The Universal Declaration: making States accountable for human rights

I want to talk about the international system of human rights that has developed in the post-war era and some of the problems that arise in making rights effective for all people everywhere. The starting point is the Universal Declaration of Human Rights, adopted by the General Assembly fifty years ago, on December 10, 1948. Its origins go back to the United Nations Charter of 1945 which includes among the purposes of the United Nations the promotion of respect for the human rights and fundamental freedoms of all without distinction as to race, sex, language or religion. Every member State of the United Nations has pledged to take action, jointly and separately to achieve human rights and higher standards of living. It was the United Nations Charter which the rights of every individual a matter of international concern. (1)

The detailed content of human rights and the means of implementing rights were not set out in the Charter, but were left to be spelled out later. (2) The Commission on Human Rights was given the task of preparing an international Bill of Human Rights. The first stage of this Bill was to be a statement of general principles, a Declaration of Human Rights. The Commission, presided over by Eleanor Roosevelt, produced a draft which was substantially the document adopted by the General Assembly as the Universal Declaration of Human Rights on 10 December 1948.

The Declaration does not itself create rights - it declares rights and freedoms which are already inhere in every individual by virtue of the dignity and worth of that individual. Those rights do not depend on the grant of any government or on the existence of specific laws. Their existence is already recognised in the Charter. By spelling out the content of rights, the Declaration gives substance and scope to the commitment made by member States in adhering to the Charter to promote and respect human rights.

The rights and freedoms of the Declaration are universal in that they do not represent solely the values of one cultural group; they are valid for all people, at all times and in all places. They are comprehensive, in that they encompass both economic, social and cultural rights and civil and political rights. Among the 30 provisions of the Declaration can be found the right to life, liberty and security of person, to a fair and public hearing, to freedom of opinion and expression as well as the right to social security, to an adequate standard of living and to education. The Universal Declaration recognises that adequate economic and social conditions are essential for
the full enjoyment of rights and to avoid the conflicts, national and international, which can be a threat to peace.

A central provision of the Declaration recognises the equality of every human being and the equal entitlement of each individual to enjoy the rights and freedoms it sets forth, without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin.(3)

A point not always given sufficient attention is that the Universal Declaration is not addressed only to States. It calls on every individual and every organ of society to strive to promote respect for rights and freedoms.

It is sometimes claimed that the rights of the Declaration represent something called western values and that those rights are not equally relevant to all cultures and religions. (4) In the same vein it is argued that human rights give undue weight to the individual to the detriment of community welfare or community values. These issues have been much debated in recent years. My answer is that representatives of all regions took part in the drafting of the Universal Declaration; and that the universality and indivisibility of human rights was affirmed at the Vienna World Conference in 1993. (5) In response to the argument that community values should be given greater priority than individual rights, I would point out that the Declaration expressly recognises that individuals have duties to the community in which alone the free and full development of [his] personality is possible. (6) I would add that the well-being of any community is made up of the well-being of each of its members. Community welfare cannot be secured at the expense of individual suffering, or by allowing individuals to be subjected to arbitrary detention or torture or by forbidding people to associate together to discuss issues of current concern. Proper respect for human rights principles builds the confidence between the people and their government which is essential if democracy is to thrive.

Though not in itself a treaty, the Universal Declaration has gained considerable authority in the intervening years. It is drawn upon by international and national courts; its principles have been embodied in national constitutions, and it has come to be regarded by many as having the force of customary international law. (7) It is the foundation of the whole United Nations system of human rights. I will focus on the treaty system rather than other mechanisms.

The Covenants and other UN human rights instruments

After preparing the Universal Declaration, the Commission on Human Rights went on to prepare a binding treaty on human rights, drawing on the rights of the Declaration. In 1954 the Commission sent two draft Covenants to the General Assembly, one dealing with civil and political rights and the other with economic, social and cultural rights. Several Declaration rights were left out of these instruments (8) (for example, the right to asylum and the right to property). The Covenant on Civil and Political Rights also introduced the rights of members of minorities which had not been expressed in the Declaration. (9)

Although the division between the two sets of rights was in some ways unfortunate, attempts were made to ensure the complementarity of the two Covenants. Both
include a new reference to the right of peoples to self-determination, (10) both create legally binding obligations for States and both establish independent committees, or treaty bodies, to monitor State compliance. There is however, an importance difference in the definition of State obligations. The ICCPR requires States to provide specific and effective remedies in case of violation of rights. In the case of economic, social and cultural rights, however, the State's obligations are not immediate. They are limited to taking steps individually and through international co-operation with a view to achieving rights progressively. Another difference is that an Optional Protocol was added to the Covenant on Civil and Political Rights, allowing individuals to complain to the Human Rights Committee about the violation of their rights. The Covenants were finally adopted by the General Assembly in 1966 and came into force in 1976. (11) They completed the International Bill of Human Rights.

