

37 Many human rights activists raise the problem of infringements upon their personal security and freedom of action. In this context, the High Commissioner supports endeavours aimed at the finalisation of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms. The Commission on Human Rights, in its Resolution 1996/81 of 23 April 1996, urged an open-ended working group to make every effort to complete work on this draft declaration.

38 The High Commissioner raises issues related to the implementation of human rights in his dialogue with governments, stressing the need for consideration of the recommendations adopted by the Commission and made by its mechanisms. It is to be pointed out that in many cases the response of governments indicates their willingness to react constructively to the voice of the international community. The High Commissioner regrets that his appeals do not always bring expected results. In keeping with his mandate and guided by his responsibility to promote and protect human rights for everyone, the High Commissioner will continue to take up particular cases and, if appropriate, use direct contact with governments, and other relevant parties, in order to obtain concrete results.

...

V CHALLENGES TO HUMAN RIGHTS

A Equality and non-discrimination

1 Elimination of racial discrimination

71 In accordance with General Assembly Resolution 48/91 of 20 December 1993, in which the Assembly proclaimed the Third Decade to Combat Racism and Racial Discrimination, the High Commissioner/Centre for Human Rights organised a seminar to assess the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, with particular reference to Articles 4 and 6. The seminar was held at Geneva from 9 to 13 September 1996.

72 In his introductory statement, the High Commissioner focused on the discrimination of immigrants, refugees and ethnic minorities and the propaganda of racism and anti-semitism through the modern media, including the Internet. The participants expressed their concern about the use of media for the dissemination of racist ideas and incitement to acts of violence and stressed the necessity of a vigorous action, at the international and national levels, against such phenomena. In relation to the Internet, the seminar suggested that the High Commissioner/Centre for Human Rights hold a further seminar in co-operation with Internet service providers to discuss how to prevent racist information on the Internet. The seminar strongly underlined the importance of education as a significant means of preventing and eradicating racism and racial discrimination and of creating awareness of human rights principles, particularly among young people, and recommended to States parties that they take measures in that regard.

2 Women

73 In its Resolution 1996/22 of 19 April 1996, the Commission on Human Rights welcomed that the persons chairing the human rights treaty bodies had emphasised that the enjoyment of human rights by women should be closely monitored by each treaty body within the competence of its mandate, and recommended that the reporting guidelines adopted by each treaty body should be amended to identify gender-specific information that should be provided by

State parties in their reports. Subsequently, the treaty-based bodies are in the process of revising or preparing new sets of guidelines taking this recommendation into account. On the basis of analysis of gender-related data in State reports, the Division for the Advancement of Women is continuing to formulate methodologies by which the treaty-based bodies might systematically and routinely incorporate a gender perspective in their monitoring activities.

74 The Special *Rapporteur* on violence against women, Ms Radhika Coomaraswamy, visited Poland in May 1996, to study in depth the causes and consequences of the issue of trafficking and forced prostitution of women in the eastern European region. This visit was in accordance with para 7 of General Assembly Resolution 50/167 of 22 December 1995 on traffic in women and girls.

75 In July 1996 the Special *Rapporteur* on violence against women visited Brazil on the issue of domestic violence against women. The Special *Rapporteur* submitted to the Commission on Human Rights at its fifty-second session a framework for model legislation on domestic violence to be considered by governments (E/CN4/1996/53/Add 2).

76 The United Nations Population Fund (UNFPA), the High Commissioner/Centre for Human Rights and the Division for the Advancement of Women will jointly organise in December 1996 a round table on ways in which the recommendations of recent world conferences concerning women's reproductive and health rights might be integrated into the human rights monitoring and reporting procedures.

All six treaty bodies will be invited to be represented at the round table.

3 Children

77 The implementation of the Convention on the Rights of the Child represents the greatest hope for the future of children, particularly for the world's one billion poor children. The Convention, the most widely ratified human rights treaty, deserves great support as the clear expression of what the international community has adopted as standards for the treatment of children. Only a handful of countries have yet to ratify the Convention.

