

“Human rights are as fundamental to the poor as to the rich, and their protection is as important to the security and prosperity of the developed world as it is to that of the developing world. It would be a mistake to treat human rights as though there were a trade-off to be made between human rights and such goals as security or development. We only weaken our hand in fighting the horrors of extreme poverty or terrorism if, in our efforts to do so, we deny the very human rights that these scourges take away from citizens. Strategies based on the protection of human rights are vital for both our moral standing and practical effectiveness of our actions.

Since its establishment, the United Nations has committed itself to striving for a world of peace and justice grounded in universal respect for human rights – a mission reaffirmed five years ago by the Millennium Declaration. But the system for protecting human rights at the international level is today under considerable strain. Change is needed if the United Nations is to sustain long-term, high-level engagement on human rights issues, across the range of the Organization’s work”

Kofi Annan, 2005

I. INTRODUCTION: THE UNITED NATIONS AND HUMAN RIGHTS

When the Charter of the United Nations was adopted in 1945, as a consequence of the crimes against humanity committed by Fascism, one of the most sacred trusts placed in the hands of the new World Organization was the promotion of respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Human rights is woven as an important guiding thread throughout the fabric of the UN Charter (see Articles 1, para. 3, 13, para. 1 b., 55 c., 56, 68, and 76 c. in annex VI.1): The Preamble to the Charter and its Article 1, para. 3, contain explicit references to human rights; furthermore, the Charter also charges specifically the General Assembly (Article 13, para. 1 b.) and the ECOSOC (Article 55 c.) with promoting respect for human rights and gives a similar mandate to the Trusteeship System (Article 76 c.). Through the Charter all UN Member States are legally bound to strive towards the full realization of all human rights and freedoms.

Although the San Francisco Conference decided in 1945 not to include an international bill of human rights in the Charter itself, it explicitly demanded in Article 68 the establishment of a commission for the promotion of human rights which had as its first task the drafting of the international bill of human rights.

The Universal Declaration of Human Rights

The centerpiece of this code is the Universal Declaration of Human Rights adopted by the General Assembly on 10 December 1948 (see the full text in annex VI.2). Although it has only the character of a recommendation, the Declaration played a key role in the further development of human rights instruments and became the foundation upon which the international system for the protection and promotion of human rights has been built.

The Declaration, which contains 30 Articles, claims a “common standard of achievement for all peoples and all nations” and is formulated in general terms; it contains fundamental freedom rights (Articles 3-19), political rights (Articles 20-21), and also economic, social and cultural rights (Articles 22-28) without any hierarchy among them. The basic rights laid down in the Universal Declaration have given birth to over 100 international treaties, declarations or other instruments within the UN system (see document 1). One can mention:

- the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the International Covenant on Civil and Political Rights (ICCPR);
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- the Convention on the Elimination of Discrimination against Women (CEDAW);
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- the Convention on the Rights of the Child (CRC);
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW);
- the Convention on the Rights of Persons with Disabilities (CRPD);
- the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED); and
- other declarations and/or conventions dealing with such matters as discrimination, genocide, slavery, and social welfare, progress and development.

Towards a System of Human Rights Protection

In order to create a system of human rights protection, the following order of steps was necessary: (a) the conceptualization of a programme; (b) the definition of human rights; (c) the creation of compulsory norms; and (d) a system for the implementation and monitoring of human rights in political and legal terms. In the UN Charter we find the programme as expressed in Article 1, para. 3, where the UN shall “achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”. This programme formulation increasingly led to the exclusion of the universal observance of human rights from “matters which are essentially within the domestic jurisdiction of any state” (Article 2, para. 7) – a position which is not shared by all UN Member States. Organs of the UN are allowed to discuss those issues. Moreover, actual human rights violations could be dealt with after the creation of the necessary instruments.

