 cases in which there were violations of the ICCPR.

The early decisions of the Human Rights Committee had little if any legal analysis. In the Committee's views, there usually was only a discussion of the facts and an assertion of what ICCPR articles (if any) have been violated. This early lack of legal analysis has been criticized from within and from outside the Committee. Although the Committee has developed some minimal tests for determining the level of deference given to a state party that interferes with a particular ICCPR right, for the most part, the Committee's views were barren of much legal argument. However, in recent years, the Committee's decisions have included more legal analysis.

The effectiveness of the Committee has been mixed. Several countries have changed their laws as a result of Committee recommendations. In a number of cases, prisoner sentences have been commuted and compensation paid to victims of human rights violations. Countries that have complied with their ICCPR obligations include Canada and several Scandinavian countries. However, many countries have simply ignored the Committee's recommendations. Some countries have even refused to answer initial Committee requests for comments on the author's communication. In 1990, the Committee instituted a mechanism whereby it seeks to monitor more closely whether states parties have given effect to its final decisions on the merits.

Committee on the Elimination of Racial Discrimination. Largely in response to Third World pressure against the South African policy of apartheid, the UN General Assembly adopted the Declaration on Racial Discrimination in 1963 and the Convention on the Elimination of All Forms of Racial Discrimination in 1965. The convention entered into force in 1969.

The implementation provisions of the convention were the first such provisions included in the text of a UN human rights convention. Unlike, for example, the ICCPR, the Convention on the Elimination of All Forms of Racial Discrimination incorporates a right of petition for individuals. The Committee on the Elimination of Racial Discrimination (CERD) considers communications from individuals and groups within a state's jurisdiction. If the author has exhausted all domestic remedies, the convention provides notice of the alleged violation to the state party concerned, maintaining the confidentiality of the petitioner. The state is then given a three-month period in which to cure or submit written comments on the allegations. After reviewing all relevant information made available, CERD makes a finding about any violations of the convention. If a violation is found, CERD makes a recommendation to the state party. However, CERD has considered very few communications in all its years even though over 140 countries are states parties. The preferred UN protection mechanism for pressing complaints of racial discrimination has been the UN Human Rights Committee.

CERD also has the task of supervising states parties' implementation of the convention. After a state has notified the committee that another state is not adhering to the provisions of the convention, the Committee is required to transmit the communication to the state concerned and proceed to resolve the issue. In the event that the states parties fail to reach a settlement, an ad hoc conciliation commission of five is appointed by the CERD's chairman to facilitate an amicable solution.

Committee Against Torture. The Committee Against Torture (CAT) was established under Article 17 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. The convention was adopted by the UN General Assembly in 1984 and entered into force in 1987.

Each party to the convention accepts the affirmative responsibility to take effective legislative, administrative, judicial, and other measures to prevent acts of torture in any territory under its jurisdiction and to submit reports to the CAT on the measures it has taken to fulfill its responsibilities.

The Committee examines and issue reports of CAT violations. Furthermore, Article 22 of the convention creates an individual complaint procedure. On screening out communications that are anonymous or incompatible with provisions of the convention, the Committee brings admissible communications to the attention of the state party concerned and considers the communications in light of all the information made available by the individual and the state party. CAT may then forward its views to both parties and report its views in its annual report to the UN General Assembly.

The convention is distinctive among several treaties in providing for the more intrusive Article 20 remedy, whereby one or more of its members may be called on to undertake a confidential inquiry and to report urgently to CAT in those cases in which it "receives reliable information which appears to it to contain well-founded indications that torture is being systematically practiced in the territory of the State Party." While CERD has an interstate complaint procedure, the CAT interstate complaint procedure is dependent on the specific and separable acceptance by the state of Article 41.