78 In 1995, the High Commissioner outlined a precise strategy to support the work of the Committee on the Rights of the Child. This strategy could serve as an example of how similar support to other treaty bodies could be provided, making it possible for them to carry out their own responsibilities more effectively. Through this plan of action, the High Commissioner is seeking to provide the Committee with the resources necessary to strengthen its monitoring activities and for the implementation of its recommendations: staff, database and information sharing, and co-operation with the relevant United Nations programmes and agencies, in particular UNICEF.

79 In his address to the World Congress against the Commercial Sexual Exploitation of Children, held at Stockholm from 26 to 30 August 1996, the High Commissioner expressed the hope that global awareness of crimes committed against children would strengthen action taken towards ending them. He proposed four concrete ways to achieve change: the participation of children themselves in campaigns to end their exploitation, thereby increasing the children's own awareness of their rights; making adults familiar with children's rights; legal reforms to protect children and to punish violators of children's rights; and co-operation at all levels to combat the problem of commercial sexual exploitation. The Special *Rapporteur* on the sale of children, child prostitution and child pornography, Ms Ofelia Calcetas-Santos, visited the Czech Republic on the issue of the sale of children and child prostitution and pornography.

80 In a follow-up to specific recommendations of the Committee on the Rights of the Child, a mission to formulate a project on the administration of juvenile justice was undertaken by the High Commissioner/Centre for Human Rights in Vietnam in March 1996, with the participation of a member of the Committee. A needs assessment mission on the same subject took place in July 1996 in the Philippines, also following a recommendation of the Committee on the Rights of the Child.

4 Minorities

81 At its meeting from 30 April to 3 May 1996, the Working Group on Minorities considered and adopted recommendations on the following issues: the promotion and practical realisation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; the examination of possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and governments; and the recommendation of further measures for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities (see E/CN4/Sub 2/1996/28).

82 In his introductory statement, the High Commissioner welcomed the growing commitment of the international community to the protection of minorities. A programme of international activities should focus on the translation of international standards into domestic law and practice and embrace, *inter alia*, a world-wide campaign for the promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; education on rights of persons belonging to minorities and the creation of a climate of tolerance and understanding between different communities; setting up commissions for community relations to reinforce existing inter-group understanding.

83 The High Commissioner organised an inter-agency consultation on minorities on 21 August 1996 in Geneva. The rationale for the consultation was to exchange information on minority-related activities, to share ideas and to discuss future collaboration in the field of minority protection. Welcoming this initiative, the participants decided to continue their consultations on a regular basis.

5 Indigenous people

84 The international community renewed its commitment to the economic, social and cultural well-being of indigenous people and the full enjoyment of their rights by proclaiming the period 1995–2004 as the International Decade of the World's Indigenous People. Within the framework of the Programme of Activities as adopted by the General Assembly in the annex to its resolution 50/157 of 21 December 1995, the Advisory Group of the Co-ordinator of the Decade developed guidelines and a questionnaire for the submission of requests for financial assistance from the Voluntary Fund for the International Decade of the World's Indigenous People. It recommended that the High Commissioner/Centre for Human Rights give priority to the following proposals: to organise a second international workshop on the establishment of a permanent forum for indigenous people within the United Nations; to develop a fellowship programme to provide indigenous people with training and practical experience in the field of human rights and the United Nations system; to sponsor, in conjunction with UNESCO, a human rights training programme for official delegates of the Governments of Peru and Ecuador and indigenous representatives from those countries; and to provide technical support for an information workshop on the draft declaration of the rights of indigenous peoples, as proposed by the Government of Fiji. Finally, it recommended that the necessary assistance should be provided to the implementation of an indigenous

project aimed at establishing a Central and East Africa regional office for indigenous peoples. The information workshop in Fiji has already taken place while the other projects are currently being developed.

