The United Nations
Human Rights Treaty System: Success and Failures

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(This document will constitute the first page of the Thesis)
To my family
Acknowledgment

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Abstract

Today, the United Nations in general and the International Human Rights system in particular are undergoing reforms because they have often been accused of inefficiency. At the eve of creating the new Human Rights Council at the United Nations, it is important to analyze the current system along with its present shortcomings in order to enhance the role of the United Nations in promoting and protecting the human rights of all peoples.

This paper describes the International treaty system; and it assesses its success and failures. It is composed of three chapters. The first chapter provides a broad overview of the International human rights system, by defining first what is meant by human rights, then by explaining the historical background of each of the three generations of human rights which are civil and political,(the first generation), economic, social and cultural (the second generation), and collective rights (the third generation). The first chapter also describes how the International system for the protection and promotion of human rights first started after world war II with the creation of the United Nations in 1945, followed by the drafting of the Universal Declaration on Human Rights in 1948, and it assess the two covenants on civil and political rights and on economic, social and cultural rights (ICPR and ICESC). We also discuss in the first chapter how the United Nations human rights system evolved from standard-setting to creating specialized mechanisms for protecting human rights and moving into the field with peace keeping missions and ad-hoc tribunals (such as the two tribunals for Rwanda and former Yugoslavia), due to a more assertive role of the UN Security Council following the end of the cold war.

The second chapter focuses on the individual rights as translated in the five Human Rights Conventions which are The Convention on the Elimination of Racial Discrimination (ICERD), The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), The Convention against Torture (CAT), The Convention on the Rights of the Child (CRC), and the Convention on the Protection of the Rights of Migrant Workers and Members of Their Families (ICMW).

Before assessing each of these conventions, this paper provides an exhaustive and detailed explanation of almost every human right by resorting to the interpretive comments issued by the respective treaty body mechanism. (each convention has a respective committee that issues general comments which interpret some of the articles of each convention.) This is a novelty in human rights literature as to date no one has systematically explained each right in accordance with its respective UN general comment. As most rights are sometimes complex and hard to understand, this paper not only assesses the strength and weaknesses of the seven human rights conventions, but also explains in details every human right.

The second chapter then, as mentioned, attempts to analyze the strength and weaknesses of these legal texts by examining the reservations placed by the state parties and by resorting to the interpretation of the Vienna Convention on the Law of Treaties (1969). When states ratify any convention, they usually place reservations on some provisions or articles of a given convention because they believe that these provisions
contradict their national laws and might infringe upon their sovereignty. Therefore, the best way to assess a legal text or convention is by studying the reservations that states have entered upon it in order to discover whether this convention contains any polemical or ill-defined rights.

We have examined all the reservations that states have entered into the seven human rights conventions and we were able to assess which convention had ill-defined certain rights or might have contained some rights that states consider as a violation to their sovereignty. How to reconcile state sovereignty with the proper implementation of the human rights conventions is at the heart of this paper, therefore we attempt in chapter two to shed light on this debate and propose ways to adhere better to the spirit and letter of every convention.

In addition to examining state reservations, resorting to the Vienna Convention on the Law of Treaties (1969) is the ideal way to interpret any convention. The Vienna Convention on the Law of Treaties (1969), has set the rules for states and it has defined their obligations under any treaty or convention. Therefore, the provisions of this convention have been often used throughout this paper in order to explain how states should and can implement human rights conventions. Finally, a last way to assess human rights conventions can be undertaken by examining the interpretive comments of the United Nations treaty body mechanisms which are often issued to explain to member states and ordinary people the provisions of the conventions and the significance of each and every human right.

The third and final chapter describes and assesses the effectiveness and impact of every treaty-body mechanism which are the state reports, inquiry, inter-state and individual complaints procedures. Upon ratifying any human rights convention, states are obliged to submit a periodical detailed report that would describe how they are adhering to their international commitment. Furthermore, some treaty bodies are empowered with more than reviewing periodical reports, as they might also examine individual complaints of people whose rights have been violated. Some treaty bodies might also organize an inquiry and send a commission to member states in order to investigate the violation of certain rights. A last mechanism would be the inter-state complaints system that has been never used to date and that allows states to complain to the treaty body when they believe that another state is violating the convention. All of these mechanisms are assessed and case studies are provided in the third chapter.

After examining in details all seven human rights conventions and assessing the mandate and work of their respective committees, we can conclude the following: although this treaty-body system can be accredited with a unique role of standard-setting and the creation of new human rights norms, yet its main weakness lies in the fact that it often favors state sovereignty over protecting human rights. The voluntary ratification process, reservations, derogations, ill-defined rights, limitation clauses, and non-binding views; have been intentionally permitted by the United Nations system in order to protect state sovereignty and non-intervention.

The best solution to protect human rights would be probably to empower the International Organization to ensure that International law is respected: what is needed is a more forceful approach by the United Nations in dealing with member states.
Contents

1. Introduction


   2.1 Background
   2.2 The Convention on Civil and Political Rights (ICCPR)
      2.2.1 habeas corpus
      2.2.2 The Right to Life
      2.2.3 Derogations in a State of Emergency
      2.2.4 State’s Obligations at the National Level
   2.3 The Convention on Economic, Social and Cultural Rights (ICESCR)
      2.3.1 The Right to work
      2.3.2 The Right to Adequate Standards of Living
      2.3.3 The Right to Food
      2.3.4 The Right to the Highest Attainable Standard of Physical and Mental Health
      2.3.5 The Right to Education
      2.3.6. The Right to a cultural Life
      2.3.7 State’s obligations for the implementation of ICESCR

3. The United Nations Five Conventions on Human Rights

   3.1 The Convention on the Elimination of Racial Discrimination (ICERD)
      3.1.1 The Definition of Racial Discrimination
      3.1.2 State’s Obligations for the implementation of ICERD
3.2 The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

3.2.1 Definition of gender discrimination
3.2.2 De Jure and de Facto Equality
3.2.3 Women’s Rights
3.2.4 State’s Obligations for the implementation of CEDAW

3.3 The Convention against Torture (CAT)

3.3.1 The Definition of Torture
3.3.2 State’s Obligations for the implementation of CAT
3.3.3 The Right to non-refoulment
3.3.4 Aut Dedere Aut Judicare

3.4 The Convention on the Rights of the Child (CRC)

3.4.1 Four Basic Principles
3.4.2 Children’s Rights

3.5 The Convention on the Protection of the Rights of Migrant Workers and Members of their Families (ICMW)

3.5.1. The Scope of Application of the Convention
3.5.2 The Universal rights of all Migrant Workers
3.5.3 The Rights of Documented Migrant Workers

4. The Mechanisms of the Treaty-body System

4.1 State Reports
4.2 Inter-state Complaints
4.3 Individual Complaints
4.3.1 Case Study: Alex Soteli Chambala Vs Zambia

4.4 Inquiry

4.4.1 Case Study: Torture in Sri Lanka

5. Conclusion: Limitations of the Human Rights Treaty-body system: More Sovereignty to States

References
The United Nations Human Rights Treaty System: Success and Failures

1. Introduction

Today, the United Nations in general and the International Human Rights system in particular are undergoing reforms because they have often been accused of inefficiency. At the eve of creating the new Human Rights Council at the United Nations, it is important to analyze the current system along with its present shortcomings in order to enhance the role of the United Nations in promoting and protecting the human rights of all peoples.

This paper will describe the International treaty-body system; then it will assess its success and failures. It is composed of three chapters. The first chapter will provide a broad overview of the International human rights system, by defining first what is meant by human rights, then by explaining the historical background of each of the three generations of human rights which are civil and political, (the first generation), economic, social and cultural (the second generation), and collective rights (the third generation). The first chapter will also describe how the International system for the promotion and protection of human rights first started after World War II with the creation of the United Nations in 1945, followed by the drafting of the Universal Declaration on Human Rights in 1948 and it will assess the two covenants on civil and political rights and on economic, social and cultural rights (ICCPR and ICESCR). We will also discuss in the first chapter
how the United Nations human rights system evolved from standard-setting to creating specialized mechanisms for protecting human rights and moving into the field with peacekeeping missions and ad-hoc tribunals (such as the two tribunals for Rwanda and former Yugoslavia), due to a more assertive role of the UN Security Council following the end of the cold war.

The second chapter will focus on the individual rights as translated in the five Human Rights Conventions which are The Convention on the Elimination of Racial Discrimination (ICERD), The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), The Convention against Torture (CAT), The Convention on the Rights of the Child (CRC); and the Convention on the Protection of the Rights of Migrant Workers and Members of Their Families (ICMW). We chose to analyze the two covenants as well as these five conventions because according to the Office of the High Commissioner on Human Rights, these are the most important binding instruments for the promotion and protection of human rights. It is also important to clarify that this paper will assess only these instruments and will not tackle humanitarian law, which is one branch of human rights law that is limited to conflict situations.

The first and second chapters will attempt to analyze the strength and weaknesses of these legal texts by examining the reservations placed by the state parties and by resorting to the interpretation of both the Vienna Convention on the Law of Treaties (1969), and the United Nations General Comments issued by the treaty body mechanisms to interpret certain provisions of the conventions.
When states ratify any convention, they usually place reservations on some provisions or articles of a given convention because they believe that these provisions contradict their national laws and might infringe upon their sovereignty. Therefore, the best way to assess a legal text or convention is by studying the reservations that states have entered upon it in order to discover whether this convention contains any polemical or ill-defined rights. We have examined all the reservations that states have entered into the seven human rights conventions and we were able to assess which convention had ill-defined certain rights or might have contained some rights that states consider as a violation to their sovereignty. How to reconcile state sovereignty with the proper implementation of the human rights conventions is at the heart of this paper, therefore we attempt in chapter two to shed light on this debate and propose ways to adhere better to the spirit and letter of every convention.

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Before assessing each of the seven conventions, this paper provides an exhaustive and detailed explanation of almost every human right by resorting to the interpretive comments issued by the respective treaty body mechanism. This is a novelty in human rights literature as to date no one has systematically explained each right in accordance with its respective UN general comment. As most rights are sometimes complex and hard to understand, this paper not only assesses the strength and weaknesses of the seven human rights conventions, but also explains in details every human right.

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Chapter I


2.1 Background

Any paper that wants to address human rights issues needs to answer first the following questions: What are Human Rights? What are their Philosophical backgrounds? When was the International system created? And how did this system evolve?

Human Rights can be defined in several ways. A descriptive definition would state that human rights are “basic rights that empower human beings to live in liberty, equality and dignity” (Nowak, 2003, p1). A legal definition, would argue that human rights are the “sum of civil, political, economic, social, cultural and collective rights found in national and international instruments.” (Nowak, 2003, p1). Philosophical definitions on the other hand would claim that human rights are the “only universally recognized system of values” (Nowak, 2003, p1) that contain elements of liberalism, democracy, social justice, rule of law and good governance. No matter which definition one chooses to adopt, human rights will always be closely related to human dignity.
Living in dignity can encompass a full range of rights starting from the most basic such as the right to food and ending with the most sophisticated such as the right to protection of intellectual property.

Regarding the variety of human rights, one needs to mention that the human rights literature before the end of cold war always defined three generations of human rights. The first generation would be the group of political and civil rights championed by the west which include, the right to vote, equal access to public service, freedom to form political parties (political), freedom of speech, conscience, religion, assembly and equality before the law and non-discrimination (civil rights). The second generation of rights would be the economic, social and cultural rights that the communist block was calling for during the cold war. These include the right to work, the right to food, the right to decent living, the right to social protection … etc. Finally, the right to self determination, protection of minorities and indigenous, and the right to development; all belong to the third generation of human rights also called collective rights. This debate between the communist block and the West on which generation of human rights is more important soon ended after the collapse of the soviet union with the adoption of the Vienna Declaration in 1993 which reaffirmed that all human rights are universal, indivisible and interdependent.

Although the legal international human rights system was officially introduced with the creation of the United Nations following the atrocities of the Second World War, yet human rights can be traced to an older philosophical tradition.
The golden rule for example is stated in almost every religion. Christianity, Judaism, Islam, Hinduism and Buddhism all in their own words believe that it is necessary to "do unto others as you would have them do unto you" (Luke 6:31). In Judaism, it is important to understand that "what is hateful to you, do not to your fellow man." (Nowak, 2003, p9). Islam also states that "no one of you is a believer until he desires for his brother that which he desires for himself" (Nowak, 2003, p9). Hindu philosophy believes that, it is the duty of man to "do naught to others which, if done to thee, would cause thee pain." (Nowak, 2003, p9). Moreover, Buddhism also states that "hurt not others in ways that you yourself would find hurtful" (Nowak, 2003, p9).

In addition to the golden rule, liberalism and the philosophers of the age of enlightenment contributed enormously to human rights thought. The theory of social contract which stressed on the rationality of human beings and dismissed the divine basis of any rule contributed to the creation of the rights and duties tradition. According to Locke, "the great and chief end, therefore of men uniting into commonwealths and putting themselves under government, is preservation of their property that is their lives, liberties and estates." (Locke, 1690, p 87, 124, 123) Hence the rights of life, security, and property were reaffirmed.

Democratic thought also contributed to human rights. The American Declaration of Independence states that "all men are created equal; they are endowed by their creator with certain inalienable rights, among these are life, liberty and the pursuit of happiness...to secure these rights governments are instituted among men deriving their just
powers from the consent of the governed." (The American Declaration of Independence, 1776, p1).

Moreover, the French Declaration des droits de l'homme et du citoyen states that: "le but de toute association politique est la conservation des droits naturels et imprescriptible de l'homme." (the French Declaration des droits de l'homme et du citoyen, 1789, p1). While Liberalism contributed to the idea of non-interference by the state and church in the civil freedoms of individuals; the principle of democracy stressed on the importance of political active participation of individuals i.e. on political rights. The sum of these political rights which were influenced by the emergence of democratic thought and the civil rights which were influenced by 18th century liberalism constitute the first generation of human rights. Nevertheless, theses freedoms according to Emmanuel Kant do have a natural limit which is the respect of the freedom of others.