The International Bill of Rights

The Universal Declaration of Human Rights of 1948 contained a first, yet not

comprehensive attempt of defining human rights. It took almost 20 years of drafting the two International Covenants which – together with the Universal Declaration – form the International Bill of Rights. In 1966, the General Assembly adopted the documents which entered into force ten years later, in 1976.

The two Covenants together with the Optional Protocol to the International Covenant on Civil and Political Rights (OP1) and the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty (OP2-DP) also contain instructions for the implementation of human rights which takes place through national and international procedures. Many countries have included provisions from the basic instruments of the UN directly in their national constitutions or have directly incorporated them in national law. The UN itself developed a wide range of procedures for observing respect for the international code of human rights. In this context, four major methods can be identified:

- (1) the examination of reports from States parties by committees of independent experts where issues such as respect for civil and political rights, economic, social and cultural rights, the elimination of racial discrimination, equality of women, and the prohibition of torture are discussed with representatives of governments – often at the ministerial level;
- (2) the consideration by the Human Rights Council (see section II and charts 4-6), through special rapporteurs or working groups, of individual reports of particularly serious violations of human rights, such as arbitrary or summary executions, torture, disappearances and arbitrary detention.

Under these procedures, the practice of sending urgent action cables has been developed. Each year, over 1,000 particularly urgent cases are transmitted to governments by e-mail, fax and telegram and much more are sent by letter. The results of these initiatives and the responses of the governments are contained in public reports debated in the UN Human Rights Council;

- (3) the study of the human rights situation in specific countries or territories by the Human Rights Council, such as in Burundi, Cambodia, Democratic People's Republic of Korea, Haiti, Myanmar, Palestinian territories occupied since 1967, Somalia and Sudan. In this connection, working groups, committees or special rapporteurs are appointed to investigate the facts; their reports, with conclusions and recommendations, are discussed by UN policy-making bodies including the General Assembly; and
- (4) the consideration by human rights organs of petitions/complaints (“communications”) from individuals and organizations (NGOs) which allege serious and systematic violations of human rights. These cases of systematic human rights violations (“situations”) are studied in private meetings by the Human Rights Council (see chart 6).

In sum, it can be concluded that the UN in its standard-setting and international implementation of human rights had a significant impact on the improvement of the human rights situation in many parts around the world. Together with the

preservation of international peace and security and the furtherance of economic and social development, the promotion of human rights constitutes one of the three principal objectives of the UN that has undergone a great expansion both in terms of mandates and activities.

Over the last 20 years we have witnessed a major expansion of UN activities in the field of human rights. This relates not only to the human rights treaty system but also to the UN human rights programme as a whole. These developments are generally recognized as most impressive achievements of the UN human rights programme. Other “proxies”, such as the number of States parties to the human rights instruments listed in annex VI.3, which reached a total of 1,808 as of 11 January 2010, are good indicators for this development. In its resolution 43/115 the General Assembly of the UN stated that: “The effective implementation of instruments on human rights, involving periodic reporting by States parties to the relevant treaty bodies and the efficient functioning of the treaty bodies themselves, not only enhances international accountability in relation to the protection and promotion of human rights but also provides States parties with a valuable opportunity to review policies and programmes affecting the protection and promotion of human rights and to make any appropriate adjustments”.

Today, the UN human rights treaty system (see chart 2) has reached a critical point where additional measures must be undertaken in order to further guarantee an efficient and effective implementation of UN instruments on human rights:

- Excessive delays by States parties in the submission of their reports can be observed as mentioned above. The treaty bodies are confronted with serious difficulties in seeking to induce the relevant States parties to submit their overdue reports. Also, the problem of inadequate reports must be attacked; a one-page report, for instance, cannot serve as a serious basis for discussion.
- On the other hand, there is a growing burden imposed on many States by the expansion and overlapping of reporting obligations; the right to freedom of association, for instance, is recognized in five treaties; it is also contained in the conventions dealing with the rights of the child and of migrant workers; moreover, two ILO conventions deal with that right.
- The financial resources (less than three percent of the UN regular budget) are insufficient to enable the UN human rights to function effectively; the meeting time available to some of the treaty bodies is inadequate; this is also true with regard to the staffing levels of the Office of the High Commissioner for Human Rights (OHCHR).