85 From 24 to 28 March 1996, the government of Canada hosted a land rights seminar held at Whitehorse, Yukon, where a discussion on the negotiation process and legal arrangements for the demarcation, titling and protection of lands took place. It was recommended that the United Nations and its specialised agencies should consider providing technical assistance to states and indigenous people to contribute to the resolution of land claims.

86 The fourteenth session of the Working Group on Indigenous Populations was held from 29 July to 2 August 1996 and attracted 721 participants. It focused part of its deliberations on the issue of health and, in this regard, co-operated closely with WHO. The ideas and suggestions brought forward will, where possible, be incorporated in the WHO programme.

87 In its Resolution 50/157, the General Assembly recommended that, with regard to the issue of the establishment of a permanent forum for indigenous people within the United Nations, the Secretary General undertake a review of the existing mechanisms, procedures and programmes within the United Nations relating to indigenous people, and report to the Assembly at its fifty-first session. Although the findings of the review are encouraging (see A/51/493), it is clear that there is a lack of adequate procedures and mechanisms. The High Commissioner considers the question concerning the establishment of a permanent forum for indigenous people within the United Nations system to be one of the core issues in relation to the International Decade of the World's Indigenous People. The dialogue on this issue will continue during the second workshop that will be hosted by the government of Chile.

88 The High Commissioner calls upon the international community to recognise, protect and promote the rights of indigenous people in order to achieve full participation of this sector of the population in political, economic and social life at all levels of society. It is essential that this participation be based on full respect for languages, cultures, traditions and forms of social organisation of indigenous people.

6 *People infected by the human immunodeficiency virus*

89 The High Commissioner organised in conjunction with the Joint United Nations Programme on HIV/AIDS (UNAIDS) a Second International Consultation on HIV/AIDS and Human Rights at Geneva from 23 to 25 September 1996. The Consultation was attended by some 35 participants representing governments, human rights non-governmental organisations, AIDS service organisations, academia, networks of people living with HIV/AIDS, and United Nations system agencies and programmes.

90 The final document contains concrete, action-oriented strategy guidelines, intended primarily for governments, regarding the promotion of and the respect for human rights in the context of HIV/AIDS. The guidelines, set out in the framework of applicable international human rights standards, address areas of, *inter alia*, labour, education, immigration, law review and reform, and the empowerment of vulnerable groups. The Consultation also called for the creation of a Special *Rapporteur* of the Commission on Human Rights to monitor and receive communications regarding violations of human rights relating to AIDS.

B Extrajudicial, summary or arbitrary executions

91 The eradication of extrajudicial, summary or arbitrary executions remains a matter of the highest priority in the protection of human rights. In its Resolution

1996/74 of 23 April 1996, the Commission on Human Rights reiterated its strong condemnation for the practice of such executions and demanded that all governments ensure that it be brought to an end. The High Commissioner pays particular attention to situations of serious concern in this context, and to situations where early action may have a preventive effect.

92 In his interim report to the General Assembly on extrajudicial, summary or arbitrary executions (A/51/457, annex), the Special *Rapporteur*, Mr Bacre Waly Ndiaye, offers an overview of the action undertaken during his years in office. The Special *Rapporteur* concludes that the number of violations of the right to life has not decreased in the last four years, and that women, children and the elderly have not been spared. Such violations have ranged from death threats, death in custody and due to attacks by security forces, death resulting from armed conflicts to executions imposed after unfair trials. In his report, the Special *Rapporteur* issues recommendations to strengthen respect for the right to life, calling upon all states to conduct exhaustive and impartial investigations into all allegations of violations of this right, and to bring to justice those responsible. Moreover, he considers that effective measures should be taken to avoid the recurrence of such violations.

C Torture

93 In April 1996, only one month before the annual meeting of its Board of Trustees, the United Nations Voluntary Fund for Victims of Torture was facing an alarming financial situation. The total amount of contributions received by the fund was \$333,000, whereas the amount requested for assistance was more than \$5 million. The High Commissioner therefore made an appeal at the fifty-second session of the Commission on Human Rights urging all governments to contribute to the fund. Subsequently, over \$2 million was received for the fund's activities.