The philosophic origins of the second generation of human rights, i.e. economic, social and cultural rights are derived primarily from Marxist thought. Marx saw that the contemporary idea of human rights as propagated by the western countries was directly linked to the idea of slavery, colonialism and the suppression of women and the working classes. He believed that real equality can only occur through state intervention. This creates the polemical debate on how to reconcile social collective interests with individual freedoms (such as the right to own property, and the right to be free from state interference in one's private life).

In addition to the first and second generation of rights, the most recent generation of human rights is the third and it includes the right to self-determination, free
disposition of natural resources, and the right to development. This group of rights has been mainly influenced by the reaction of the countries of the south vis a vis neo-colonial economic expansion. The most comprehensive document containing all of these rights is regional instrument entitled “the African Charter on Human and Peoples Rights”;

The United Nations has also been active in promoting the right to self-determination as this rights has been first mentioned at the beginning of both covenants (Article 2 of ICCPR and article 2 of ICESCR).

Moreover, in 1986 the UN declaration on the right to Development was adopted and widely accepted by the International community (with the exception of the US). It reaffirmed the importance of this right which pertains to the third generation of human rights.

After reviewing the background of the three generations of human rights, one has to ask oneself: when did the International system for the promotion and protection of human rights officially start? And how did it evolve through time? As mentioned, the focus of human rights is always on the life and dignity of human beings. Human rights which provides a minimum standard and procedures for human relations; are not only applicable to governments but also seeks to organize business enterprises, International organizations and individuals.

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

“(Article 1, Universal Declaration of Human Rights, 1948)
The values of human rights, as mentioned, can be traced to an older philosophical tradition, however it is not until after WWII and precisely with the Universal Declaration of Human Rights in 1948 that human rights acquired a legal framework. The atrocities of the Second World War led to the creation of the United Nations, they also made world leaders more committed towards the safeguarding of human rights.

The Protection of human rights is mentioned in the UN charter mainly in articles 1 and 55. One of the purposes of the UN is defined in these terms: “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (United Nations Charter, 1945, article 1 paragraph 3)

Article 55 also strongly reaffirms that” With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: higher standards of living, full employment, and conditions of economic and social progress and development; it shall also promote solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. “(United Nations Charter, 1945, article 55).
The Universal Declaration of Human Rights (UDHR) was the first document drafted by the Commission on Human Rights. It was adopted in 1948 and to this date it is considered the bible of Human Rights. It is a standard-setting, unprecedented comprehensive document that has been integrated later in several constitutions of the world (especially in the states that have acquired their independence during the 1960's). Nevertheless, the UDHR was only a declaration thus a non-binding instrument therefore in 1966 the United Nations General Assembly adopted the two covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). Theses covenants entered into force in 1976.

However, one has to ask why did the Commission on Human Rights produce two separate instruments? Why did it not combine the rights into one comprehensive document? The answer takes us back to the categorization of human rights as three separate generations.

Throughout the evolution of human rights, many experts and policy makers in the West believed that the civil and political rights are the first generation of human rights and that the economic, social and cultural rights are less important and they are considered as the second generation of human rights. This narrow interpretation of Human Rights, reflected in several western constitutions," restricts human rights to the vertical relations between the state and the individual and to claims of the individual against state interference."(Nowak, 2003, P24). The communist block on the other hand had the opposite view, it claimed that economic, social and cultural rights are the most
important rights and that civil and political rights “would only aid and abet the capitalist interest of separating state and society. Thus, the task of the state was to ensure the rights to work, social security food, housing health and education, etc.” (Nowak, 2003, P24)

Consequently, the world community in 1966 could not agree on one document, and the two blocks argued that since these rights are of a different nature and since political and civil rights required negative intervention by the state while economic, social and cultural rights required positive action (ex welfare); they should be placed in two separate documents. In 1993 the Vienna Conference on Human Rights came to oppose this rationale and affirmed the” universality, indivisibility, and interdependence of human rights” (Vienna Conference on Human Rights, 1993).
Yet at the European Union until this date, in the provisions of its regional instrument on civil and political rights which is the European Convention on Human Rights for civil and political rights (ECHR) all civil and political rights are mandatory while in the provisions of the European Social Charter on social and economic rights, theses rights are not mandatory and they can be “selected a la carte”.

In addition to the two covenants, the Commission on Human Rights started drafting a comprehensive set of conventions that were later on adopted by the United Nations general assembly. The total number of these Human rights conventions is seven- including the covenants-The next chapter will describe each convention in detail while analyzing their strength and weaknesses.
The first convention that was drafted following the adoption of the two covenants was the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) which defined discrimination and created sets of rights that needed to be emphasized during the 1960s especially in an era that witnessed apartheid and wide-spread discrimination in many parts of the world. ICERD was adopted in 1965 and it entered into force in 1969.

The convention that followed ICERD was the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). This convention was adopted in 1979 and it entered into force in 1981. To this present day, CEDAW is considered the International bill of rights for women. The International community realized that the political, civil, social, economic and cultural rights present in the two covenants were not enough towards guaranteeing the full rights of women. Therefore, a special convention needed to be drafted in order to enumerate all the rights that women should enjoy.

Following CEDAW, the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) was created. It was drafted in 1984 and it entered into force in 1987. Although the prohibition of torture according to International law is *Jus Cogens* (self binding-rule), yet the International community felt that there was a need to define torture and include with it a set of cruel, inhumane or degrading treatment or punishment. The full text of this convention will be explored and analyzed in the next chapter.

The Convention on the Rights of the Child (CRC) followed the adoption of CAT and it is until this date the most ratified treaty among all other human rights treaties. It has been ratified by all of the UN member states with the exception of the United States.
and Somalia. The United States failed to ratify CAT because this convention prohibits the death penalty for Juvenile offenders. Furthermore, Somalia being a failed state could not officially ratify CRC.

The last Human rights Convention that was adopted in 1990 and entered into force in 2004 is the Convention on the Rights of Migrant Workers and Members of Their Families. Unfortunately, this convention has been ratified only by labor-sending states rather than by labor-receiving states.

Each of these conventions established their own mechanisms which will be explored and assessed in the third chapter of this paper.

The International human rights system however is not limited to the convention and treaty-body mechanisms, it also came to include different machineries to promote and protect human rights; as well as prevent human rights abuses. These are the famous three Ps found in human rights literature: Promote, Protect and Prevent.

At the onset of the International system, the United Nations always used the word promote rather than protect as to not violate article 2 (7) of the UN charter which describes the right of non-intervention in the domestic affairs of states. However as more human rights abuses occurred, the United Nations had to use more creative ways to protect human rights such as the International ad-hoc tribunals for Rwanda and former Yugoslavia. Eventually, states could no longer invoke article 2(7) on
non-intervention in their domestic affairs as the Security Council came to play a bigger role in human rights protection through humanitarian intervention.

During the 1990's the UN Security Council, considered human rights abuses a threat to peace in accordance with article 39 of the UN charter which prompted chapter VII action (The human rights literature would place humanitarian intervention under the Protection of human rights)

According to many human rights experts, the first P which is the Promotion of human rights would include the standard-setting role played by the United Nations i.e the Conventions. The second P which is Protection would include the treaty and chartered body mechanisms as well as Security Council action such as sanctions and humanitarian intervention. Prevention of abusing human rights or the third P is concerned with mechanisms such as the early warning system, conflict-resolution, preventive visits to places of detention and International criminal law (the ad-hoc tribunals and International Criminal Court).

The International human rights system tried to respond to human rights abuses as they occurred in an improvised manner. Tribunals for example were a response to genocide crimes that occurred in Rwanda and Yugoslavia. Conflict-resolution and peace building were a response to a reoccurring trend in conflicts, thus the need arose to send human rights officers along with peace keeping missions in order to build a long lasting peace and make sure that human rights abuses and conflicts will not occur again.
With time the notion of peace came to be directly linked to human rights. Human rights were recently seen as both an ingredient and a pre-condition for peace. In sum, one can notice that the human rights system started with broad standard—setting with the adoption of law making covenants on political, civil, economic, cultural and social rights; then moved to more specific standard-setting with the adoption of conventions related to vulnerable groups such as women, children, and migrant workers. Finally this system moved to the field with peace keeping and peace building missions and ad-hoc tribunals through a stronger role of the Security Council in protecting human rights.

2.2 The International Convention on Civil and Political Rights (ICCPR)

Before analyzing ICCPR or any other human rights convention, one has to bear in mind that three levels of state obligations to ensure the realization of human rights are always found in every human rights instrument. These different levels are the state obligations to respect, protect and fulfill. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of human rights.

The obligation to protect requires States to take measures that prevent third parties from interfering with the human rights of individuals. And the obligation to fulfill requires states to facilitate, provide and promote human rights by adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of human rights. Regarding racial discrimination for example, the obligation to respect can be translated into a legislation that ensures equality in all state institutions.
The obligation to protect can be ensured for instance by punishing private individuals or organizations in case of racial discrimination. State’s obligation to fulfill human rights can be accomplished by enacting legislation such as affirmative action measures to promote the rights of certain groups that are discriminated against because of their race, color or ethnic backgrounds. In each human rights instrument, one can clearly notice these three levels of state obligations.

ICCPR and ICESCR were both adopted in 1966 and they entered into force ten years later in 1976. They are called Covenants because they are law-making instruments that encompass a comprehensive set of rights. Along with the Universal Declaration on Human rights, they are sometimes referred to as the International Bill of Human Rights. ICCPR and ICESCR are structured in the same manner. Article 1 and 3 in ICCPR and ICESCR, for example are identical. Whereas article 2 in both covenants is on specific state obligations under each of these conventions, article 1 is on the right to self determination and article 3 is on the prohibition of gender discrimination.

ICCPR has two optional protocols that were drafted later and are considered binding for those who accept them. The first optional protocol of ICCPR allows for the United Nations Human Rights Committee (the committee mandated to oversee the implementation of the convention), to receive and consider complaints from individuals whose rights as set by the convention have been violated. The second optional protocol is related to the abolition of the death penalty by those states that ratify it.
ICCPR is made of a preamble and 53 articles, 27 of which are substantive.

The convention enumerates mainly the following civil and political rights: the right to self-determination; equality between men and women; the right to life; the prohibition of torture; the prohibition of slavery; the right to due process when arrested or detained; the right to treatment with respect and humanity while deprived of liberty; the right not to be imprisoned because of a failure to fulfill a contractual obligation; liberty of movement and residence; the right to enter and leave one's own country; the right of aliens not to be expelled except for compelling reasons and in pursuance to decisions reached in accordance with established laws; the right to 

*habea corpus* while awaiting for a trial; the right not to have heavier laws or retroactive laws imposed when one is on trial; the right to be recognized as a person before the law; the right to privacy and protection from interference in one's family, home or correspondence; the right to one's freedom of thought, conscience and religion; the right to one's freedom of opinion, and expression; prohibition of war propaganda or incitement to national, racial or religious hatred; the right to peacefully assemble and associate; the right to have a family and to equality of rights and responsibilities during a marriage and at its dissolution; the right to freely enter into a marriage; the right of children to be immediately registered, to acquire a name and a nationality and to be protected by law as required by their status as minors and to be free from any kind of discrimination; the right of children to be protected if a dissolution of the marriage of their parents occurs; the right to vote and to be elected; the right to have access to public service, the right to equality before the law and to non-discrimination; and the right of linguistic, religious or ethnic groups within a state to freely enjoy their own culture, profess their religion and use their own language.
2.2.1 habeas corpus

Although some of these rights are self-explanatory, yet some are complex – rights or do have limitations placed upon them, and do need further analysis and explanation. This is notably the case of articles 9 and 14 that both pertain to the rights of those arrested or on trial.

Article 9 requests from state parties to ensure that no one is arbitrarily arrested or detained. State parties should also guarantee that if a person is detained, he should have the following rights: the right to be informed of the reasons of his detention, and the charges pressed against him; the right to be brought promptly before a judge and to be trialed within a reasonable amount of time; the right to be released in some cases while awaiting for a trial, however subject to guarantees to appear for trial. Article 9 also requests states to ensure that anyone detained or arrested may take proceedings before a court in order for the judge to decide promptly whether the detention is lawful. Furthermore, victims of unlawful arrests should be compensated.

Article 14 can be seen as a continuation of article 9 because it sets the rights of individuals in courts-proceedings. This article stresses equality before the law and underlines that every person should have a “fair and public hearing by a competent, independent and impartial tribunal established by law” (ICCPR, 1966, article 14). Furthermore, two major principles should always apply in court –proceedings: the presumed innocent until proven guilty principle and the non-bis in idem principle Latin for the right not to be trialed again or punished of a crime that one had been already convicted or acquitted of. Moreover, article 14 defines situations that might necessitate
the press and public to be excluded from a trial in a democratic society, and these are: reasons of morals, public order, national security, prejudice to the interest of private lives or prejudice to justice itself. These reasons might preclude the presence of the public or the press in a trial; however the rendering of a judgment in a criminal case or in a law suit should be always made public except when the interest of a juvenile might be compromised or when the trial relates to matrimonial disputes or the guardianship of a juvenile.

Article 14 also defines seven main conditions when it comes to the determination of criminal charges in a court of law. The accused should be always informed “in a language that he can understands of the nature and cause of the charges against him.” (ICCPR, 1966, article 14). The accused should have the freedom to choose his own lawyer and this party should have adequate time and facilities to prepare the defense. Every accused should be tried without undue delay. Furthermore, each trial should be conducted in the presence of the accused and this person has the right to freely choose his lawyer and if he can not afford to hire one, the court has the obligation to provide him with one, free of charge. Moreover, each accused has the right to examine, under the same conditions, the witnesses that are on his behalf as well as those testifying against him.

The accused has the right to be provided with a free interpreter in case he can not understand the language used in court, and finally during a trial, no accused shall be “compelled to testify against himself or to confess guilt.” (ICCPR, 1966, article 14). Article 14 also referred to the rights of juveniles involved in criminal proceeding, it requested from the court to always take into account their age as
well as the possibility of their rehabilitation when rendering a judgment that involves them.