The Vienna World Conference on Human Rights Machinery

The World Conference on Human Rights in June 1993, where representatives of over 170 States met for the first time in 25 years to reaffirm their commitment to protect human rights, was unequivocal in confirming the universality, interdependence, indivisibility and interrelatedness of all human rights and fundamental freedoms. A call was made on all States to observe international standards of behavior, to ratify international instruments and to

strengthen the human rights machinery at both the national and international level.

The Conference examined in detail the progress achieved in human rights, and obstacles to their full enjoyment, as well as the application of international instruments and the effectiveness of the methods and machinery established by the UN in the field of human rights.

Emphasis was placed on protecting the rights of the most vulnerable groups, including racial, religious and ethnic minorities, indigenous populations, women and children, casualties of war, the poor, and the disabled.

Through the Vienna Declaration and Programme of Action adopted at the World Conference, the States declared their commitment to ensure that human rights remain a priority objective of the UN. In fact, the World Conference resulted in an upgrading of human rights within the UN. To-day, human rights are recognized as one of the three pillars, alongside security and development, of the UN.

The High Commissioner for Human Rights

The 48th session of the General Assembly confirmed the Vienna Declaration and Programme of Action; in addition, the Assembly decided to create the post of a High Commissioner for Human Rights (Resolution 48/141 of 20 December 1993) and devoted three decades to human rights: the Third Decade against Racism and Racial Discrimination (1993-2003); a Decade for Indigenous People (1994-2004); and a Decade for Human Rights Education (1995-2005). In its resolution, the General Assembly listed the High Commissioner's specific responsibilities. They include:

- to promote and protect the effective enjoyment by all of civil, cultural, economic, political and social rights, including the right to development;
- to provide advisory services, technical and financial assistance in the field of human rights to States that request them;
- to coordinate United Nations education and public information programmes in the field of human rights;
- to play an active role in removing the obstacles to the full realization of human rights and in preventing the continuation of human rights violations throughout the world;
- to engage in a dialogue with governments in order to secure respect for human rights;
- to enhance international cooperation for the promotion and protection of human rights;
- to coordinate human rights promotion and protection activities throughout the United Nations system; and
- to rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights in order to improve its efficiency and effectiveness.

With the approval of the General Assembly the UN Secretary-General

appointed José Ayala-Lasso (Ecuador) who served as High Commissioner for Human Rights at the rank of Under-Secretary-General from 5 April 1994 to 15 March 1997. Since 15 September 1997, Mary Robinson (Ireland) served a four-year term as High Commissioner for Human Rights; then, she asked for a one-year extension to September 2002. Her successor, Sergio Viera de Mello (Brazil), was elected to serve a four-year term. He was nominated special representative of the Secretary-General for Iraq on 27 Mai 2003 for a period of four months, where he became victim of a terrorist attack on the UN Headquarters in Baghdad. On 1 July 2004, Louise Arbour (Canada) took up her assignment as High Commissioner for Human Rights. On 28 July 2008, the General Assembly approved of Navanethem Pillay (South Africa) as the fifth High Commissioner for Human Rights.

The Office of the United Nations High Commissioner for Human Rights

Human rights activities have been expanding as a result of recent global events after the end of the East-West confrontation which led to a series of new mandates by legislative organs for peaceful and constructive solutions to human rights problems: the role of the various organs in the human rights field has progressively become operational which required a change of the activities of the Centre for Human Rights both in terms of functions as well as of magnitude. Following this necessity, the UN Secretary-General has merged on 12 September 1997 the Office of the High Commissioner for Human Rights and the Centre for Human Rights into a single Office of the High Commissioner. This Geneva-based Office of the UN High Commissioner is a body of the United Nations Secretariat (see chart 3).