94 The Board recommended that \$2,535,500 be granted to 96 requests, corresponding to the total amount available. The projects scrutinised provide medical, psychological, social and legal assistance to victims of torture and their relatives. They are implemented by non-governmental organisations and specialised centres located in 60 countries world-wide.

D Enforced disappearances

95 The systematic practice of acts of enforced disappearance became known in the early 1970s as a phenomenon prevalent in a relatively small number of countries. Since then, it has, unfortunately, spread to many regions of the world, occurring primarily in the context of internal armed conflict and ethnic strife. The Commission on Human Rights, in its Resolution 1996/30 of 19 April 1996, reiterated its deep concern about that phenomenon and called upon governments to establish appropriate structures and mechanisms aimed at preventing the occurrence of involuntary disappearances in their countries and at clarifying already existing cases. States should take effective measures to implement the principles of the Declaration on the Protection of All Persons from Enforced Disappearance, and to that end take action at the national and regional levels and in co-operation with the United Nations. The technical co-operation programme is available with regard to reform of legislation and training in this respect (see paras 43–47 above).

E Internally displaced persons

96 A compilation and analysis of legal norms pertaining to the protection and assistance needs of internally displaced persons was presented to the Commission on Human Rights by the representative of the Secretary General on

internally displaced persons, Mr Francis Deng (E/CN4/1996/52/Add 2). This compilation examines the extent to which existing provisions of international human rights law and humanitarian law provide adequate coverage for the protection and assistance needs of the internally displaced, and also examines refugee law for purposes of analogy. In accordance with the recommendations by the General Assembly and the Commission, the representative is in the process of developing a body of guiding principles, based on the aforementioned compilation, with a view to addressing displacement in all its stages.

97 Ever since it started in January 1995, the High Commissioner and the Centre for Human Rights have participated in the overall process of the Conference on Refugees, Returnees, Displaced Persons and Related Migratory Movements in the Commonwealth of Independent States and Relevant Neighbouring States, which was organised by UNHCR, the International Organisation on Migration (IOM) and OSCE and held at Geneva on 30 and 31 May 1996. The High Commissioner/Centre maintained a close working relation with the Conference secretariat by sharing its expertise and providing background materials as well as contributions in the area of human rights and on the specific issues of forced displacement, with a view to ensuring that commitments undertaken under international human rights and humanitarian law standards were accurately reflected in the final document of the Conference. The United Nations human rights programme is contributing to the implementation of the programme of action adopted by the Conference.

...

122 The year 1998 will be important for human rights. Two years before the dawn of the next millennium, the international community will celebrate the fiftieth anniversary of its first-ever proclamation of rights and freedoms of the individual. In 1948, the international community agreed upon the Universal Declaration of Human Rights – a common standard of achievement for all peoples and all nations, which gave rise to a vigorous development of international promotion and protection of these rights. In order to respond to the hopes of the drafters of the Declaration and to generations of its advocates all over the world, the celebration of its fiftieth anniversary should be used for advancement of human rights.

123 The World Conference on Human Rights provided a means for reaching this objective by linking the fiftieth anniversary of the Universal Declaration with the five-year review of the implementation of the Vienna Declaration and Programme of Action. It requested the Secretary General: ‘... to invite on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights all States, all organs and agencies of the United Nations system related to human rights, to report to him on the progress made in the implementation of the present Declaration and to submit a report to the General Assembly at its fifty-third session, through the Commission on Human Rights and the Economic and Social Council. Likewise, regional, and as appropriate, national human rights institutions, as well as non-governmental organisations, may present their views to the Secretary General on the progress made in the implementation of the present Declaration.’ The Commission on Human Rights, in its resolution 1996/42 of 19 April 1996 on the preparation for the 50th anniversary of the Universal Declaration of Human Rights, requested the High Commissioner to co-ordinate the preparations for the 50th anniversary of the Universal Declaration, bearing in mind provisions of the Vienna Declaration and Programme of Action for evaluation and follow-up.