The last two principles that the judicial system should abide by are first the right of every convicted to have his sentence and conviction reviewed by a higher tribunal in accordance to law, and second there is the right of compensation in case of a miscarriage of justice. If new evidence is discovered and the conviction is reversed because of this new evidence, then this miscarriage of justice necessitates compensation to the falsely convicted person because of the undeserved punishment that he may have received. One has to note here that the new evidence that might be discovered is neither valid nor acceptable if it had been intentionally withheld by the convicted person.

2.2.2 The Right to Life

In addition to articles 9 and 14 that have set the core rights when there is administration of justice, the convention also tried to define in detail through article 6 what is meant by the inherent right to life. First, the right to life should be protected by law, and no one “should be arbitrarily deprived of his life” (ICCPR, 1966, article 6). This of course entails the enactment of legislation that protects that right and prohibits state institutions or agencies from arbitrarily taking the life of people and punishing third parties or private individuals when they commit such act.

Article 6 also reminds state parties to apply without derogations the Convention on the Prevention and Punishment of the Crime of Genocide whenever Genocide occurs.
Regarding the death penalty, the article clearly stresses that states that have not yet abolished this sentence, can impose this penalty only for the most serious crimes in accordance with the law in force at the time of the commission of the crime, and only pursuant to a judgment issued by a competent court. Furthermore, those sentenced to death, “can seek pardon or commutation and states may consider amnesty, pardon or commutation of this sentence.” (ICCPR, 1966, article 6). Article 6 clearly prohibits the imposition of the death penalty on pregnant women and persons below 18 years of age. This article also encourages states that are considering the abolition of the capital punishment to proceed with the necessary actions for this amendment.

It is worth noting, that many states still impose capital punishment, the United states for example have placed a reservation on this article because it executes minors i.e. persons below 18 years of age, an action which is prohibited under article 6. Many states have objected to the reservation made by the United States on this article; and this has prompted an on-going debate on the legality under International law to impose capital punishment on adults - convicts in general and on minors-convicts in particular. This debate has led to the creation of the second protocol for ICCPR which is exclusively reserved to the abolition of the death penalty (for those states who accept this additional second protocol).

2.2.3 Derogations in a State of Emergency

In addition to the enumerated self-explanatory list of civil and political rights,
as well as the thorough examination of articles 9, 14 and 6, one has to analyze the most controversial article in ICCPR which is article 4 on the derogations from the convention in case of an emergency.

The drafters of the convention realized that civil and political rights are a sensitive issue and states often abuse these rights and do resort to their suspension in order to maintain their prerogatives. Therefore, the drafters of the convention conceived article 4 which defines when certain civil and political rights can be suspended, which rights can never be suspended and how states should act in a state of an emergency.

First, certain rights are non-derogable and can never be suspended in any circumstances, and these include the right to life; freedom from torture; freedom from enslavement; protection from imprisonment for debt; freedom from retroactive penal laws; the right to recognition as a person before the law; and freedom of thought, conscience, and religion.

Second, if a situation “threatens the life and existence of a nation”, then the state should proclaim officially that it is in a state of an emergency and it should reported this to the United Nations and to the other state parties to this convention.

Third, in this state of emergency, certain rights can be suspended but these rights as well as the reasons behind their suspension and the duration of their suspension should be all signaled out to the other state parties and to the United Nations. Moreover, while in a state of an emergency, the state can suspend certain rights only on equality basis, without discrimination on the basis of race, sex, social origins, color, language or religion i.e. it can not suspend the rights of only one particular group; rather to the population as a
whole. Furthermore, these suspensions can not be inconsistent with the state's other obligations under International law.

According to the United Nations human rights committee which is mandated to oversee the implementation of the convention, the other state’s obligations under International law include humanitarian law. In its general comment number 29, the United Nations human rights committee explained that “certain elements of the right to a fair trial such as the right to be presumed innocent until proven guilty are guaranteed in humanitarian law, therefore the committee believes that there is no justification for derogating from these rights even in a state of an emergency” (United Nations Human Rights Committee, General Comment number 29, 2001). Furthermore, the committee believes that in order to protect non-derogable rights, the right to take proceedings before a court can not be diminished by states that are derogating from the covenant ( to enable court to decide on the lawfulness of detention).

2.2.4 State’s Obligations at the National Level

After enumerating the simple self-explanatory rights and examining the more complex rights such as those contained in articles 9, 14, 6, and 4; one has to move now to article 2 which is the most significant article that defines state obligation at the national level for the implementation of the convention. Article 2 states the following:

“1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language,
religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted. ” (ICCPR, 1966, article 2).

In its general comment number 31 issued in 2004, the United Nations Human Rights Committee referred to Vienna Convention on the Law of Treaties of 1969 in order
to interpret article 2 and state's obligations for the implementation of the convention. The committee reminded state parties of article 26 of the Vienna Convention on the law of Treaties (1969) which stipulates that *pacta sunt servanda i.e* “every convention in force is binding upon the parties to it and must be performed by them in good faith.” (Vienna Convention on the law of Treaties, article 26, 1969). The committee also mentioned another important rule that pertains not only to the implementation of ICCPR but to all other conventions which is summarized in article 27 of the Vienna Convention on the Law of Treaties. This rule states that “no party may invoke the provisions of its internal law as justification for its failure to perform a treaty.” (Vienna Convention on the law of Treaties, 1969, article 27). Because of this rule, article 2 of ICCPR clearly requests states to adopt laws in order to give full effect to the provisions found in this convention.

States need to understand that their International obligations under International treaties and conventions supersede their national laws. Ideally, states need to amend their national laws in order to make them in conformity with their international obligations. Of course most states do not act in accordance with article 27 of the Vienna Convention on the Law of treaties and therefore, do resort to placing reservations on some of the articles that contradict their internal Laws.

Regarding reservations, international law made it clear that in accordance with article 19 of the Vienna Convention on the Law of Treaties, any reservation that is incompatible with the object and purpose of the treaty is impermissible. (In its general comment number 24, the Human Rights Committee considered a reservation on article 2 of ICCPR, violates the object and purpose of the convention and thus considered
International Law permitted states to place reservations in order not to compromise state sovereignty found in article 2 (7) of the United Nations Charter; however balancing state sovereignty and enforcing international law proved to be a difficult and somewhat a contradictory task.

In addition to resorting to international law in order to explain article 2 and state’s obligations for the implementation of the convention, the Human Rights committee made it clear that once a state ratifies the convention it is considered binding in all its territories and throughout all of the branches of the government i.e the legislative, judiciary, and executive, including the structures of federal systems. Moreover regarding paragraph one of article 2, and the insurance of the rights set forth in the convention to all individuals in the territory of the state and under its jurisdiction without discrimination, the committee explained that some states” may reserve certain rights only to their citizens and not to all those in their territory or under their jurisdiction, such as the rights found in article 25 i.e to vote and be elected and those found in article 12 such as the right to residence and freedom of movement” (Human Rights Committee, 1986, general comment number 15).

Nevertheless, the committee believes that certain rights needs to be accorded to all individuals regardless whether theses were citizens of the state or simply migrant workers, aliens, or tourist. These rights that should be accorded to citizens as well as to aliens are according to the committee:

"the right to life; the prohibition of torture; the prohibition of torture or cruel, inhuman or degrading treatment or punishment; prohibition of enslavement or servitude; the right to liberty and security of the person. If aliens are lawfully deprived of their
liberty, they shall be treated with humanity and with respect for the inherent dignity of their person. Aliens may not be imprisoned for failure to fulfill a contractual obligation. They have the right to liberty of movement and free choice of residence; they shall be free to leave the country. Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law. Aliens shall not be subjected to retrospective penal legislation, and are entitled to recognition before the law. They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at marriageable age. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.” (Human Rights committee, general comment number 15, 1986).

The committee added few years later that states might differentiate in their accord of rights-except those rights that are mentioned above- because “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are
reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.” (Human Rights committee, general comment number 18, 1989). Because of the many volumes of comments that the committee published to explain the application of article 2 of ICCPR, states can no longer argue that their obligations for the implementation of the convention are not understood or ill-defined.

In sum, article 2 requests states not to discriminate in the application of the rights set forth in the convention. Furthermore, states should ensure these rights to those in their territory and subject to their jurisdiction. They should also take all necessary measures, including legislative, to give full effect to the convention. Moreover, they should provide individuals, whose rights have been violated, with effective remedies determined by competent authorities, and they should ensure that such remedies have indeed been granted.

After describing the rights found in ICCPR and analyzing state obligations at the national level, one should proceed to the final stage of assessing this legal text and examining its strength and weaknesses. The best way to assess a convention is to examine in detail the reservations which were made by states at the time of ratification. A thorough examination of these reservations revealed that most European states found that article 20 which prohibits war propaganda and incitement to racial, national or religious hatred is incompatible with the rights of freedom of speech, expression, thought, conscience and assembly which are found in articles 18, 19 and 21. Therefore, most European states placed a reservation on article 20.
This might be considered as one of the weaknesses of ICCPR because the drafters could not reconcile the right of freedom of expression with the principle of prohibiting war propaganda and incitement to religious, racial or national hatred. Perhaps a better definition of article 20 might have precluded European states from placing reservations on this article.

Another controversial article is the one on the right to life (article 6). Many states showed resentment regarding article 6 because they considered that ICCPR should have systematically prohibited capital punishment. Therefore, in order to correct this situation, the United Nations Commission on Human Rights decided to draft a second optional protocol to ICCPR which is on the abolition of capital punishment.

In addition to these two debatable issues, many consider that ICCPR weaknesses lie in its limitation clauses and in the famous article 4 on derogations of rights in a state of an emergency. Article 4 necessitated additional general comments from the Human Rights committee because it is one of the articles that is most abused by states. Usually when states declare that they are in a state of an emergency, they suspend the rights of their citizens and violate their obligations under international law. Although article 4 tried to define the conditions of a state of an emergency and expand the list of non-derogable rights, yet it did not succeed in clarifying when states should resort to proclaiming a state of an emergency and for how long certain rights are permitted to be suspended. States proclaim states of emergency for the most trivial reasons and solely to maintain sometimes their illegitimate reign. Therefore “a situation that threatens the life of a nation” is too vague as a precondition for proclaiming the state
of an emergency and this has prompted many states to wrongfully proclaim and extend the state of an emergency for sometimes more than 20 years.

ICCPR should have placed time limits and should have clearly defined when and how states can resort to suspending certain rights. Some legal experts argue that it is not always possible to have a solid legal text and that states will always find loopholes that would permit them to violate the convention. They argue that expanding the non-derogable rights beyond the *jus cogens* of prohibition of torture and slavery (to the other 5 rights), is already an achievement.

In addition to finding loopholes in the application of article 4, states also violate constantly some rights and they argue that ICCPR allows these violations because of the limitation clauses. ICCPR placed limitation clauses on freedom of movement (article 12), freedom to manifest one’s religion (article 18(3)), freedom of expression (article 19 (2)), right to peaceful assembly (article 21) and the right to freedom of association (article 22). The limitation clauses restrict the application of these rights “when it is necessary in a democratic society for the interest of national security, public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” (ICCPR, 1966, articles 12, 18, 19, 21, and 22.) Many experts argue that these limitation clauses are often used by states to deny their citizens or those within their jurisdiction certain rights.

These experts believe that the drafters of the convention compromised certain rights in order to please states, secure wide ratification, and protect state sovereignty. Law experts believe that all legal texts do suffer from loopholes that states can abuse, and ICCPR is
no exception to that rule. Nevertheless, they also believe that this covenant is a comprehensive law-making instrument that encompasses a wide variety of civil and political rights. The Universal Declaration on Human Rights (UDHR) clearly influenced this document as many of their articles are almost identical.

As of 2006 ICCPR secured" the ratification of 157 states "(www.ohchr.com). If the number of ratification is an indicator of success, than ICCPR has done considerably well...

2.3 The International Convention on Economic, Social and Cultural Rights (ICESCR)

Like ICCPR, the International Convention on Economic, Social, and Cultural rights (ICESCR) was adopted in 1966 and it entered into force in 1976. Many western states hesitated to ratify this convention because they considered the rights contained in this document as secondary. The United Nations worked hard to change this concept and to reaffirm the interdependence, indivisibility, and interrelatedness of all rights. After all without certain economic and social rights such as the right to work or the right to food, how can one practice his civil and political rights? Can one for instance be preoccupied with exercising his right to vote and to be elected if he doesn’t have the minimum caloric daily intake?
ICESCR is made of 31 articles, 15 of which are substantive. This convention enumerates the following rights: the right to work; the right to just and favorable conditions of work; the right to form trade unions and to go on strike; the right to social security and social insurance; special protection to the economic and social rights of the family, mothers and children; the right to adequate standard of living, the right to the highest attainable physical and mental health; the right to education; and the right to a cultural life. One can notice that economic and social rights are divided between the first fourteen substantive articles, whereas cultural rights are summarized in the last substantive article which is article 15.

2.3.1. The Right to work

ICESCR focused in its articles 6 and 7 on the right to work. States were not only expected to recognize and protect the right of all individuals to freely gain their living and work, but they also had to enact positive legislation and actions to fulfill this right.

According to article 6, states should take the necessary steps including “technical and vocational guidance and training programmes policies and techniques to achieve steady economic, social and cultural development and full productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.” (ICESCR, 1966, article 6). States are requested to promote the right to work by providing individuals what we call an enabling environment, and this includes
providing vocational training and adequate programmes for sharpening the skills of workers.

Furthermore, the convention defines through article 7 what is meant by "just and favorable conditions of work" (ICESCR, 1966, article 7). This includes equal remuneration for work of equal value without discrimination that can provide a decent living for the workers and their families. States according to these provisions have to calculate the minimum wage and enact legislation that could translate on the ground the minimum wage that could provide a decent living for the worker and his family. Article 7 also requests from states to ensure that the working conditions are safe and healthy. The article also referred to the right of all workers to be granted work promotions, and stated that this should be subject only to considerations such as seniority and competence. The last clause of article 7 underlined that all workers are entitled to "rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays." (ICESCR, 1966, article 7). The striking feature of this clause is that it is seldom being implemented in the third world. (and some western countries). Limitation of working hours includes enacting legislation to organize the private sector, and to punish any abuse to the labor laws. The right to rest and leisure are perceived as a "luxury" in most third world countries, and not as basic human rights like the convention defined them.