The OHCHR is the “heart” of the international community to promote and protect all human rights; it supports the work of the UN human rights mechanisms, such as the Human Rights Council (see section II) and the human rights treaty bodies (see section III). The Office employs more than 850 staff, based in Geneva and New York and in seven regional offices and in eleven country offices.

The address of the Office of the High Commissioner for Human Rights is the following:

Office of the United Nations High Commissioner for Human Rights United Nations Office at Geneva Palais Wilson 52, rue des Pâquis CH-1201 Geneva Switzerland Phone: xx 41-22-917 9220 E-mail: InfoDesk@ohchr.org Internet: http://www.ohchr.org/EN/Pages/WelcomePage.aspx

The UN Commission on Human Rights

Article 68 of the Charter (see annex VI.1) requests the Economic and Social Council (ECOSOC; see chart 1) to set up commissions in economic and social

fields and for the promotion of human rights. In consequence, the Commission on Human Rights (CHR) was established as a "functional commission" by ECOSOC at its first session in 1946; it was the only human rights body established through an explicit provision of the Charter. Originally, the Commission consisted of nine core members acting in their individual capacity; later, the Commission of representatives of 53 Member States was elected for three-year terms by ECOSOC on the following regional basis: 15 from Africa; 12 from Asia; 11 from Latin America and the Caribbean states; ten from Western Europe and Other states (WEO); and five from Eastern Europe.

In 1947, the Commission met for the first time; its sole function was to draft the Universal Declaration of Human Rights (for the full text see annex VI.2). The Commission accomplished this task within one year: on 10 December 1948 the Universal Declaration was adopted by the UN General Assembly. Since then, the 10 December has been celebrated annually as "Human Rights Day" around the world.

For the first 20 years (1947-1966) the Commission concentrated its activities on standard-setting. Based upon the Universal Declaration, the Commission worked on the drafting of the two human rights covenants, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), which were adopted by the General Assembly in 1966.

The progress achieved can be best characterized by the fact that in 1947 the Commission "recognized that it had no competence to deal with any complaint about violations of human rights". 20 years later, the Commission was authorized to start to deal with these problems. Since then, the Commission has developed special procedures for the protection of human rights. These non-treaty procedures, country-orientated or thematic (operating through special rapporteurs and working groups), shall monitor the compliance by States with international human rights law and investigate alleged violations of human rights, among others, through fact-finding missions to countries in all parts of the world. During the 1970s and 1980s, these implementation and fact-finding procedures became the focus of the Commission's activities.

In the 1990s, the Commission has increasingly turned its attention to the provision of advisory services and technical assistance in order to overcome the existing obstacles and to secure the enjoyment of human rights by all.

Also, more emphasis has been put on the promotion of economic, social and cultural rights, including the right to development and the right to an adequate standard of living, as well as on the protection of the rights of the vulnerable groups in society, such as minorities and indigenous people, and of the rights of women (see section III.4) and of the child (see section III.6).

The Commission acted as the main policy-oriented UN body responsible for the promotion and protection of human rights. During recent years, the Commission has discussed such issues as the human rights situation in various countries, economic, social and cultural rights, self-determination, torture, "disappearances", capital punishment, detention for exercising the rights to freedom of expression, rights of the child, racial discrimination, apartheid, rights of minorities, the International Covenants on Human Rights.

Since 1990, the Commission has been authorized to meet exceptionally to consider particularly grave human rights situations provided that a majority of at least 27 of its 53 members so agreed (for instance, human rights violations in former Yugoslavia (1992 and 1993), Rwanda (1994), East Timor (1999) and in Palestine (2000) have been treated in special sessions).