124 The celebration of the 50th anniversary of the Universal Declaration and review of the implementation of the Vienna Declaration and Programme of

Action should provide the opportunity: (a) to strengthen the promotion and protection of human rights world-wide; (b) to review and assess the progress that has been made in the field of human rights since the adoption of the Universal Declaration; (c) to review the progress made in the implementation of the Vienna Declaration and Programme of Action; and (d) to outline or update human rights programmes to meet current and future challenges. This should be achieved through joint efforts of the international community. Let us call 1998 'Human Rights Year'.

125 All sectors of the human rights constituency, governments, United Nations agencies and programmes, international and regional organisations, academic institutions, non-governmental organisations and other parts of civil society, media and private enterprises, are called upon to take initiatives aimed at the commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights. This should be a global movement giving evidence that human rights reflect not only hopes and aspirations but also essential interests and legitimate demands of all people on all continents. The international community should use 1998 to give new impetus to human rights, reflecting the vision of the next century.

126 The High Commissioner will facilitate co-operation between various initiatives aimed at the commemoration of the fiftieth anniversary of the Universal Declaration. To that end, the High Commissioner/Centre has initiated the United Nations inter-agency consultations that will provide a continuing forum throughout 1997 and 1998. In 1997, the High Commissioner intends to undertake sectoral consultations with regional organisations, non-governmental organisations, academic institutions, and others to discuss the preparations for the anniversary. In 1998, the Commission on Human Rights and the Economic and Social Council will be the United Nations focal points for the commemoration which should culminate on 10 December 1998. The General Assembly at its fifty-first session may wish to adopt a decision convening a ceremonial meeting for that day.

127 The review of the progress in the implementation of the Vienna Declaration and Programme of Action during the first five years since its adoption should include a profound analysis of achievements in and obstacles to the full realisation of the recommendations adopted at Vienna. A frank and open debate will be of paramount importance for future efforts aimed at the promotion and protection of human rights. It is useful to identify well in advance which role the Commission on Human Rights, the Economic and Social Council and the General Assembly should play in reviewing the implementation of the Vienna Declaration and Programme of Action. Governments, United Nations agencies and programmes, international organisations and non-governmental organisations are encouraged to launch preparations for the presentation of their reports and views on the progress made in the implementation of the Vienna Declaration and Programme of Action, in accordance with para 100 of that document (see para 123 above).

128 The Commission on Human Rights may wish to undertake in 1998 an initial evaluation of the implementation of the Vienna Declaration and Programme of Action. The results of that debate would provide input to the work of the Economic and Social Council and the General Assembly. This exchange would be enhanced considerably if held during a high-level segment of the Commission.

129 The Economic and Social Council, in its Decision 1996/283 of 24 July 1996, endorsed the recommendation of the Commission on Human Rights Resolution

1996/78 of 23 April 1996 to devote the co-ordination segment of its session in 1998 to the co-ordinated follow-up to, and implementation of the Vienna Declaration and Programme of Action as part of the overall co-ordinated follow-up to major United Nations conferences. This would be an excellent occasion to analyse the implementation of the Vienna Declaration and Programme of Action by the United Nations system.

130 The General Assembly may also wish to carry out in 1998 a comprehensive analysis of the progress achieved in the implementation of the Vienna Declaration and Programme of Action and to consider recommendations made by the Commission on Human Rights and the Economic and Social Council. Thus, the report of the Secretary General to the General Assembly concerning the implementation of the Vienna Declaration and Programme of Action will highlight the activities of all actors involved, including international and regional organisations, that are not parts of the United Nations system, and civil society.

