The United Nations System for Protecting Human Rights

Volume IV

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The United Nations System for Protecting Human Rights
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Series Preface

The *Library of Essays in International Human Rights Law* provides access, in a single series, to some of the most important and influential journal articles and papers on the subject. Selections include broad overviews of key areas in international human rights law, critical assessments of this law and of human rights institutions and inquiries into areas of contestation. Some are classic works in the field; others are more recent works that provide insight into important developments or debates.

The series comprises five volumes. A volume on the development of international human rights law covers both the historical and philosophical development of human rights law as well as major issues during this development. A volume on challenges of human rights law presents works not only on issues of non-state actors, transitional justice and terrorism, but also articles on a human rights approach to public health, severe poverty as a human rights violation, investment arbitration as a venue of human rights challenges and climate change. The subject of equality and non-discrimination under international law merited its own volume, as the principles of equality and non-discrimination lie at the heart of human rights law. They are the only human rights explicitly included in the UN Charter, and they appear in virtually every major human rights instrument.

The volume on the United Nations system for protecting human rights presents leading articles on the UN bodies specially created to promote and monitor the implementation of human rights, but it also goes beyond those entities to present articles on the human rights work of UN specialized agencies such as the World Health Organization, the International Labour Organization, UNICEF and UNESCO. Finally, the volume on regional systems for protecting human rights provides selections on the regional human rights instruments and on institutions and their jurisprudence, procedures, activities and effectiveness.

Each volume opens with an introductory essay providing an overview of the topic covered and discussing the significance and context of the works selected. It is my hope that this series will serve as a valuable research resource for those already well-versed in the subject as well as those new to the field.

STEPHANIE FARRIOR
Vermont Law School, USA
Series Editor

Introduction

This volume compiles some of the leading articles concerned with the work of the United Nations in the development, promotion and protection of human rights. The United Nations human rights system, like the parallel regional systems in existence, consists of a network of norms addressing rights and obligations, together with institutions and procedures related to the promotion and protection of human rights. Beyond the treaty bodies and UN organs proper, this system embraces UN agencies such as the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization. Taken as a whole, the UN system has played a central role in creating and monitoring modern human rights law.

Despite its many contributions to the development of human rights law, the UN's work has had its critics, and the crescendo of concerns in the 1990s led to institutional and procedural reforms at the beginning of the twenty-first century, as some of the essays herein discuss. Thomas Franck (1985, p. 224) claimed two decades ago that 'no indictment of the U.N. has been made more frequently or with greater vehemence than that it singles out Western and pro-Western states for obloquy, while ignoring far worse excesses committed by socialist and Third World nations'. Third World commentators maintain the opposite is true, asserting that the UN has focused disproportionately on condemning developing countries.[1] It is more common today to hear Western countries complaining of bias in favour of developing countries' human rights agenda than it is for developing countries to complain about the UN human rights agenda. Controversies over the right to development,[2] the right to a safe and healthy environment[3] and norms for transnational companies[4] reflect a North–South split in priorities and concepts of rights. While these contradictory views may indicate that the UN is rather more even-handed than is generally accepted, a perception of politicization and lack

[1] 'Longtime UN observers' view the UN as adopting resolutions condemning violations mostly in developing countries, rather than in the Western world (Deen, 2006).

[2] See, for example, Marks (1981) (arguing the right to property and development is a fundamental right); World Conference on Human Rights (1993, p. 5) (referring to the right to development as 'a universal and inalienable right and an integral part of fundamental human rights').

[3] See, for example, Commission on Human Rights (1994, p. 258) (asserting that there is a right to a safe and healthy environment).

[4] See ECOSOC Sub-Comm. on Promotion and Protection of Human Rights (2003) (recognizing the duty of transnational corporations to promote and respect human rights). The Commission responded by noting that it had not requested the norms and that 'as a draft proposal' the Sub-Commission's report had no legal standing (Commission on Human Rights, 2004). Therefore, the Sub-Commission 'should not perform any monitoring function in this regard' (Commission on Human Rights, 2004). In 2005, the Commission, by resolution, requested the Secretary-General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises (Commission on Human Rights, 2005, p. 68). No reference was made to the Sub-Commissions Norms (see Commission on Human Rights, 2005).