In 2005, the year before the Commission was replaced by the Human Rights Council (see section II), seven working groups established by the Commission dealt with the following issues:

- enforced or involuntary disappearances (since 1980);
- right to development (since 1998);
- arbitrary detention (since 1991);
- human rights situations (since 2000);
- indigenous people (since 1995);
- structural adjustment programmes (since 1996); and
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (since 2002).

The Commission met once a year in Geneva for six weeks, beginning in March. In general, its meetings were public, except when it met for several days to discuss situations which appear to reveal a consistent pattern of gross violations under the “1503 procedure”. During the public meetings governments which are not members of the Commission and non-governmental organizations (NGOs) which have been granted consultative status with ECOSOC could attend and make written and oral statements concerning issues on the agenda. The input of the NGOs has had a significant impact on the Commission’s work. Often, NGO investigations and reports provided useful information available to the Commission about human rights abuses in various parts of the world.

The 60th session of the Commission took place in Geneva in March/April 2004. For the first time, more than 40 national human rights institutions (NHRIs) were invited to take part in the work of the Commission. On the one hand, the UN Secretary-General underlined in his Annual Report of 2004 to the General Assembly that the Commission on Human Rights developed to an important forum for the partnership of governmental and non-governmental representatives within the UN system. On the other hand, the problems of increasing political polarization of the CHR were mentioned: “This year the Commission on Human Rights attracted almost 5,000 participants, including representatives of Member States, non-governmental organizations, independent experts, United Nations agencies and national human rights institutions. ... Despite broad participation, however, there continues to be disquiet over the fact that a number of Governments accused of gross violations of human rights are elected to membership in the Commission, about the high level of politicization of the Commission’s debates and about the lack of consideration of certain situations involving grave human rights violations” (para. 205).

In principle, the UN Secretary-General repeated his criticism he mentioned

already in his Annual Report of 2003. It is against this background that he did not take up the concrete proposals put forward by the High-level Panel on Threats, Challenges and Change which included:

- membership of the Commission on Human Rights should be made universal;
- all members of the CHR should designate prominent and experienced human rights figures as the heads of their delegations;
- the CHR should be supported in its work by an advisory council or panel consisting of some 15 individuals appointed for their skills for a period of three years by the CHR on the joint proposal of the Secretary-General and the High Commissioner.

But the High-level Panel also mentioned that: "In the longer term, Member States should consider upgrading the Commission to become a 'Human Rights Council' that is no longer subsidiary to the Economic and Social Council but a Charter body standing alongside it and the Security Council, and reflecting in the process the weight given to human rights, alongside security and economic issues, in the Preamble of the Charter" (para. 291).

Instead of reflecting on long-term options, the Secretary-General developed the concept of a mutually interdependent trias of security, development and human rights and proposed to replace the Commission of Human Rights by a smaller standing Human Rights Council in the context of necessary structural reform measures to be undertaken on the occasion of the 60th anniversary of the United Nations in 2005 (see below).

"Interim Results" of Reform Measures

The UN human rights programme is now evolving from standard-setting activities to the implementation and monitoring of the international standards of human rights. Its operational activities are moving towards creating the conditions necessary for the implementation process and for a universal culture of human rights which will, hopefully, lead to a considerable reduction of world-wide human rights violations. On the one hand, universal ratification of the various human rights conventions should be pursued; on the other hand, a further strengthening of the efficiency of implementing human rights through the UN Human Rights Council, human rights treaty bodies, monitoring bodies of various covenants, preventive diplomacy, and the participation of NGOs will be necessary which also includes a better co-ordination within the UN system.

In his Programme for Reform 1997, UN Secretary-General Kofi Annan set out the promotion and protection of human rights as one of the five central tasks of the United Nations. Accordingly, the issue of human rights has been designated as cutting across each of the four substantive fields of the Secretariat's work programme (peace and security, economic and social affairs, development cooperation; and humanitarian affairs): "A major task for the United Nations, therefore, it is to enhance its human rights programme and fully integrate it into the broad range of the Organization's activities" (UNITED NATIONS / GENERAL ASSEMBLY (1997), para. 79).