131 A multifaceted and timely preparation of the celebration of the fiftieth anniversary of the Universal Declaration and of the review of the implementation of the Vienna Declaration and Programme of Action will produce an important contribution to the promotion and protection of human rights. A spirit of solidarity and co-operation should guide the international community in this endeavour.⁴

16.2.2 Specialised international agreements

The two Covenants adopted in 1966 set down a number of general rights which apply equally to all human beings. In addition to these two general agreements there exists an increasing number of specialised agreements either directed to the protection of particular rights or particular categories of individual. The specialised conventions have often been the work of the specialised agencies of the UN. For example, the International Labour Organisation has played an important role in addressing the issue of workers' rights and employment conditions and has been responsible for the adoption of a number of conventions dealing with such things as freedom of association.

One of the earliest specialised agreements actually pre-dates UDHR. The Slavery Convention 1926 outlaws slavery and the slave trade and makes such activities subject to the universal jurisdiction of states. The Slavery Convention was followed by the Forced Labour Convention 1930. Since 1948 there have been a considerable number of specialised agreements among the most significant of which are:

- Genocide Convention 1949, which was the first human rights treaty to be adopted under the auspices of the UN;
- Convention on the Status of Refugees 1951;
- Convention on the Suppression and Punishment of the Crime of Apartheid 1973;
- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment 1984;
- Convention on the Rights of the Child 1989.

4 *Report of the United Nations High Commissioner for Human Rights (A/51/36)* 18 October 1996.

With regard to discrimination on grounds of sex, ECOSOC established a Commission on the Status of Women in 1946, which was largely responsible for the adoption of the Convention on the Political Rights of Women 1952 and the Convention on Elimination of all forms of Discrimination against Women 1979. The convention establishes a UN Committee on the Elimination of Discrimination against Women which is charged with monitoring the observance and implementation of the conventions provisions.

As far as racial discrimination is concerned, the Convention on the Elimination of all Forms of Racial Discrimination 1966, which entered into force in 1969, prohibits States from engaging in acts or practices which involve the 'distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin' and which have the purpose or effect 'of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'. The convention does not refer to discrimination on grounds of religion or nationality, which have been the subject of UN resolutions but regarding which there is no specific treaty. Article 1(4) of the convention expressly permits action taken to advance the interests of particular groups in order to secure their equal rights, and would cover instances of so-called 'affirmative action' or 'positive discrimination'. There exists a UN Committee on the Elimination of Racial Discrimination which monitors observance of the convention.

16.2.3 Regional agreements

16.2.3.1 European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

The first regional agreement pertaining to the protection of human rights was the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR), which was signed by the member states of the Council of Europe at Rome on 4 November 1950 and which entered into force in 1953.

ECHR went far beyond UDHR in that it imposed binding obligations on the parties to provide effective domestic remedies in regard to a number of rights, and it refined the definition of such rights. It also established the European Commission of Human Rights to investigate and report on violations of human rights at the instigation of State Parties, or, with the express prior consent of individual states, upon petition of any person, NGO, or groups of individuals within that state's jurisdiction. The Convention also provides for a European Court of Human Rights with compulsory jurisdiction. This was set up in 1959 after eight states had accepted its compulsory jurisdiction.

ECHR was followed later by the European Social Charter 1961, which entered into force in 1965. The Social Charter deals with the social, economic and cultural rights, including the right to work, the right to fair remuneration, the right to bargain collectively and the right to social security. The Social Charter puts claims rather than restrictions on States, and the enforcement machinery is very different from that created under ECHR. The European Social Charter 1961 must be distinguished from the Social Chapter of the Treaty on European Union (the Maastricht Treaty).

More recently the member states of the Council of Europe adopted the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987, which entered into force in 1989. The convention establishes a European Committee for the Prevention of Torture which is charged with monitoring the treatment of those deprived of their liberty and envisages a system of inspections of prisons and other places of detention. The convention aims to encourage observance of its provisions rather than to provide formal enforcement mechanisms. Torture and other forms of degrading or inhuman treatment are already prohibited under Article 3 of the ECHR.