The United Nations human rights system also includes several other conventions, dealing with issues such as racial discrimination, (12) discrimination against women, (13) torture (14) and the rights of the child. (15) All these instruments draw on the principles of the Universal Declaration and all provide for independent committees to monitor their implementation. The work of drafting human rights instruments still continues in the United Nations, covering such diverse topics as migrant workers, (16) religious intolerance, (17) indigenous rights, (18) and the right to development. (19) The Commission on Human Rights has also established other accountability mechanisms and programs which cannot be dealt with here. (20)

**The treaty bodies and accountability**

My own work in human rights has been as a member of two United Nations treaty bodies. The treaty bodies are the Committees of independent experts elected by States parties. Their role is to monitor the progress made by States in giving effect to their human rights obligations under the principal United Nations human rights instruments. States which ratify any of these instruments are obliged to submit written reports at intervals of four to five years, explaining how they give effect to rights and the progress made in the enjoyment of those rights. (21) The Committees for each instrument meet at regular sessions to examine reports. The government representatives are invited to attend, and are asked many questions by the Committee as it attempts to discover whether the reality of people's experience corresponds with the human rights standards their government has promised to observe.

After its dialogue with the government, the Committee prepares a written assessment, or concluding observations in which it recommends the State to revise those aspects of law and practice which appear to fall short of Covenant standards. (22) These observations are not legally binding as such, but the Committee expects that States will consider them in good faith and respond in a positive way.

From 1984 to 1992 I was a member of CEDAW, the body monitoring the Convention on the Elimination of All Forms of Discrimination Against Women. Indonesia is a party to that instrument and has reported to the Committee more than once; Ms Pudjiwati Sajogyo was a member of the Committee during my time there. Since 1993 I have been a member of the Human Rights Committee, which monitors the International Covenant on Civil and Political Rights. There are 140 States parties, but they do not yet include Indonesia. The Human Rights Committee examines State
reports, and it is also able to receive complaints from individuals who claim that their rights have been violated by the State. This applies only in respect of States which have accepted the Optional Protocol, about 90 at present. Dealing with these complaints, or communications, is a substantial part of the Committee's work.

Non-governmental organisations participate actively in the work of the treaty bodies. They have participated in the human rights work of the UN from the very beginning when they were invited to attend the meetings of the Human Rights Commission when the Declaration was being drafted, and were able to make both written and oral submissions. In regard to the treaty bodies, organisations, such as Amnesty International, Human Rights Watch and other international and national NGOs, assist in the reporting process by providing the Human Rights Committee with written information about laws and practices from their own point of view. These and other non-governmental organisations provide information to the other treaty bodies in the same way. These alternative NGO reports, usually present a picture considerably less flattering to the State than the government report.

**Problems of implementation: serious violations**

I have outlined briefly an international system of governmental accountability for human rights which has been built up over the last 50 years. It is based upon a vision of how we want the world to be. How far does reality match this vision? In this discussion I draw on my recent experience with the International Covenant on Civil and Political Rights. Every year the Human Rights Committee studies the reports of 15 to 18 countries and engages in dialogue with their governments about their human rights records. Some countries have reported three or four times. There have been significant improvements. Some countries have returned to the Committee after a period to report new laws, new institutions, new practices, the withdrawal of reservations, all of which bring them closer to fulfilling their Covenant obligations. The Committee's decisions in individual complaint matters have also led to some good results. Prisoners have been released, compensation has been paid and laws amended following the Committee's determination. Outcomes of this kind have usually occurred in States which are basically democratic and where the problems are likely to be that domestic laws do not provide adequate protection for all Covenant rights.

There is a darker side, however. There are States who consider that they have discharged their obligations to human rights by ratifying the Covenant and reporting to the Human Rights Committee, without making any serious effort to meet the standards. In too many of these countries, there are serious violations, sometimes on a wide scale. In the worst situations, these violations includes extra judicial killings, disappearances, arbitrary detention, torture, mistreatment of detainees and unfair trials.