The present work of the United Nations in the field of human rights is very complex and still needs to be reformed. Five years later, in its follow-up report “Strengthening of the United Nations: An Agenda for Further Change” UN Secretary-General Kofi Annan announced measures to improve the work of the UN:

- the capacity of the United Nations to help individual countries to build strong human rights institutions will be strengthened;
- the procedures of the treaty bodies will be reviewed in order to simplify reporting obligations;
- the system of special procedures (rapporteurs, working groups, etc.) will be reviewed, with a view to making it more effective by ensuring greater consistency; and
- the management of the Office of the United Nations High Commissioner for Human Rights will be strengthened (UNITED NATIONS / GENERAL ASSEMBLY (3 September 2002), p. 2).

In the following, the UN Secretary-General pointed out four concrete measures according to which the High Commissioner will

- develop and implement a plan to strengthen human rights-related United Nations actions at the country level;
- consult with treaty bodies on new streamlined reporting procedures and submit his recommendations to him;
- undertake a review on the special procedures and report back to him with recommendations on how to enhance their effectiveness and improve the support provided;
- develop a plan to strengthen management, taking into account the recommendations emerging from the management review conducted by the Office of Internal Oversight Services (OIOS).

As will be shown in section III, the reporting obligations of States parties exceed the capacity of treaty bodies to consider them in a timely manner. Also, many countries experience extreme difficulties in coping with the burden of separate reporting to each treaty body. Therefore, as part of his proposals of reform of the human rights machinery, the UN Secretary-General proposed to reform the reporting procedures of the treaty bodies by standardizing the reporting guidelines and introducing a single report, thereby reducing significantly the reporting burden for States parties to the UN human rights treaty bodies. The introduction of a single report was, however, rejected by all treaty bodies. Instead, it was decided to develop an expanded core document and to examine the possibility of harmonization and streamlining the reporting procedures. In fact, the treaty bodies have already broadly similar working methods. Both with regard to working methods and substantive issues, the annual meetings of chairpersons allow further improvements in the streamlining efforts.

In his report “In Larger Freedom: Towards Development, Security and Human Rights for All” of 2005, the UN Secretary-General informed that the UN human rights machinery has expanded its protection work and technical assistance at

the country level. At the same time he stressed that this programme urgently needs more financial resources and staff. He demanded the incorporation of human rights into discussion and decision-making throughout the work of the Organization and deplored that the concept of “mainstreaming” human rights has still not been adequately reflected in key policy and resource decisions.

In conclusion, the UN Secretary-General developed a concept for a comprehensive reform of the UN human rights machinery which includes, inter alia, the following measures:

- The Office of the High Commissioner must be involved in the whole spectrum of UN activities;
- the proclaimed commitment of the Member States to human rights must be matched by corresponding financial resources;
- the human rights treaty bodies (see section III) must be more effective and more responsive to human rights violations; they should finalize and implement harmonized guidelines on the reporting so that these bodies can function as unified system; and
- the Commission on Human Rights should be transformed into a smaller standing Human Rights Council “which should be the central pillar of the United Nations human rights system” (for further details see section II).

Meanwhile, human rights are fully recognized as one of the three pillars of the UN. The amount of funding allocated to the UN human rights programme has grown in recent years, both in absolute as well as in relative terms. Whereas during the 1990s funding went down to about 1.5 percent of the UN regular budget, its share increased to almost three percent in 2008-2009. During the same period over 60 percent of OHCHR expenditure was covered by voluntary contributions. It must be taken into account that extra-budgetary income is generated on a voluntary basis, for a limited time period and often determined to serve a particular purpose. Despite recent increases in its share of the UN regular budget, the OHCHR remains heavily reliant on voluntary contributions. Hopefully, donors of voluntary contributions make more funding available on an unearmarked basis in order to strengthen OHCHR’s political independence.

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