In addition to focusing on the right to work, the convention also requested states through article 9 to recognize the right of all individuals to social security, including social insurance. The drafters of the convention used the word recognize rather
than provide because of the inability of some poor nations to secure these services to their citizens.

Following article 9 is the article concerned with the protection of the economic and social rights of the family, motherhood and children i.e. article 10. One can clearly notice this article relates to the rights of family, working mothers and children in a very broad way. It does not define what is meant by protection, rather it state that “the widest possible protection should be accorded to the family” (ICESCE, article 10). Moreover, on the issue of working mothers, it requests states to ensure that “special attention be accorded to mothers during reasonable period before and after birth …where working mothers should be accorded paid leave or leave with adequate social security benefits.” (ICESCR, 1966, article 10) This article leaves the liberty to states in specifying the period of maternity leaves and the nature of special benefits that mothers may benefit from.

It is worth noting that the United Nations Economic, social and cultural committee (CESCR committee) that is mandated to oversee the implementation of the convention has not issued any interpretive or general comments on article 10, thus leaving states to guarantee this right in accordance with their national laws. The following rights however (11 to 15) did indeed witness interpretation and further clarification by the CESCR committee.

2.3.2. The Right to Adequate Standards of Living

Article 11 guarantees one of the most basic economic and social human right,
which is the right to adequate standard of living. This article is divided into two sections. The first section defines what is meant by adequate standard of living and the second part explains what is meant by the right to food and how this can be accomplished. According to this article, adequate standard of living includes “adequate food, clothing, housing, and the continuous improvement of living conditions.” (ICESCR, article 11)

One has to note here that CESC committee has issued several general comments on this section of article 11. It added the right to water as a basic human right in the application of article 11. It also explained in detail what is meant by adequate housing and demonstrated that forced evictions are violations to this article. Furthermore, the committee issued in 1999, general comment number 12, on the right to food; explaining hereby in details the second section of article 11 which is solely reserved to the right to be free from hunger.

As mentioned, regarding the first section of article 11, the CESC committee added the right to water in its general comment number 15 issued in 2002 to the list of rights that could secure an adequate standard of living. The committee went further in explaining that article 11 stated that “the adequate standard of living included, food, clothing and housing” (ICESCR committee, 2002 general comment number 15) and the use here of the word included meant that this was not an exhaustive list and certainly the right to water can be added to the interpretation of article 11 because water was necessary for the survival of every human being.
In its general comment number 15, the CESC R committee also defined what is exactly meant by the right to water. It is “a right that contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.” (CESCR committee, 2002, general comment number 15)

In addition to defining the right to water, the committee also issued a general comment to explain better the right to adequate housing. In its general comment number 4, issued on 1991, on the right to adequate housing, the CESC R committee requested states not to narrowly define housing as only a shelter, rather to bear in mind that proper housing also includes “adequate privacy, space, security, lightening, ventilation, basic infrastructure, plus adequate location with regard to amenities and reasonable prices.” (CESCR committee, 1991, general comment number 4). According to the committee, states are also requested to adopt national housing plans, ensure this right to the vulnerable groups in society, and enact national legislation to protect it. The legislation that states have to enact, should prevent planned and forced evictions; provide compensation in case of illegal evictions; and create the proper judicial mechanisms that would enable tenants to complain against landlords concerning unsafe or unhealthy housing.
2.3.3 The Right to Food

In addition to thoroughly defining adequate standard of living, article 11 also referred to the right to food in its second section. Moreover, the CEDCR committee issued in 1999, its general comment number 12 on this particular right. According to article 11, the right to food is the responsibility of the international community as states are requested to "take measures individually and through international cooperation" (ICESCR, 1966, article 11) to secure that right. Furthermore, two clauses define what is needed to ensure the right to be free from hunger. First, states should cooperate in improving the methods of production, conservation and distribution of food by disseminating technology throughout the world and resorting to agrarian reform when needed. Second, the international community is requested to ensure an "equitable distribution of world food supplies in relation to need and taking into account the problems of both food-importing and food-exporting countries" (ICESCR, 1966, article 11). These clauses state that it is the duty of developed countries to assist poor counties, first in the dissemination of food-technology, and second by international cooperation to reach an equitable distribution of world food.

International cooperation which is a key concept in international law is also underlined in articles 55 and 56 in the United Nations charter.

It is worth noting that the right to food as defined by article 11 is constantly being violated by the developed countries. In its report entitled "The Effects of Globalization..."
on the Enjoyment of Human Rights “, the United Nations Commission on Human Rights, explained how granting patents covering all genetically engineered varieties monopolized in the hands of an inventor what one might grow in one’s garden. This is an appropriation of nature’s bounty which is designed for the whole world rather than to privileged few. It is a clear violation to the right to food. Food security is also being violated by Trans National Co operations that maximize profits in third world countries by transforming staple food or subsistence farming into cash-crops for exports. While TNCs export the newly created varieties, the local population starves because it can no longer produce its staple food.

2.3.4 The Right to the Highest Attainable Standard of Physical and Mental Health

Following article 11 and the right to food, the convention refers to the right to the highest attainable standard of health found in article 12.

According to this article states are not only expected to acknowledge that every person is entitled to the highest standard of physical and mental health, but they are also required to take steps in order to ensure four main objectives. The first objective is the reduction of still-birth rate and infant mortality. The second aim is to improve all aspects of environmental and industrial hygiene i.e. to decrease pollution levels. The third objective relates to the prevention and treatment of epidemic and endemic. The last objective that pertains to the right to the highest attainable standard of health is “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.” (ICESCR, 1966, article 12).
This last clause was the subject of general comment number 14 that was issued by the CESC committee in 2000. According to this general comment, the right to health should not be understood as only the right to be “healthy”, rather this notion should include the following elements: “the right to control one’s own health and body including sexual and reproductive freedom; the right to be free from interference such as torture and non-consensual medical experimentation; the right to have a system of health protection available to all without discrimination.” (ICESCR, 2000, general comment number 14)

Furthermore, the committee added that the medical system provided by states as defined in article 12 (last clause) should contain characteristics such as availability, accessibility, acceptability, and quality. Availability is reflected in medical facilities that are a present in sufficient quantities; containing safe water, sanitation and trained medical staff. Accessibility requires states to provide individuals with a medical system that is physically and economically accessible. There is also a need to provide individuals with information regarding the medical system and not to discriminate in the administration of health care. Acceptability and quality on the other hand refer to good, ethical, and culturally appropriate medical service.

Although international cooperation in the past few years have increased concerning assistance in disaster relief, yet one can notice several violations to the right of health. By placing patent rights on important life-saving drugs, developed countries are violating article 12 in terms of international cooperation. Furthermore, some
developed states have placed economic embargoes on other states that involve medical
drugs, and this act according to CESC R committee is illegal and a violation to article 12.
CESCR committee in its general comment number 8 considered embargoes on medical
supplies and drugs to be illegal acts of political and economic pressure.

2.3.5 The Right to Education

The last social right found in the convention is the right to education as
defined in articles 13 and 14. Article 15 which is the last substantive article in the
convention describes on the other hand the set of cultural rights. As mentioned, the right
to education is found in articles 13 and 14. Whereas article 13 defines in detail the right
to education, article 14 is solely reserved to establishing primary free and compulsory
primary education. Article 13 is divided into 4 sections.

The first section enumerates the goals of education which are promoting a
culture of tolerance and peace, developing the human personality while focusing on
dignity, respecting human rights and its values, and enabling individuals to fully
participate in open democratic societies. The second section details the means to achieve
this kind of education, which are enforcing free and compulsory primary education,
making secondary and vocational education available while considering making them
progressively free, making higher education available to all with the progressive
possibility of providing them free, providing fundamental education to those who were
not able to complete the full cycle of their primary education, and finally creating a
system of schools that offers fellowships and constantly increases the material resources
of its staff. The last two sections of article 13 are on the right of parents to freely choose the education of their children and to place them in private schools that have the minimum required standards of the state, and that can teach them religious or moral codes that conform to the convictions of parents. This section also requests states to allow the establishment of such institutions subject to the minimum rules of the states and to the general principles of education as defined by article 13.

Article 14 continue exploring the right to education and it request states to secure compulsory and free primary education. According to this article states are suppose to undertake within 2 years of ratification of the convention to adopt a plan that would secure compulsory and free primary education to all, within “reasonable number of years” (ICESCR,1966, article 14.).According to the CESC0R committee the right to education is both a human rights in itself and an indispensable means to secure other human rights. It also empowers women and protects children fro exploitation.
Regarding implementation of the right to compulsory and free primary education, “structural adjustment of the 1970’s, debt crisis of the 1980’s, financial crisis of the 1990’s, have all led to denial of that right in several countries” (ICESCR, article 11).

2.3.6 The Right to a cultural Life

The last substantive article of ICESCR which is article 15 is on cultural rights. The three levels of state obligation, which are respect, protect and fulfill, explained at the beginning of the chapter are clearly found in the article. States are required to recognize
and respect the right of every one to take part in cultural life, enjoy the benefits of scientific progress, and benefit from "the protection of moral and material interests resulting from any scientific, literary or artistic production of which he may be the author". (ICESCR, 1966, article 15) The state obligation to respect and protect this right can be accomplished by enacting the proper legislation that will permit individuals to enjoy these rights and that would punish those who might violate these rights or deny them to their fellow human beings. The second part of article 15 is on the state obligation to fulfill cultural rights, by diffusing science and culture, promoting scientific research and artistic expressions, and encouraging international cooperation in these areas.

It is interesting to note that regarding the concept of "the protection of moral and material interests resulting from any scientific, literary or artistic production" (ICESCR, 1966, article 15) can be found in the Universal Declaration of Human Rights (UDHR) where article 27, paragraph 2, states "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." (UDHR, 1948, article 27). Similarly, this right is recognized in "regional human rights instruments, such as article 13, paragraph 2, of the American Declaration of the Rights and Duties of Man of 1948, article 14, paragraph 1 (c), of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 ("Protocol of San Salvador") and, albeit not explicitly, in article 1 of Protocol No. 1 to the Convention for the Protection of

2.3.7 State’s obligations for the implementation of ICESCR

Like ICCPR, article 2 of ICESCR is on state obligation for the implementation of the convention. Article 2 states:

“1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals. “(ICESCR, 1966, article 2).

This article acknowledges in section 3 that some economic rights may not be available to all peoples especially in third world or poor countries. Moreover, the different sentences such as “the progressive realization”, and “to the maximum of its
available resources”, according to the CESC committee should not be used as a pretext to derogate from the covenant. These sentences have been used in the convention because the committee acknowledged that economic, social and cultural rights can not be achieved in a short period of time.

Nevertheless, article 2 does set up clear state obligations such as the enactment of legislation to guarantee these rights and to provide individuals with the “judicial remedies, in cases of violation “(CESCR committee, 1990 general comment number 3). According to the committee states should demonstrate that they have used all their available resources in order to provide these rights, as the sentence “to the maximum of their available resources” requires.

Two other important concepts in the application of the convention are the principles of non-discrimination and that of international cooperation. States are requested to cooperate in the application of every right found in ICESCR. They are also required not to discriminate in the implementation of the rights set forth in the convention.

After describing in detail the rights found in ICESCR, relating them to their respective interpretation by the CESC committee through the general comments, and providing few examples of how certain rights are being violated on the ground; one has to finally assess this legal document and analyze its strength and weaknesses.

Before assessing ICESCR, one has to bear in mind that some economic, social and cultural rights are couched in very general terms whereas some are quite detailed
because there was a need to find a middle ground between two extremes: the convention should neither be a recasting of the universal declaration on human rights nor a compendium of all civil and penal codes and all social or education legislation.” (United Nations, 1995, P 45). Both ICESCR and ICCPR are called covenant because they are law-making instruments that can be further developed into specific convention for example on education, on the elimination of discrimination…etc

ICESCR has been criticized by many human rights experts because of its weak tone and the use of gradual rights lexicon such as the” progressive realization”, “to the maximum of their available resources”, and “take steps to achieving progressively” (ICESCR, 1966, article2). Moreover, unlike ICCPR, the United Nations was unable to reach consensus on the adoption of an optional protocol that can give the authority to the CESC committee to receive and examine communications from individuals whose rights as set by the convention have been violated. Therefore, one can notice a weakness in the text of ICESCR as well as in its respective mechanism of implementation.

Furthermore, many human rights experts complained from the fact that certain articles did not define rights in a comprehensive way. Article 13 for example which is on the right to education ignored to mention the notions of gender equality in education, the protection of academic freedom and the prohibition of corporal punishment.

The examination of states reservations on the other hand revealed no specific flaw or problematic articles in ICESCR. Most states placed their reservations in relation to either their economic status or other internal factors. Unlike when ratifying ICCPR, states showed no confusion in understanding the rights set in ICESCR. The reservations for
example of most European states centered on article 8 (1) on the right to strike, which they preferred to implement in accordance with their regional instrument which is the European Social Charter. India, for example, placed a reservation on article 7 (c) and the right of every one to be promoted subject to competence and seniority, because of its caste system. Most third world countries had a problem with providing free and compulsory primary education due to financial constraints; therefore they have placed reservations on article 13 and 14.

Regarding the status of ratification, it is interesting to note that as of February 2006 there have been 153 state parties to ICESCR (www.ohchr.org). In addition to the limited number of state reservations, ICESCR can be accredited for being a full –encompassing document that tried to create time frames for the implementation of certain rights (example article 14).
Chapter II

3. The United Nations Five Conventions on Human Rights

3.1 The Convention on the Elimination of all Forms of Racial Discrimination (ICERD)

The Convention on the Elimination of all Forms of Racial Discrimination was adopted around the same time as the two covenants: ICCPR and ICESCR. However, it entered into force much earlier than the two covenants - in 1969. The reason behind the speedy ratification by states of ICERD, laid in the fact that apartheid during that time was an alarming practice that needed the quick intervention of the international community.

Before the drafting of ICERD, a declaration existed and it attributed the spread of racial discrimination to a dangerous doctrine of racial superiority that is scientifically false and that would endanger international peace and security.