In some countries ethnic and religious hatred, ideological differences, gross economic and social disparities are a cause of conflict and even violence. This can make the full implementation of human rights difficult unless standards are strictly adhered to. But only too often, it is the institutions of government have failed, the institutions which should be responsible to ensure the enjoyment of rights and freedoms.
The Universal Declaration and the Covenant (23) make it clear that the will of the people is the basis of the authority of government and that all citizens have the right to take part in the conduct of public affairs, directly or through freely chosen representatives and to take part in genuine periodic elections held by secret ballot. (24) In States where serious violations are occurring, too often power is concentrated in the hands of an authoritarian government which suppresses or restricts opposition and which not accountable to the people through the proper democratic process. (25) That process may have been subverted, by cancelling or postponing elections, banning opposition parties or limiting the powers of elected bodies. Typically in these countries, freedom of association and freedom of expression, both essential to the exercise of democratic rights, are severely restricted. (26) In many of the States described, non-governmental organisations are prevented from working freely to protect human rights or to promote change through the democratic process. In such circumstances, the people can have little confidence in their government.

The crushing of civil society in the manner described also impedes the work of international monitoring bodies. For example, when the Committee reviewed the reports of Iraq, Algeria and Libya, no national non-governmental organisations sent material or were able to attend the Committee's session. Either they do not exist, or they were fearful of reprisals. The Committee has noted instances where human rights defenders were subjected to death threats, (27) and others where attempts were made to prevent human rights bodies from communicating with the Committee. Repression of this kind deprives the Committee was deprived of important insights into the human rights situations in those countries. By contrast, when Japan presented its report recently, the Committee received dozens of submissions from non-governmental organisations, many of whom attended the session in person.

In countries where serious human rights abuses are occurring, the military and/or the security forces often have a dominating role and are able to act without full and effective control by civilian authorities. They are not accountable for their actions other than to military courts and enjoy virtual impunity for gross violations of rights. (28) Their activities are sometimes backed up by emergency decrees which remain in force for many years and suspend many rights and freedoms thus allowing the military or security forces to exercise draconian powers.

The abuses perpetrated by the security forces are, in may cases, aided by the absence of an independent judiciary or prosecuting authority capable of carrying out inquiries into alleged abuses and ensuring the prosecution of offenders. The courts should be the guardian of the rule of law, with power to ensure that government and its agencies act according to the law. Regrettably there are countries where the judges are simply incapable of responding to the needs of the situation or carrying out their duties independently and impartially. (29) In some countries the judges themselves have been implicated in human rights violations. (30) More often, the executive controls the judiciary, or so closely supervises them that they cannot take effective action to protect the rights of citizens. (31) For example, appointments are made on a short term basis, the executive has power to dismiss or transfer judges, or new non-judicial tribunals are created. Some judges have even been subjected to death threats if they did not comply with the wishes of the security forces. (32)
When the courts do not or cannot act with independent authority and there are no independent institutions able to investigate alleged violations of rights and take action, the perpetrators, which often include the army, the police and security forces can continue to act with impunity and the victims or their families remain without remedy.

The States that I am referring to are mainly in Latin America, Africa and the middle-East. They are all States which have ratified international human rights instruments and have reported to the Human Rights Committee. In some cases human rights are given paper protection, in the Constitution or the laws of the State. But there is a huge gap between the written law on the one hand, and the prevailing practices on the other.

**Restoring democracy: problems of transformation**

What can the Human Rights Committee do when faced with situations of this kind? The Committee insists that States must respect the obligations they have agreed to undertake, and that if they fail to do so they are in violation of international treaty law. The Committee, which is made up of 18 members from all regions of the world, acts by consensus. It has always maintained its role as the guardian of Covenant rights, even in the depths of the cold war, when there seemed little prospect of change. But it cannot do more than insist. Action must come from within the State.

Despite the generally adverse climate for human rights which prevailed in many countries up to the end of the 1980s, in the last decade, a number of repressive regimes have been replaced by more democratic governments, and situations where gross violations were rampant now seem to offer hope. Examples have occurred in Eastern Europe, in Latin America and in Asia and Africa. South Africa is a special case with which many people are familiar. In some cases, as in the Baltic States and in some Eastern European countries, the repressive order simply collapsed, and democratic institutions were restored to people who had previous experience of democracy. In Latin American countries, where established democracies had been overthrown by military governments, the reversion to democracy was the subject of concessions and agreement over time. Sometimes the trade-off was an amnesty law allowing human rights violations perpetrated by the security forces to go unpunished. Uruguay is a case in point. Chile is another.

What triggered these changes? This is a complex question, and every story is different. Although the Committee’s recommendations are not legally binding as such, the Covenant itself does create legal obligations. International human rights standards have certainly provided a lever for the exertion of pressure by the various political and expert bodies which are part of the United Nations human rights system and by international non-governmental organisations. But experience suggests that external pressure of this kind, even the imposition of sanctions, is seldom the sole moving force.