16.2.3.2 Other regional agreements

A number of other regional organisations have adopted conventions relating to human rights: The American Declaration of the Rights and Duties of Man of 1948, which was closely modelled on UDHR, was followed by the Protocol to the Charter of the Organisation of American States 1967, which established the Inter-American Commission on Human Rights as a principal organ of the OAS with the function of promoting respect for human rights. Two years later the Inter-American Convention on Human Rights 1969 was adopted, which details the rights to be observed and provides for an Inter-American Court of Human Rights.

The Organisation of African Unity has adopted the African Charter on Human and Peoples' Rights 1981. State parties are placed under an obligation to adopt measures to give effect to the rights contained in the charter rather than a strict obligation to observe the rights contained. The substantive provisions of this charter differ from other general human rights treaties in that far greater emphasis is placed on peoples' rights. The charter establishes an African Commission on Human and Peoples' Rights which is given responsibility for the promotion of such rights.

Discussions have also taken place with a view to establishing other regional agreements – for example, among the members of the Arab League and within the region of south Asia.

It is also worth noting here certain provisions of the Helsinki Declaration 1975, adopted by the Conference on Security and Co-operation in Europe. Although, as has previously been stated, this declaration was expressed not to be legally binding, Part VII of the declaration pledged respect for fundamental freedoms and human rights. Certain human rights are also dealt with in other more general treaties, for example, the Treaty of Rome 1957.

16.2.4 Customary rules

A significant number of the provisions contained in the various human rights treaties are now considered to be rules of customary international law. In particular, many of the provisions of UDHR, which as a UN resolution is not binding *per se*, have come to be regarded as expressing customary rules. An important case in this respect is *Filartiga v Pena-Irala* (1980), which was heard by a US court. The defendant in the case was a former chief of police in Asuncion, Paraguay, and the case was brought by two Paraguayan nationals who alleged that Pena-Irala had tortured to death a member of their family. In the course of

giving judgment, the court had cause to consider whether the torture violated customary international law, and it cited with approval the view that UDHR had become, *in toto*, a part of binding, international customary law. The Third Restatement of US Foreign Relations Law (1987), which commands considerable respect as a statement of general international law, indicates in para 702 that the following practices, where carried out by or on behalf of states, constitute a violation of customary international law:

- genocide;
- slavery;
- murder or causing the disappearance of individuals (this would not include executions imposed following a fair trial);
- torture and other cruel, inhuman or degrading treatment;
- prolonged arbitrary detention;
- systematic racial discrimination.

It is suggested that such violations should be considered to be breaches of *jus cogens* and that the customary rules protecting human rights are binding *erga omnes*. Some support for this view is found in the judgment of the ICJ in the *Barcelona Traction* case (1970) in which the court indicated that certain obligations deriving from the outlawing of acts of aggression and genocide and 'from the principles and rules concerning basic rights of the human person including protection from slavery and racial discrimination' were owed to the international community as a whole and could be considered obligations *erga omnes*. In addition, the Restatement suggests that consistent gross violations of other generally recognised human rights would be contrary to customary international law even if isolated violations of such rights was not prohibited except by treaty. The Restatement suggests that a gross violation is one which is particularly shocking given its particular context.

16.3 Third generation human rights

It has already been indicated that international law distinguishes between civil and political rights and economic, social and cultural rights. The former are often referred to as 'first generation' rights and the latter as 'second generation' rights. According to the classical justification of human rights, which argued that such rights as existed were inherent in the existence of a human being, any rights belonging to entities other than human beings could not be considered as 'human rights' and their justification would have to be found elsewhere. However, with the development of rights such as those of assembly and association, which are possessed by individuals but which can only be asserted by collections of individuals, it has become clear that collective rights are recognised by the international community. From this, the idea of peoples' rights has followed. Such rights are seen as belonging to peoples rather than individuals, and the principal two such rights are the right to self-determination and the right to development. These rights are often referred to in the literature as 'third generation' rights. The right to development is discussed in Chapter 17 in the context of the international law governing economic relations. In this chapter, discussion is limited to the right of self-determination. In addition to