3.1.1 The Definition of Racial Discrimination

In 1966 the United Nations General Assembly adopted ICERD as a binding instrument in international law to those states that ratify it. ICERD is made of 25 articles, 7 of which are substantive. The convention starts by defining in article 1, the term "racial discrimination". Furthermore, article 1 states two limitations on the application of the convention as well as one clarification regarding special measures to enhance the rights of certain groups. According to article 1, "the term racial discrimination shall mean any
distinction, exclusion, restriction or preference based on race, colour, descent, or national
or ethnic origin which has the purpose or effect of nullifying or impairing the recognition,
enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in
the political, economic, social, cultural or any other field of public life.” (ICERD, 1966,
article 1).

Regarding limitations, article 1 states that the convention shall “not apply to
distinctions, exclusions, restrictions or preferences made by a state party between citizens
and non-citizens “(ICERD, 1966, article 1). This clause was further clarified in an
ICERD general comment which will be discussed later while assessing the convention.

In addition to defining the term racial discrimination and placing limitations on non-
citizens, article 1 also reasserted that any favorable or special treatment -such as
affirmative action- which is aimed at securing the advancement of a particular racial or
ethnic group, in not considered discrimination as long as it is discontinued once full
equality is reached among all groups.

3.1.2 State’s Obligations for the implementation of ICERD

In article 2 which defines state obligations under the convention, one can clearly
notice the three levels of state duty to respect, protect and fulfill. States should refrain
first from practicing racial discrimination (the obligation to respect), then they should
prohibit racial discrimination by private persons or organizations (the obligation to
protect), finally they should encourage the establishment of multiracial internationalists
organizations and discourage racial division. Furthermore, they should also create special
temporary measures such as quota systems or affirmative action to ensure the equal enjoyment of human rights to all (the obligation to fulfill). All of these actions should be implemented by amending legislation and taking all the necessary steps to ensure the elimination of racial discrimination.

Whereas article 3 condemns apartheid and requests states to prohibit such practices in its territories, article 4 prohibits the dissemination of ideas based on racial superiority, and the incitement to racial hate. It also requests states to prohibit public or private organizations that are involved in theses practices.

Article 5 is the most important article in ICERD because it enumerates the civil rights that should be enjoyed by all individuals. The importance of this article was reaffirmed in general comment number 20 that was issued by the CERD committee to explain that the rights set forth in this article should be enjoyed by citizens as well as non-citizens alike. Article 5 states the following: “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(vii) The right to freedom of thought, conscience and religion;

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:
(i) The rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration;

(ii) The right to form and join trade unions;

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;

(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks. (ICERD, 1966, article 5)

After enumerating these different rights, ICERD through article 6 requests states to provide through competent national tribunals to every one within their jurisdiction effective protections and legal remedies such as reparations in cases of racial discrimination.

The last substantive article which is article 7 is related to combating prejudices that might lead to racial discrimination by adopting special measures in the fields of education, teaching, culture and information.
After reviewing the different rights found in ICERD, one should assess this convention and discuss its weaknesses as well as its strength. One obvious weakness found in ICERD is the limitation made in article 1 to non-citizens. This limitation was used by some states to violate the rights of non-citizens, therefore in 2004 the CERD committee which is mandated to oversee the implementation of the convention issued its general comment number 30 explaining that the limitation found in article 1 was misused by some states and that non-citizens should enjoy all of the rights found in article 5 of ICERD. Furthermore, while examining state reservations to ICERD; one notices that most European countries placed a reservation on article 4 of that convention fearing that this article might jeopardize the right to freedom of thought, expression and association in their respective societies. Article 4 prohibits the dissemination of ideas based on racial superiority, the incitement to racial hate, and the establishment of public or private organizations that are involved in theses practices.

The drafters of the convention have been once again faced with the problem of balancing certain rights. Defining better what is meant by “incitement to hatred” and providing concrete criteria for banning certain organizations might have precluded some states from entering reservations to article 4. Despite these limited shortfalls, ICERD has indeed succeeded in defining racial discrimination at a time that witnessed apartheid in South Africa as well as continuous violations in countries such as the United States in the 1960’s. The importance of ICERD also lays in the fact that this convention also “covers non-self governing states even if the state that administers them is not party to this convention” (www.ohchr.org/eng/ about/publication/docs/fs12.htm)
Moreover, ICERD has been empowered with innovative mechanisms that would ensure its implementation such as the early-warning system in addition to the more traditional methods such as individual complaints and reporting mechanisms (these will be discussed in chapter 3). According to OHCHR fact sheet number 12, early warning measures result in resolutions, declarations and decisions by both the General Assembly and the Security Council. Moreover, the criteria for these measures are "the existence of a pattern of racial discrimination in social and economic indicators, the significant flow of refugees, or encroachment of lands owned by minorities, and the lack of legislation to prohibit racial discrimination." (www.ohchr.org/english/about/publication/docs/fs12.htm)

Discrimination and Racial discrimination in particular are an important challenge facing the United Nations and the international community. After ICERD, many conferences and declarations followed such as the Durban World Conference against Racism, Racial Discrimination, xenophobia and related Intolerance. Nevertheless many individuals are still discriminated against because of their race. The eradication of such discrimination should include as defined by ICERD a holistic approach starting from raising awareness in the media and education against racial discrimination, implementing special measures to accelerate equality and ending by the enactment and enforcement of appropriate legislation aimed at eradicating this violation to the human dignity.
3.2 The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

Although ICCPR and ICESCR were both adopted in 1966 and entered into force in 1976, yet soon the international community realized that these covenants were not enough towards guaranteeing women’s rights: women indeed needed their own instrument, that could reaffirm their rights and create a binding obligation upon states that ratify it. Therefore, in 1979, the Convention on the Elimination of all Forms of Discrimination against Women or CEDAW was adopted and it later entered into force in 1981.

3.2.1 Definition of gender discrimination

CEDAW is sometimes referred to as the *International Bill of Rights* of women because it encompasses a wide variety of rights for women. It is made of a preamble and 30 articles, 16 of which are substantive. Although CEDAW repeats certain rights found in ICCPR and ICESCR, yet the novelty lies in its method of gender mainstreaming these rights. From the first article which is on the definition of discrimination, one can notice this gender mainstreaming. Usually the definition of discrimination in every convention is a conventional one as found in the two covenants or ICERD which is defined as discrimination on the basis of “race, colour, sex, language, religion or social origin” (ICCPR, 1966, article 4). CEDAW gender mainstreamed the definition of discrimination, by adding the clause of “irrespective of their marital status” in the following context:
"discrimination shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." (CEDAW, 1979, article 1)

Adding the clause irrespective of their marital status reflects one gender dimension in discrimination that the drafters felt that there was a need to mention.

After defining discrimination, CEDAW refers to state obligations in article 2 for the implementation of the convention, and then it enumerates a variety of rights such as: the right to participate in the public and political life; the right to vote and to be elected; the right to participate in non-governmental organizations concerned with public and political life, the right to be representing the government at international levels; the right to be protected from trafficking and from sexual exploitation; the right to acquire, change and retain a nationality; the right to give their nationality to their children; the right to education; the right to employment; the right to economic and social benefits; the right to health; the right to culture, special rights of rural women; the right to equality before the law; and rights in marriage and family life.

These rights which will be detailed in the following section, have been gender mainstreamed in order to reflect the real gap between men and women.
Article 5 in CEDAW is narrowly related to article 4. It is mostly because of stereotypes (among other causes such as women illiteracy and the feminization of poverty) that women are discriminated against and are in need for special favorable measures as defined in article 4. Article 5 requests states to modify social, cultural, stereotypes and gender -biases, that perpetuate the idea of the inferiority of women; and favors the limitation of their role only in the domestic/private sphere. This article is the only article found in any human rights convention that refers directly to the modification of cultural patterns, a subject that proved to be politically-sensitive in the past.

3.2.3 Women’s Rights

In addition to articles 4 and 5, one needs to further explain the complex rights found in articles 10 to 16. Unlike article 13 in ICESCR that defined broadly the right to education; CEDAW gender-mainstreamed and explained in details this right. According to the United Nations Division for the Advancement of Women, article 10 in CEDAW which pertains to the right to education, can be divided into three categories. First, there is the obligation to “equal access to the same curricula and scholarship opportunities.” (www.ohchr.org/english/about/publications/docs/fs22.htm)

Second, state parties are requested “to revise text books and to eliminate gender role stereotypes”. (CEDAW, 1979, article 10). Third, states have the obligation to “close the gender gap in education by creating programmes that can enable women to go back to school and to catch up so they can enjoy an equal right in the workplace and the society as a whole.” (www.ohchr.org/english/about/publications/docs/fs22.htm)
In addition to these different state obligations, article 10 also referred to the particular problem of female drop-outs which is a phenomenon that is widespread in certain countries. Girls often leave school to get married and most families in third world countries prefer to invest in the education of their male children rather than their girls. Therefore, states should enact legislation and take appropriate steps to reduce female drop-outs rates.

Following the right to education, CEDAW defines the right to employment. Article 11 on the right to employment is divided into two parts. The first part gender mainstreams in general the right to employment, and the second section refers specifically to the prevention of discrimination in the workplace because of pregnancy or marital status.

On the right to employment, states should first recognize this right to all as an inalienable right. Second, states should ensure equality of access to employment, equality in freely choosing one's occupation, equality in promotion, job security and benefits, equal remuneration for equal work, the right to social security, and the right to healthy and safe working conditions. In part two of article 11, CEDAW requests states to prevent discrimination in the workplace; by prohibiting and punishing dismissal due to marriage or pregnancy.

States are also requested to enact legislation to introduce maternity leaves, create a network for child care facilities to help working mothers, and provide protection for pregnant women in working environment that might be harmful to their health.
In 1989, the CEDAW committee which is mandated to oversee the implementation of the convention, added in its general comment number 12 in the interpretation of article 11, the duty of states to protect women from violence including sexual harrassment in the workplace.

Following article 11 and the right to employment, CEDAW explains the right to health in article 12.

In sum, article 12 requests states to provide women with equal access to health services including those related to family planning, and to post- natal care and nutrition during pregnancy and lactation.

CEDAW through article 12 was the first human rights instrument to affirm women’s right to control their own fertility. This right has not yet received universal recognition as some states object to the controversial right to abortion. This controversy was again reaffirmed during the Cairo conference for population in 1994.

In its various general comments, CEDAW committee affirmed that no legal or social barriers should preclude women from freely accessing health services. Some states require the consent of the husband or the father as a precondition for women’s access to health. This is a flagrant violation to article 12 and to the right of women to health.

In 1990, through its general comment number 14, CEDAW committee added to article 12 the prohibition of female genital mutilation (FGM) or female circumcision.

In article 13, CEDAW underlines the importance of women’s financial independence, it reaffirms the right of women to equal access to bank loans, mortgage,
financial credit and family benefits. It also added the right of every woman to enjoy recreational activities, sports and a cultural life.

The last three articles in CEDAW are article 14 on rural women, article 15 on equality before the law, and article 16 on the rights of women in marriage and family life. Article 14 adds a number of specific rights that should be enjoyed by rural women in addition to the rights that are set in the other articles of the convention. CEDAW paid special attention to rural women because they usually suffer from a double burden which is caring for the family and farming the land, thus providing invisible work. Therefore, article 14 includes the following rights: the right to benefit from rural development, the right to participate in the early stages of development planning, the right to health care, information and counseling, the right to benefit from social security programmes, the right to obtain proper training and education, the right to organize into self-help groups or cooperatives in order to access employment, and the right to participate in all community activities. The last two clauses of article 14 are very much relevant to the needs of rural women and these are: “to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.” (CEDAW, 1979, article 14).

Article 15 requests states to ensure the equality of women and men before the law. This also requires states to give women equal rights “to conclude contracts,
administer property, and be equally treated in all courts and tribunals procedures “(CEDAW,1979, article 15). In order to implement this article, all national laws, instruments or legislation aimed at restricting the legal capacity of women should be of course amended and nullified. According to the United Nations Division for the Advancement of Women, article 15 is important because “in many countries, women do not have the same property rights as men: traditional property law often discriminates against women in that only male children are able to inherit the family land, and that husbands have automatic ownership over all of their wife's property upon marriage” (http://www.ohchr.org/english/about/publications/docs/fs22.htm). The United Nations Division for the Advancement of Women also believes that “legislation in a number of countries establishes that the administration of family property is to be undertaken by the male head of the family—thereby excluding women. Moreover, many legal systems do not allow a woman to enter into contracts in her own right but require the signature of her husband before a contract is considered legally binding, even in cases relating to her own property or earnings. “ (http://www.ohchr.org/english/about/publications/docs/fs22.htm)

The second section of article 15 refers to the right of women to choose freely their residence and domicile. This rights is accorded to all women including “married women” (http://www.ohchr.org/english/about/publications/docs/fs22.htm)

Article 16 which is the last substantive article in CEDAW, has witnessed the reservations of several states. Because this article is directly related to family law, many states that legislate according to religious codes when dealing with family matters
such as marriage, divorce, inheritance and child-custody have found it to be problematic. Article 16 is self-explanatory and it clearly states the following:

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory. “(CEDAW, 1979, article 16).

3.2.4 State’s Obligations for the implementation of CEDAW

Before assessing CEDAW, its weaknesses and strengths, one has to analyze article 2 which is the core of this convention related to state’s obligations in the implementation of the convention. In article 2, states are first requested to incorporate the concept of equality in their respective constitutions. Then, they have to enact legislation that prohibits and punishes any form of discrimination against women.