It seems to me that very often, pressures for change have built up within the State itself. The real issue is how the ruling regime responds to the voices of the people. Often, the first step towards restoration of democracy has been for governments to yield to internal demands by relaxing controls on freedom of expression and association, allowing the formation of opposition groups, trade unions and other non-
governmental organisations. Once these groups are able to operate freely, to challenge
government openly, the way is open for democratic institutions to be built up in a
peaceful and orderly manner (as for example in some of the Latin American
countries), avoiding violent confrontation, continuing abuses of power, continuing
recriminations. On the other hand, where the government responds with rigorous
measures to prevent civil society from expressing its views (as in the case of some of
the former Soviet satellites of the CIS) the outcome is far more likely to involve
violence and can easily lead to the replacement of one dictatorship by another.

When a State has made a commitment to change, this is only the beginning of a long
process of building, or rebuilding democratic institutions. Recent experience of the
Human Rights Committee with countries which are moving away from a violent or
repressive past (33) shows that it is not always easy to make the extensive structural
changes which are needed. Laws have to be brought into full compliance with
international human rights standards. Courts must be made completely independent.
Independent bodies, such as an Ombudsman or Human Rights Commission are
needed with power and resources to investigate abuses and ensure that the necessary
punitive and remedial action is taken.

In some Latin American countries, especially those which have a long record of
serious human rights violations, continuing problems are caused by the amnesty laws.
In the view of the Human Rights Committee, the political pressures which led to such
concessions do not absolve the State from its obligations under the Covenant to
investigate past human rights abuses and to ensure that the perpetrators are tried and
punished and that the victims or their relatives receive compensation. (34) Failure to
discharge this responsibility undermines efforts to re-establish respect for human
rights. As we see now in the case of Pinochet, the reluctant acceptance by civil society
of the terms for transfer of power has meant that the wounds of the past have not
healed.

The Committee's experience of States travelling this hard road, suggests that it is
easier to change laws and institutions than to instil democratic ideals into all those
who administer them. One will not work without the other. Attitudes have to change.
The people involved in all aspects of government must learn to overcome their past
authoritarian attitudes and behaviour and find out how democracy works in practice.
Parliamentary institutions have to learn how to represent the people rather than to
pursue sectional interests. The judiciary must change from being compliant agents of
the State into a strong and independent power, vigilant to protect the rights of citizens.
The same applies to the police and security forces. They have to be drilled to observe
strictly the rule of law and to be accountable for their actions. Persons closely
associated with human rights abuses should no longer be part of the police, army or
security forces. (35) Those found guilty of human rights abuses should be subject to
punitive measures.

To achieve these goals comprehensive human rights training is essential at all levels
of government. I want to stress, however, that human rights education should involve
the whole society.

Concluding remarks
In these remarks I have tried to show that the effective protection of human rights requires action within a society. The most valuable asset a society can have in this regard is individuals and organisations who are well informed about human rights principles and committed to action in support of those principles. Universal standards and the work of bodies such as the Human Rights Committee are important in themselves. But they are of the greatest importance when they lend strength and substance to the work of national human rights agencies. In this way a human rights society is built on the interaction between international standards and local action.

The weaving of a vast world wide human rights web began with the adoption of the Universal Declaration of Human Rights; it has many gaps, but the threads are strong, they are made out of the hopes of people everywhere for freedom, justice and peace, the promise of the Universal Declaration.

References


2 See Cassese, $171 for outline of history.

3 Preamble, arts 2, 7.

4 Cassese #172-3.


6 art 29.1.


8 Eg property, asylum. Cassese #177.

9 Article 27, ICCPR.

10 Eg, self-determination of peoples, Cassese #176.

11 The ICESCR came into force on 3 January 1976; the ICCPR came into force on 23 March 1976.


16 The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 Dec. 1990 [not yet in force]
17 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981.


19 Cassese #181; Steiner and Alston, p 1110 ff. UN Declaration on the Right to Development, UN GA resolution 41/128, Dec 4, 1986.

20 Eg, Resolution 1503 communications procedure; thematic and State Rapporteurs; Working Group on Involuntary Disappearances. 21 Eg, ICCPR, article 40.

22 This also provides an opportunity to interpret Covenant principles.

23 UDHR article 21 (3), ICCPR, art 25.

24 UDHR article 21, ICCPR, art 25.


27 Threats to human rights defenders: Algeria, report for 1998, para 364; Belarus, report for 1998, para 155,


33 Eg, Slovakia, Estonia, Armenia, Hungary, Uruguay and Bolivia.


36 Involvement of NGOs in Political transformation after a period of repression is discussed in Diverse partners, Non-Governmental Organisations in the Human Rights Movement, Harvard Human Rights Program, Henry Steiner ed, 1991, p 51.