The three levels of state obligations which are respect, protect and fulfill can be clearly noticed in this article. The obligation to respect prompts states to refrain themselves from discriminating against women by enacting proper legislation and establishing tribunals and courts that could protect women and provide them with the appropriate remedies. The obligation to protect is reflected in section (e): “states have to take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise.” (CEDAW, 1979, article 16). The last obligation to fulfill can be accomplished by “taking steps, including legislative, for abolishing all discriminative laws, practices, and regulations.” (CEDAW, 1979, article 16).
After describing the different rights found in CEDAW, one should proceed to assess this convention. What is its strength? And what are its weaknesses? CEDAW is the only human rights instruments that referred to two sensitive and polemical issues, which are the right of women to family planning i.e. to control their own fertility(article 12); and the obligation of states to modify any cultural or social pattern that discriminate against women.(article 5). In this CEDAW which was adopted in 1979 served as a progressive, “avant-gardist” -if one can use this term- instrument. This is definitely considered strength in CEDAW; however one should admit that this convention does suffer from many weaknesses. First, CEDAW completely failed to refer to violence against women. The convention should have pointed out to this kind of discrimination and flagrant violation to women’s rights. The United Nations admitted this omission and tried to correct this mistake by drafting and adopting the declaration on the elimination of violence against women in 1993. The United Nations also appointed a special rapporteur that was mandated to investigate situations of violence against women throughout the world. Furthermore, the CEDAW committee acknowledged its mistake and issued in 1992, general comment number 19 which added to CEDAW the prohibition of violence against women or what it called gender-based violence.

Human rights experts also point out to another inconsistency in CEDAW, which is found in article 11, and the right to employment. The protections in employment which were enumerated in article 11 such as equality in promotion, job security and benefits, equal remuneration for equal work, the right to social security, and the right to healthy and safe working conditions; apply all to women working in only the formal sector. Many
human rights experts believe that CEDAW neglected to define the rights of women working in the informal sector as it is the responsibility of states to secure the rights of women in both the formal and informal sector.

Another weakness that not only pertains to CEDAW but also to the other seven human rights instruments; is the inability of the respective human rights treaty-body committees to judge on the illegality of certain reservations. As mentioned many states fail to implement the conventions because they place reservations on certain articles. According to article 19 of the Vienna Convention on the Law of Treaties (1969), and article 28 of CEDAW, “any reservation that is incompatible with the object and purpose of the convention is impermissible.” (CEDAW, 1979,article 28). Furthermore, CEDAW committee announced in one of its general comments that articles 2 on the obligations of states under the convention and article 16 on equality in marriage and family life are considered core articles in CEDAW, and any reservation on these two articles will violate the object and purpose of CEDAW. Nevertheless, CEDAW committee as well as the other human rights treaty-body committees are not empowered to judge on the illegality of certain reservations, it is rather the job of the International Court of Justice (ICJ) to do so. No state so far” sought an opinion from the ICJ on the compatibility of reservations or on how specific they have to be, or challenged another state in this forum.”(www.ohchr.org/english/about/publications/docs/fs22.htm).

The issue of state reservations to CEDAW is of an important relevance because all Islamic states placed reservations on articles 2, 9, 15 and 16 which in practice means that their commitment to CEDAW is only partial. After examining the state reservations
to CEDAW, one can clearly notice the use of Islamic sharia by Islamic States as a factor for placing reservations on the substantive articles of CEDAW.

Israel also placed reservations on “articles 7 and article 16 because its judges in religious courts are only men and the law governing personal status is a religious one” (http://www.bayefsky.com/./html/israel_t2_cedaw.php). Furthermore, most third world countries have placed reservations on article 9 (2) i.e the right of women to give their nationality to their children.

In addition to these reservations some European countries placed a reservation on article 16 (g) on the right of women to choose their family name. On the other hand, the status of ratification concerning CEDAW as of 2006 is 181 states.

Although it is a substantive number of state ratifications, however due to the numerous reservations placed on certain articles in CEDAW; one really questions the importance of such ratifications. Rather than to eliminate discrimination against women in their respective states and societies, most of these ratifications are done only pour la forme.

In order to be fair to CEDAW, one needs to mention that the mechanism to ensure implementation of this convention is somewhat valuable. CEDAW committee is empowered in accordance with CEDAW optional protocol that was adopted in 1999 and entered into force in 2000, to receive and examine complaints by individuals whose rights as set in the convention have been violated. The optional protocol also allows CEDAW committee to form inquiry groups to investigate systematic violations to CEDAW (with the consent of states). Therefore, one can conclude that CEDAW does suffer from
weaknesses, however it is the will of the United Nations and the international community to always find innovative ways to implement this convention and secure adherence to its letter and spirit.
3.3 The Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment (CAT)

Although the prohibition of torture is *jus cogens* i.e. a self-binding rule in international law and is found in both the Universal Declaration on Human Rights (1948) and ICCPR as non-derogable right, yet the international community felt that a convention against torture was needed because of the consistent and flagrant violation to this right.

CAT was adopted in 1984 and it entered into force in 1987. It consists of 33 articles, 16 of which are substantive. This convention can be divided to five parts. First, article 1 defines torture, then the convention through articles 2, 10, 11, 15 and 16 enumerates the different state obligation to prevent torture. The third theme in the convention relates to state obligation to provide remedies and reparation to those who were victims of torture. (article 12, 13 and 14). The fourth theme in CAT is related to the famous principle of *non-refoulment* found in article 3. Finally the last theme found in CAT pertains to the concept of universal jurisdiction or “aut dedere aut judicare” in Latin.

3.3.1 The Definition of Torture

One should start with article 1 that defines what is meant by torture. This article clearly states the following:
“1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.” (CAT, 1984, article 1)

According to Manfred Nowak, a human rights expert, this definition is narrow and controversial. According to this definition, torture: “can not be committed through negligence or by private persons, it also requires a certain degree of intensity in intentionally inflicting suffering; and it can not be committed without purpose (e.g by mere sadism).” (Nowak, 2003, p88-89). Moreover, the last clause which is “(torture)... doesn’t include pain or suffering arising from, inherent in or incidental to lawful sanctions” (CAT, 1984, article 1) have been added according to Nowak to please some Islamic states. This addition might be used as a pretext to violate the convention and exclude the prohibition of torture when it is inflicted upon individuals who are in prison or under arrest ... etc
3.3.2 State’s Obligations for the implementation of CAT

After defining torture, the convention in articles 2, 10, 11, 15 and 16 enumerate the different state obligations. First states have to take the appropriate administrative, judicial and legislative steps to prevent torture. Moreover, states have to note that an order from a superior officer to torture may not be invoked as a justification for torture. The convention affirms that no emergency situation such as war, threat to war, or political instability may be used as pretext for allowing acts of torture. States also have the obligation to disseminate information on the prohibition of torture, and to train its law enforcement officers as well as any other public, medical, civil or military officers who are involved in the interrogation or the arrest of individuals in methods to prevent torture. Furthermore, states have to keep under review all interrogation methods in order to ensure that no torture is taking place.

In addition to torture, states also have to prohibit all cruel, inhumane and degrading acts. Moreover, states have to disregards in any kind of proceeding; any statement that might have been obtained through torture i.e. evidence that was obtained in judicial proceeding due to torture may not be valid nor accepted in court.

Other state obligations are found in CAT, and these relate to the right of compensation to the victims of torture. First, states have to investigate every incident of torture that may have occurred in the territory under their jurisdiction. Then in every
state, victims of torture shall have the right to complain to the competent authority and the right to be protected as well as their other witnesses from any threat or intimidation. States have to ensure that their legal system can provide enforceable redress and compensation, including rehabilitation to the victims of torture. Moreover, “in the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.”(CAT,1984, article 14)

3.3.3 The Right to non-refoulment

In addition to these various state obligation, CAT through article 3 defines a very important concept which is non-refoulment. Article 3 clearly states the following:

“1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. “ (CAT, 1984, article 3 ).

This right has been particularly relevant in the “war against terror” after September 11, where many human rights non-governmental organizations pointed out to violations of that right being committed by European states and the United States in
particular. States should not extradite individuals to other states where they might be tortured. In November 2003, the United States extradited a Canadian-Arab citizen in transit in New York to his native Middle-Eastern state where he was allegedly tortured in the prisons of that state. This is one of the examples of the United States violations of article 3 of CAT.

3.3.4 Aut Dedere Aut Judicaret

The last concept defined in the convention against torture is that of *aut dedere, aut judicaret* which is the universal jurisdiction in crimes related to torture. CAT is the first human rights instrument that includes this concept in relation to torture. Usually, this concept was limited to humanitarian law and specifically to the three crimes of genocide, war crimes and crimes against humanity.

This concept can be defined in the following manner: "Whenever a person is suspected of having committed an act of torture is present on the territory of a state party -irrespective of the nationality of perpetrator or victim or of the scene of the crime-, the authorities of the state (even without a request for extradition from the other state), are obligated to initiate a provisional investigation and take the suspect into custody or otherwise ensure their physical presence until criminal or extradition proceedings are commenced. If there is satisfaction after the examination of information that torture was committed, the state in accordance with the principle of *aut dedere aut judicaret*, either has to extradite the person to another state, or undertake to prosecute the suspect under its own criminal proceedings." (Nowak, 2003, p 90).
Because of CAT, torture was recognized as an international crime. The
perpetuators of torture have no place to hide on earth, they will be either prosecuted or
extradited for prosecution, and states can no longer invoke the concepts of state
sovereignty, and non-interference in the affairs of their own citizens; when it comes to
the prosecution of such crimes.

After reviewing the convention and its different articles, one needs to assess this
legal text. As mentioned, the definition of torture in CAT is a narrow and controversial
one. This has prompted the United States to enter a reservation on article 1 explaining
that the exclusion of “lawful sanctions” from the definition of torture should not defeat
the object and purpose of the convention. In addition to the controversial addition of the
clause “lawful sanctions”, the limitation of the definition, found in article 1, of the acts of
torture only to public officials; restricts the prohibition of torture by private individuals.
One can ascertain that CAT has failed in defining the three levels of state obligations to
respect, protect and fulfill. CAT has omitted the state obligation to protect, because it
did not include the prohibition of torture by private organizations or individuals.

The strength of CAT on the other hand pertain to including for the first time in
human rights law the concept of universal jurisdiction in relation to torture crimes.
Moreover, CAT was successful in defining an important right which is non-refoulement
in its article 3. Finally, CAT is accredited with potentially efficient monitoring mechanism
through the drafting of an optional protocol that has not yet entered into force. This
optional protocol needs the ratification of 20 states in order to enter into force, it has as
of 2005 secured only the ratification of 13 states (www.ohchr.org). The optional protocol
which is an imitation of a procedure implemented in the European Union, provides for a system of regular visits to places of detention. This system can act as a preventive measure to deter acts of torture in places of detention.

In addition to the optional protocol, CAT has within its articles, provisions for an individual complaints system as well as inquiry procedures (with the consent of states) which are handled by the CAT committee. Finally CAT has secured as of 2005, the ratification of 139 states.(www.ohchr.org) Considering the seriousness of this crime, the number of state ratification should have been larger.
3.4 The Convention on the Rights of the Child (CRC)

CRC which was adopted in 1989 and entered into force one year later in 1990; is the most ratified convention among the other seven human rights convention. It has been ratified, as of April 2003, by 192 states i.e. by all United Nations member states with the exception of the United States and Somalia. The United States refused to ratify CRC because it executes minors, an act which is prohibited by the convention (ICCPR also prohibits capital punishment for minors). Somalia on the other hand is a failed state, therefore has still no real authority to ratify any conventions.

Although a declaration on the rights of the child existed before the drafting of CRC, yet the United Nations felt that there was a need for a binding instrument because the world witnessed every day flagrant violations of the rights of children. Therefore, the United Nations Commission on Human Rights drafted in 1989 this legal text with the help of government delegates, and representatives of United Nations Specialized Agencies such UNICEF, ILO, WHO and others.

3.4.1 Four Basic Principles

CRC is made of 54 articles, 41 of which are substantive. Article 1 starts by defining what is meant by a child: “for the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”(CRC,1989, article 1 )

According to an OHCHR (Office of the High Commissioner on Human Rights) fact sheet, CRC contains four main principles, which are “non-discrimination, the best interest
of the child, the right to life, survival, and development, the importance of the views of
the child. (http://www.ohchr.org/english/about/publications/docs/fs10htm).

Article 2 requests states to ensure that children under their jurisdiction are not
discriminated against ,”irrespective of the child or legal guardian’s race, colour, sex,
language, religion, political or other opinion, national, ethnic or social origin, property,
disability, birth or other status(CRC, 1989,article 2 ).States have to provide equal
opportunity to all children.

In article 3, one can notice the principle of best interest of the child: state’s
legislative, administrative and judicial decisions should all take into consideration first
the interest of the child, and then states should ensure the implementation of such
decisions. The right to life, survival and development is emphasized in article 6 of CRC.
This article also states that the word development is not limited to the physical aspects;
rather it includes “the mental, emotional, cognitive, social and cultural
development”.(CRC, article 6).The principle of the importance of the views of the child
is found in article 12 which states that children should have the freedom of opinion in all
matters that affect them, including in judicial and administrative proceedings,” in
accordance with their age and maturity” (CRC, 1989, article 12) .The child is accorded in
accordance with article 14 , freedom of thought, conscience and religion.

3.4.2 Children’s Rights

In addition to these four basic principles, CRC requests states to provide children
with the following rights: the right to a name and a nationality; the right no to be
separated from their parents except by a competent authority that takes into account their well being; the right of disabled children to be provided with special treatment, education and care; the right to the highest attainable standard of health; the right to compulsory and free primary education, the right to rest and play; the right to cultural and artistic activities, the right to be protected from abduction and trafficking; the right of children of minorities and indigenous to enjoy their culture, religion, and language.

Furthermore, states should ensure the right to family reunification. They should also assist parents through the creation of child-care institutions. Moreover, states should protect children from physical and mental harm as well as sexual abuse, neglect and exploitation. Protection from economic exploitation is also required from states, thus states have to define the minimum age for employment and regulate working hours and conditions.

States have to protect children from the illegal use of drugs. Capital punishment and life imprisonment should not be imposed for crimes that are committed before 18 years old. When children are in detention, states should separate them from adults. Furthermore, torture in all cases is prohibited. The Judicial system should also always promote the sense of worth and reintegrate in society children who have had trouble with the law.

In the case of parentless children, states should provide these minors with an alternative. Such alternative “could include foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children.” (CRC, 1989, article 20).
Regarding children in conflict situations, humanitarian law should be implemented and no children under 15 shall take part in hostilities. Furthermore, special attention should be accorded to these children in conflict.

The convention also defines a series of civil, social and economic rights such as the right to freedom of assembly and association, the right to access information aimed at his development, the right to social security, and the same civil rights as adults (as found in ICCPR) during the administration of justice. These include the right:

“(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings. "(CRC, 1989, article 40).

After reviewing the different rights set by the convention, one needs to assess this legal text. It is worth noting of course that an important feature of CRC success is the enormous number of ratification it had secured making it the most ratified human rights instrument. Moreover, it had included a full range of children human rights including the right to rest and play and the right to benefit from breastfeeding, thus paying attention to children's most basic and daily needs. Nevertheless, CRC does suffer from shortcomings; many states have criticized its article 38 which has set the age of 15 for taking part in hostilities. Many states (mostly European states) believe that this age should have been raised to 18 because through this article CRC failed to protect children from the harmful effects of wars. On the contrary, it seemed to incite including children in conflicts at an early age. In order to correct this mistake, the Commission on Human Rights drafted and adopted in 2000, (entry into force in 2002) CRC first optional protocol on the involvement of children in armed conflicts. This protocol rose the age of those participating in hostilities to 18.
Another optional protocol was drafted in 2000 and entered into force in 2002 on the prohibition of the sale of children, child prostitution and child pornography. This protocol came to strengthen article 34 on sexual exploitation and child pornography that used the clauses “states should prevent “. The protocol corrected this weakness and forcibly used the clause “states should prohibit “Sexual exploitation and child pornography.

While examining state reservations to CRC, one notices the reservation of some states on article 14 which defines children’s right to freedom of thought, conscience and religion. Where as the convention believed in the concept of the child as an autonomous separate entity when it came to these rights, states (mostly Islamic) on the other hand objected to this right and placed a reservation on article 14 because according to them, children automatically follow the religion of their parents. Here lays the difficulty to balance children’s rights with the duty, responsibility and rights of parents to raise their children according to their own beliefs found in other conventions such as ICCPR.

Other reservations to CRC relate to the topic of abortion and family planning. Some Latin American countries wanted to define in article 1 the child as the being “from the moment of conception” in order to include the human embryo in the enjoyment of the right to life which is found in article 6 i.e to prohibit abortion. A contrary position has been expressed by states such as China and France which placed reservations on article 6 declaring that the right to life should not contradict the right of states to regulate family planning or to allow abortion.
After reviewing the different strength and weaknesses of this convention, one final thing needs to be said regarding its mechanism of implementation. An important advantage of CRC is the ability of UNICEF to monitor its implementation. In addition to the treaty-body mechanism (that will be assessed in the following chapter) i.e., the CRC committee which is mandated to oversee the implementation of the convention, UNICEF has been playing an important role in promoting the convention. It has even enlarged its mandate in the 1990’s to include promoting CRC.
3.5 The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. (ICMW)

ICMW, the most recent human rights convention, which was adopted in 1990 and entered into force in 2004; aims at preventing and eliminating the exploitation of migrant workers. It also targets putting an end to the illegal or clandestine recruitment of migrant workers, thus discouraging the employment of migrant workers in an irregular or undocumented situation.

3.5.1 The Scope of Application of the Convention

This convention is made of 93 articles, 71 of which are substantive. It can be divided into four parts: the first part defines the categories of migrants workers and the scope of the application of this convention, the second part refers to the concept of non-discrimination and sets universal rights for all migrant workers (including those who are undocumented/illegal), the third part details the rights that should be enjoyed by documented or legal migrant workers only, and the last part defines state obligations in promoting sound, equitable, humane and lawful conditions regarding migrant workers.

In applying the convention, states should practice non-discrimination, "without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status (ICMW, 1990, article 1)"

This principle of non-discrimination is also reaffirmed in article 7 of the convention.
Furthermore, article 1 specifies that this convention shall apply to the whole migration process including “preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence. (ICMW, 1990, article 1) It also applies to the members of the migrant worker’s family i.e his/her spouse and dependent children.

After referring to non-discrimination and to the scope of application of the convention (the whole migration process), ICMW defines in its article 2 the different categories that make up the “migrant worker” status. This includes frontier workers who reside in a neighboring state and come to work daily or at least once a week to the host state, seasonal workers, seafarers who are employed on “a sea vessel registered in a state other than their own” (ICMW, 1990, article 2), workers on offshore installations which are under the jurisdiction of a foreign state, itinerant workers, workers employed for a specific project and self-employed workers. Furthermore, the convention excludes the following categories from the term “migrant worker” which are International civil servants, private investors, refugees and stateless persons, students and trainees; and “persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other cooperation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers.” (ICMW, 1990, article 3). The convention also excludes “seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment. “(ICMW, 1990, article 3).
3.5.2 The Universal rights of all Migrant Workers

The second part of the convention from articles 8-35 sets universal rights that should be enjoyed by all migrant workers including those who are undocumented or illegal. These rights include the right to liberty, security, protection against violence and against arbitrary arrest, prohibition of torture or servitude, the right to life and recognition as a person before the law.

The rights found in ICCPR during the administration of justice such as the right of the detained to understand the charges against him, the right to be brought promptly before a judge and to be either trialed within a reasonable period of time or released if found innocent, and the right to compensation if victimized by the judicial system; all apply to migrant workers regardless of their legal status in the host state. The universal rights found in article 14 of ICCPR regarding equality before the law all apply to legal as well as illegal migrant workers, however the convention added few new rights that are of a particular interest for migrant workers (both legal and illegal). These new rights include the right to communicate and inform a member of the consular or diplomatic mission of the state of origin in case the migrant worker is arrested or detained. The host state has also the duty to inform the detained migrant worker of his right to contact the embassy or the consular services of his country of origin and to arrange legal representation for him in case he can not afford it.

ICMW emphasizes on the vulnerable position of any migrant worker therefore, it requests states to take “humanitarian consideration” into account “when imposing a sentence for a criminal offence committed by a migrant worker or a member of his
family” (ICMW, 1990, article 19). The convention also prohibits states from imprisoning or depriving the migrant worker from his authorization of residence in case he has failed to fulfill a contractual obligation. Furthermore, if a migrant worker is detained to verify an infraction to migration law, no costs should be imposed upon him. This part of the convention also prohibits mass expulsions, thus requiring states to study each case individually by a competent authority and if this authority decides to expel a migrant worker than this individual should be notified with the reasons behind his expulsion and he should have the right to dispute this expulsion. Moreover, any person who will be expelled has the right to get his wages and salaries in full.

Another new right that is relevant to the situation of migrant workers is the prohibition of confiscation or destruction of any passport or work permit except by the authorized legal authority. One should note that this right is being constantly violated as employers sometimes confiscate the identification documents or work permits of their migrant—employees.

States are also requested to provide migrant workers irrespective of their legal status with the right to freedom of thought, conscience, opinion, religion and belief. Furthermore, states have to protect the cultural identification of the migrant worker and should not prevent him from culturally linking to institutions or organizations (also regardless of his legal status). Children also have the basic right to access to the educational system regardless of the legal status of the parents. States are also requested to provide migrant workers with the urgent medical care to prevent life loss.
Before moving to the second part of the convention, which is dedicated to the rights of documented or legal migrant workers, one should note that article 35 (the last article on the rights of both the documented and undocumented migrant workers) clearly states that this convention can not be used to regularize the status of undocumented migrant workers.

3.5.3 The Rights of Documented Migrant Workers

The third part of the convention which is solely reserved to documented migrant workers, emphasizes that this category of workers have the same rights as the nationals of the host country in the following areas: the right to enter and to access to business cooperatives, the right to access and participate in the cultural life of the host country, the right to access the educational system and to vocational training programmes.

Regarding employment-related rights, documented migrant workers have the same rights as nationals concerning protection against dismissal, unemployment benefits, access to public work schemes, access to alternative employment, and the right to redress by a competent authority in case of contract violation. Furthermore states have to allow migrant worker "temporary absence" from the host state without negative effects on their authorization to stay or their work permit. In case a migrant worker loses his job prior to the expiry of his work permit, he may search for another job. Documented migrant workers also have the right to access housing, social housing schemes and protection against exploitation in rents.
The convention also allows migrant workers to access social and health schemes provided that the requirement of such schemes is met. Although the right to form unions and associations is granted only when national law allows it, yet there are no restrictions on migrant workers to join trade unions, and attend their meetings.

Regarding taxes, article 48 states that migrant workers may not be subjected to a tax higher than the one imposed on nationals. Furthermore, migrant workers have the right to freely transfer their earnings and savings abroad to support their families.

ICMW, which is one of the largest human rights conventions, almost encompassed an exhaustive list of rights for migrant workers and members of their families. Nevertheless, this convention did place some limitations on certain rights and these include the right of states to limit the access of migrant workers to certain occupations, the right of states to freely evaluate the occupational qualifications acquired outside the territory (example state equivalency of some diplomas), and the rights of states to restrict the political participation of migrant workers.

The last part of the convention defines state obligations for promoting sound, equitable, humane and lawful conditions migrant workers. States have to create services to meet the social, cultural and other needs of migrant workers and their families. They are also obligated to disseminate to this convention as well as all laws and policies that pertain to migrant workers to the public at large. According to the convention, states have to collaborate in the return of the migrant worker and his families—including the deceased migrant worker—, and take all appropriate measures to facilitate that process. Finally states have to eliminate illegal movement and the irregular employment of workers.
Assessing ICMW is a difficult task because this is a relatively new convention and its respective committee did not issue any general comments to date. Moreover, the status of ratification reveals the accession of only 34 states as of February 2006 (www.ohchr.org). Furthermore, while examining state reservations, no major weakness can be noted and states seem to be satisfied with the overall provisions of the convention. One important feature however can be noted regarding this convention, which is its ratification by mainly labor-sending states rather than labor–receiving states.
Chapter III

4. The Mechanisms of the Treaty-body System

4.1 State Reports

This chapter aims at describing the different United Nations treaty body mechanisms for the promotion and protection of human rights. The treaty-based mechanisms stem from each human rights convention. As we have discussed in the previous chapter, there are seven International human rights treaties that are currently in force: the International covenant on civil and political rights, the International Covenant on economic, social and cultural rights, the Convention on the Elimination of all forms of Racial Discrimination, the Convention against Torture, the convention for the Elimination of all forms of discrimination against women, the convention for the Rights of the Child, and the Convention on Migrant Workers.

Each treaty has its relative committee that oversees the implementation of the convention. State reporting is a mandatory procedure common to all International Human Rights Treaties. State parties have to submit an initial report after one year of ratification then in most cases every 4 years or when the committee sees it necessary. Ideally state reports should involve contributions from the civil society, it should reflect the true situation on the ground and not a fabricated state report falsifying evidence and
obstructing the truth about state practices from reaching the committee. The report should contain detailed information about de jury and de facto laws and legislation, plans of action statistics and it should explain how the state plans to implement its obligations under the convention.

After submission of the report, the committee will examine information from other sources such as NGOs and specialized agencies and it will engage in a “constructive dialogue” with the state representative at the moment of consideration of reports. Based on information from different sources, the committee would have a “list of issues” where it would scrutinize the state report, raise concerns and at the end of the session issue concluding observations. These are non-binding observations that start with an introduction, positive aspects, factors and difficulties, issues of concern and end with suggestions and recommendations. Although the committee scrutinizes and interferes in state practices during the dialogue that takes place at the examination of state reports, yet the concluding observations are of a non-binding nature and serve only to publicize state practices and use the shame factor in an effort to influence the state’s conduct. Therefore, one can conclude that the state reporting procedure is one form of monitoring and promoting human rights however, since the concluding observations are non-binding; state reporting does not protect human rights in a very efficient manner.

4.2 Inter-States Complaints

The Inter states complaints system can only be applied to state parties to CERD article 11-13, ICCPR article 41-43, CAT article 21, and CMW( the procedure not yet in force for CMW). For CERD, all states parties can use this mechanism whereas for
ICCPR, CAT and CMW only those state parties that accept the competence of the respective committees in dealing with Inter-state complaints can benefit from this procedure.

When a state party informs the Committee that another state party is violating the convention, then the Committee requests from the state that is accused of violations to clarify the matter within three months in written. During this time the two state parties can engage in bilateral negotiations or other methods of conflict resolution and if the issue is not settled then “within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State”.(WWW.OHCHR.org) An ad hoc conciliation commission comprising five members would be then appointed with the consent of the two conflicting parties in order to provide its good offices and reach an amicable solution.

The role of the Commission is simply to submit a report on its findings containing its recommendations which are of course not binding, and the states concerned have three months to either accept or reject these recommendations. At the end of this process, the other states parties to this convention shall have access to the report of the Commission.
From its title, the Inter-states complaints system might hint that there would be an intervention by one state and the UN into the domestic affairs of another state. However, in addition to the fact that this procedure “has never been used to date” (Nowak, 2003, p. 89), one has to only look at states relations in order to conclude that it will seldom be used. First, “states are always the subjects under international classical law whereas for International Human rights Law, individuals are the only subjects.” (Nowak, 2003, p. 36). Furthermore, the principle of mutual interest usually present in International classical law dictates the compliance of states with their obligations and preserves the balance in international relations. However, this mutual interest is not present in International Human Rights law because states have little interest in pointing out Human rights violations of other states vis a vis their own citizens. This might endanger their friendly relations. Therefore, this procedure has never been used to date. Some states have indeed pointed out to human rights violations in other states through the United Nations Security Council and Chapter 7, however many have argued that this was not done purely out of concern for human rights protection but that it was rather committed for political reasons: military influence, oil...etc

4.3 Individual Complaints

The individual complaints system is a procedure established by ICCPR under its optional protocol, ICERD article 14, CAT article 22 and CEDAW under its optional protocol. The individuals whose rights -as recognized by the above human rights treaties -
are being violated may submit an individual complaint. Of course, the complaint must meet certain conditions in order to be reviewed by the committees. The conditions are the following: it must be “a non-anonymous complaint, a complaint that falls within the jurisdiction of the committee, i.e. the violation relates to a right that has been set forth in the relevant treaty, a complaint that is related to a violation committed by a state party to the convention and that has accepted the competence of the committee to review individual complaints (optional protocol or a declaration under a specific article), a complaint that hasn’t been reviewed by another international organization, and a complaint that has been reviewed by the local authorities -the principle of exhaustion of local remedies-”(United Nations,1995,p59). Once accepted for review, the complaint is examined confidentially by the committee; the state party has then six months to reply in written, to clarify the matter, propose a remedy or solve the issue. If the matter is not resolved, the committee will issue its views, and will include them in its annual report to the General Assembly.

One can conclude that because these quasi-judicial bodies issue non-binding views that contribute only to case law- and due to the fact that the exhaustion of all local remedies is an important precondition to accept complaints; this mechanism seem to protect more state sovereignty, rather than ensure human rights. Since states can always stall the review by the local authorities, one can imagine that this would be a lengthy process. Furthermore, it seems that this procedure which was used mostly by the victims of ICCPR violations resulted rarely in a change of legislation. It
has however succeeded in using the mobilization of shame factor against the state party that has violated human rights.

4.3.1 Case Study: Alex Soteli Chambala Vs Zambia

On February 1987, Mr. Chambala, a Zambian citizen, was arrested and detained in Zambia without being charged. The grounds of the detention according to the state were receiving and keeping an escaped prisoner and assisting him to flee to a country hostile to Zambia. After detention for over one year without any production before a court or a judicial officer, the author applied for release. On 22 September 1988, the High Court of Zambia decided that there were no reasons to keep him in detention. Nevertheless, the author was not released until December 1988, when the President revoked his detention. According to the author, the maximum prison sentence for the offence he was charged with was 6 months. Therefore, the author after exhausting local remedies decided to file an individual complaint to the United Nations Human Rights Committee (HRC) or the committee empowered under the first optional protocol to examine complaints of violations of ICCPR. The author claims that the State party, by detaining him arbitrarily for almost two years, without bringing him before a judge or other officer authorized by law to exercise judicial power, has violated his rights under article 9, paragraphs 3 and 5 of the Covenant.

After asserting that this case does fall within its jurisdiction and that it is not being examined by another International body, the committee decided to examine the case under the optional protocol of ICCPR as Zambia is a state party to that protocol.
After reviewing the findings, the committee issued its non-binding views and confirmed that Mr. Chambala was subjected to arbitrary detention, since he was detained for a period of 22 months, dating from 7 February 1987 (a claim that has not been contested by the State party). Moreover, the State party has not sought to justify this lengthy detention before the Committee. Therefore, the detention was, in the Committee's view, arbitrary and constituted a violation of article 9. Therefore the victim is entitled to an effective remedy or compensation in accordance with article 2, paragraph 3 (a), of the Covenant.

Although not binding, the committee’s final views are sometimes taken into consideration, and states occasionally do as in the case of Zambia implement the recommendations of the treaty-body committee. This case study demonstrates that the individual complaint mechanism is a lengthy one as it took almost ten years to resolve the dispute between the two conflicting parties. Nevertheless, by issuing its views the HRC committee is again using the mobilization of shame factor to amend state behavior and deter future violations.

4.4 Inquiry

This procedure relates only to two of the International Human Rights treaties: CAT (article 8-10) and CEDAW (optional protocol). The committees of these two treaties may, on their own initiative, initiate inquiries if they have received reliable information containing facts about flagrant violations of the conventions in a State party.
Inquiries may only be undertaken with respect to States parties who have recognized the competence of the relevant Committee in this regard. States parties to CAT may opt out, at the time of ratification or accession, by making a declaration under article 28. States parties to the CEDAW Optional Protocol may similarly exclude the competence of the Committee by making a declaration under article 10. If the Committee is informed that a certain state party is systematically violating the conventions (CAT and CEDAW), then the committee would invite the State party cooperate and submit information and observations on the requested issues. The Committee may decide to designate someone to make a confidential inquiry and report urgently on the discovered violations. The CEDAW and CAT procedures with the state’s consent” authorizes a visit to the territory of that State concerned where the findings are then examined by the Committee and transmitted to the State party together with any appropriate comments or suggestions/recommendations”.

(http://www.ohchr.org/eng/ bodies/petitions/index.htm#inquiry) It is then the turn of the state to respond to the observations of the committee .( it usually has a six-month deadline to respond) At the end of this procedure an account of the inquiry may be included in the annual report that will be submitted to the Secretary General.

Although this procedure protects state sovereignty because confidentiality and the consent of the state are required in order to proceed with the inquiry, yet this method proved to be efficient because country visits and investigations deterred states from violating constantly the rights of their citizens .Furthermore, one should add the mobilization of shame factor that also acts as a preventive measure to deter state violations.
4.4.1 Case Study: Torture in Sri Lanka

In April 1999, CAT committee initiated an inquiry in Sri Lanka because it has received reliable information that systematic torture is being practiced by the Sri Lankan authorities. Therefore, the committee invited the state to cooperate and to accept the visit of two human rights experts who are Mr. Mavrommatis and Mr. Yu Mengjia. Sri Lanka accepted and the visit took place from August to September 2000, and it included meetings with non-governmental organizations, lawyers, and medical doctors dealing with cases of torture. Moreover, victims of alleged torture were also interviewed by the two experts.

Upon examination of the facts, the two experts reported back to the CAT committee which found that some cases of torture, ill-treatment, sexual harassment, rape and death are indeed taking place in the custody of the Sri Lankan Police. Therefore, following the inquiry, CAT committee released the following findings:

"The most serious problem faced by Sri Lanka is the internal conflict that has been going on for years and which creates a climate of violence, in particular in the northern and eastern part of the country, and is aggravated by terrorist acts perpetrated in urban areas by the LTTE. The response of the Government vis-a-vis the conflict usually includes resorting to emergency regulations which go far beyond the ordinary emergency legislation. Thus, the Government employs not only the police and its armed forces in combating terrorism but also paramilitary groups, some of which include Tamil defectors. These groups are not fully under the control of civilian or military authorities. Moreover, the Committee notices that torture is frequently resorted to in the following cases:

(a) By the police, especially during the first days following arrest and detention of suspects;
(b) By the army in respect of captured suspected terrorists, in order to "facilitate" follow-up operations and before handing them over to the civilian authorities; and

(c) By paramilitaries, who apparently are not a regular force fully responsible to the military command."

According to the committee, even though the number of instances of torture is rather high, the majority of suspects are not tortured; some may be only treated roughly. Furthermore, the committee believes that the Government of Sri Lanka does not condone torture and is employing various means to prevent it. It appears that instructions to that effect are not always obeyed, and there was no appropriate follow-up to ensure compliance.

However, regarding the investigation by the Sri Lankan police of alleged instances of torture, the committee finds that the government is not doing enough to punish the perpetrators of torture, as it has often inordinately delayed prosecuting officials accused of torture.

On these bases, the Committee has reached the conclusion that, “although a disturbing number of cases of torture and ill-treatment as defined by articles 1 and 16 of the Convention are taking place, mainly in connection with the internal conflict; its practice is not systematic.”

(In reaching this conclusion, the Committee has taken into account its views with regard to the meaning of "systematic practice of torture" expressed at the end of its first inquiry under article 20 of the Convention in 1993 and endorsed in subsequent inquiries. The ordinary meaning to the term "systematic" in the context of its use in article 20 of the Convention is as required by article 31 of the Vienna Convention on the Law of Treaties of 1969.)

This case study demonstrated that inquiry can successfully take place with the consent and collaboration of the country in question. Although, the committee found that no systematic torture is taking place and that the government is not intentionally practicing torture,
yet the visit of the two human rights experts did mobilize *the shame factor* by displaying all the findings of the committee to the International community and the general public (the committee released its findings to the public in 2002). Sri Lanka will exert now a true effort in order to combat torture as it knows that the International community is carefully watching it and that the United Nations might re-examine again alleged cases of torture in Sri Lanka if it is needed.

After examining in details all seven human rights conventions and assessing the mandate and work of their respective committees, we can conclude the following:

Although this treaty-body system can be accredited with a unique role of standard-setting and the creation of new human rights norms, yet its main weakness lies in the fact that it often favors state sovereignty over protecting human rights.

Reservations, derogations and limitation clauses have been intentionally permitted by the United Nations system in order to protect state sovereignty and non-intervention. One should also add to this list of limitations, the ratification process itself: the state can freely decide to ratify the treaty that suits its best interest. Excluding the *jus cogens* which is self-binding on all states (slavery, non-discrimination, and torture), governments can freely chose whether to ratify or not any given treaty. *Pacta Sunt Servanda* dictates that states should honor their obligations under international law; however this is left to the *good faith* of states to implement or violate the provisions of the treaties.

Regarding reservations, as we have discussed, some are impermissible according to the Vienna Convention on the Law of Treaties, yet the treaty body system is not empowered to reject these state reservations or to judge whether they are in accordance with International Law. One example would be placing a reservation on article two of the two covenants which dictates non-discrimination in the application of the covenant as to race, sex, religion...etc. Any reservation on this article is not compatible with the purposes of the two covenants which are to ensure political, civil, economic, social and
cultural rights to all without any discrimination. Reservations are constantly allowing states to undermine their obligations vis a vis the conventions, it is a tool used frequently to abuse human rights.

Moreover, derogations found in human rights conventions (such as in article 4 of ICCPR) have been used by states as a pretext to violate their treaty-commitments. Although the United Nations always emphasizes that derogations should never turn into violations, and that states should always bear in mind their obligations under International humanitarian law and the principle of proportionality governing derogations, yet states seem to get away with the most flagrant human rights violations when they claim that they are derogating from certain rights because the convention allows it.

As for the limitation clauses which are found in all seven human rights conventions, these are mainly related to the following rights: the observance of religion, the freedom of association and assembly, the right to strike, and the freedom of expression. The convention dictates that states can limit these rights in order to protect public order, national security, public health, morals or the rights and freedoms of others. These limitations protect the authority of the state as well as the principle of non-intervention (by not imposing on states inflexible measures and then intervening in the name of protecting human rights). International law made use of these limitation clauses to protect states sovereignty and national law/order, however, unfortunately these limitations are being abused by states in order to deny human rights to their national as well as non-citizens.
In addition to reservations, derogations, and limitation clauses; another factor also undermines the conventions which is the vagueness in the wording, or the ill-definition of certain rights. As we have discussed in chapter two, article 2 for example in ICESCR explains how states should implement the covenant. Many scholars argued that because this covenant is about the realization of Economic, Social and cultural rights, which are considered the second generation of rights, one can speak of vagueness and of a weak tone dictating the implementation of the covenant. While ICCPR clearly demands that states take legislative, administrative or any other kind of measure to give effect to the provisions of the covenant, and to install judicial remedies for any violations of the civil and political rights, ICESCR on the other hand speaks of a “progressive realization”, “to the extent of the available resources”. (ICESCR, 1966, article 2). The vagueness in these sentences was often used as a pretext by states to stall and to deny economic, social and cultural rights to their nationals as well as to their non-citizens.

Many United Nations experts argue that any International convention or resolution that fails to mention timeframes or specific mechanisms of implementation is neither valid nor efficient. Therefore, sentences such as “the progressive realization “and “to the extent of the available resources” (ICESCR, 1966, article 2) undermine the strength of the convention and allow states to derogate from their international commitments.

Another weakness related to these legal texts is the willingness of the drafters to compromise for political reasons and to insert certain clauses that would ill-define certain rights. As mentioned in the section on the Convention against Torture, the definition of torture excluded pain arising from “lawful sanctions” (CAT, 1984, article 1) in order to
please some Islamic states. The result was an ill-defined right i.e. a right that neglected torture that was being practiced during imprisonment or while under arrest by the official authority that can claim that its methods are lawful (or lie under “lawful sanctions”)

Other ill-defined rights are also found in CRC such as the possibility for children above 15 years old to participate in hostilities, that was inserted to please developing countries (this was later corrected through the optional protocol to CRC that has reset the age limit to participate in war and hostilities to 18).

All of these limitations to the treaty body system are caused by the unwillingness of the United Nations to infringe upon state sovereignty. Nevertheless, this system did succeed in standard –setting and creating comprehensive lists of rights from the right to play found in CRC to the right to enjoy a cultural life present in ICESCR.

This system also succeeded in creating new rights such as the right to non-refoulement found in CAT and the rights of women to control their own fertility (CEDAW). It also included torture in the list of genocide, crimes against humanity and war crimes making CAT the first human rights convention that follows the rule of aut dedere aut judicare or universal jurisdiction for the prosecution of these crimes. (it used to be reserved only to the crimes that pertain to humanitarian law such as genocide, crimes against humanity and war crimes).

Finally, this system also succeeded in creating the treaty body mechanisms of state reports, individual complaints, inter-state complaints and inquiry that although issue non-binding views; yet do contribute to the mobilization of shame factor to intimidate states and preclude them from abusing human rights. The United Nations in general and the human rights system in particular is currently undergoing reforms,
therefore one needs to empower this organization in order to enable it to carry on its mandate in promoting and protecting human rights. What is needed is a more forceful approach by the United Nations in dealing with member states. International Law should be always respected and all the shortcomings discussed in this paper should be promptly addressed in order to ensure the human rights of all peoples. Perhaps the creation of the new Human Rights Council might address some of the weaknesses found in the treaty-body system. The Human Rights Council, which will replace the much criticized Commission on Human Rights, was created in accordance with the UN Secretary General plan to reform the International organization. The Commission on Human Rights used to ignore certain human rights abuses due to political consideration, therefore in 2006 the United Nations created the Human Rights Council, in an attempt to promote and protect better the human rights of all peoples. Less politics could be the solution to an efficient International human rights protection system.
Abbreviations

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural

ICERD: International Convention on the Elimination of Racial Discrimination

CAT: Convention against Torture

CEDAW: Convention on the Elimination of all forms of Discrimination against Women

CRC: Convention on the Rights of the Child

CMW: Convention on the Protection of Migrant Workers and Members of Their Families

UDHR: Universal Declaration on Human Rights

UNSC: United Nations Security Council

CHR: Commission on Human Rights

ECOSOC: Economic and Social Council

ECHR: European Convention on Human Rights for Civil and Political Rights

OHCHR: Office of the High Commissioner on Human Rights
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