of standards eroded the credibility and legitimacy of the UN Human Rights Commission,[5] leading to its replacement in 2006 by the Human Rights Council.[6]

United Nations standard-setting in the field of human rights began even as states undertook the drafting of the UN Charter, and standard-setting has continued unceasingly in virtually all United Nations institutions and organs. The first part of this volume begins with two essays that examine the law of the Charter and its evolution. The second part critically assesses the UN law-making process and the legal issues that emerge therefrom. The selected essays in the third part address the work of the Charter-based organs, institutions and procedures, followed by two parts which undertake the same examination with respect to UN treaty bodies and specialized agencies. Finally, the sixth part contains essays assessing and providing critiques of the nearly seven decades of UN efforts to enhance the ability of all individuals and groups to exercise their human rights and fundamental freedoms.

Inevitably, many outstanding scholarly contributions that examine UN human rights laws and policies could not be included in the present volume, despite the editor's forceful arguments for their inclusion. The process of selection was a painful one, based on balancing history with contemporary issues while always seeking to include material that is of lasting value and importance to the general reader. The remainder of this Introduction introduces the works and themes chosen, referencing other significant articles that the editor was compelled to omit. Despite the limitations, the essays in this volume provide the interested reader with diverse, authoritative and stimulating examinations of the development of human rights law by the United Nations organs and institutions.

The UN Charter and Human Rights

The topic of human rights was perhaps unavoidable on the political agenda of the post-World War II period, elevated by President Franklin Roosevelt's 'Four Freedoms' speech and academic and regional efforts during the war to draft international bills of rights. Earlier efforts at elevating human rights to a matter of international concern certainly existed, as discussed in another volume in this series (Weissbrodt *et al.*, forthcoming), and the war further enhanced a growing perception of the need for internationally guaranteed rights. As a result, concern for human rights was one of the core issues from the inception of the 1945 United Nations Conference in San Francisco.

[5] See Joint NGO Statement on UN Reform, presented to the 61st Session of the UN Commission on Human Rights, 12 April 2005, at: http://hrw.org/english/docs/2005/04/12/global10463_.htm.

[6] GA Res. 60/251, UN Doc. A/RES/60/251, 3 April 2006. The Council consists of 47 states elected by the General Assembly according to the principle of 'equitable geographic distribution' (GA Res. 60/251, ¶ 7). Africa and Asia each has 13 seats (GA Res. 60/251). There are six seats for Eastern Europe, eight for Latin America and the Caribbean, and seven for Western Europe and Others (GA Res. 60/251). The Council is authorized to meet three times a year for 10 weeks but can also hold special sessions, and it reports directly to the General Assembly (GA Res. 60/251, ¶ 10). The Council's mandate is to 'be guided by the principles of universality, impartiality, objectivity and non-selectivity, with a view to enhancing the promotion and protection of all' (GA Res. 60/251, ¶ 4). The Council is also to consider and make recommendations on situations of human rights violations, including gross and systematic violations (GA Res. 60/251, ¶ 3).

The original Dumbarton Oaks proposals for the United Nations prepared by the great powers contained only one general provision about human rights. Pressure from non-governmental organizations and smaller states, especially those of Latin America,[7] resulted in considerable strengthening of the text. John Humphrey has noted that '[t]he relatively strong human rights provisions in the Charter through which they run, as someone has said, like a golden thread, were largely, and appropriately, the result of determined lobbying by non-governmental organizations at the San Francisco Conference' (1973, p. 83).

As is now well known, the UN Charter contains more than a dozen references to human rights. The very purposes of the United Nations include cooperation in promoting respect for human rights and fundamental freedoms for all. Among the Charter provisions, particular importance is given to Article 55 of the UN Charter, which states that the UN shall promote 'respect for, and observance of, human rights'. Article 56, significantly, adds an obligation of UN member states to cooperate with the UN and take action respecting human rights (Weissbrodt, 1988). Taken together the Charter provisions made clear from the outset that henceforth respect for human rights by UN member states would be a matter of international concern. Louis B. Sohn (Chapter 1) assesses the legal import of the Charter in an early essay that retains its pertinence to the present time. Emma McClean (Chapter 2) updates the Charter law in examining the emergence of the doctrine of 'responsibility to protect'.

UN Standard-Setting

The inescapable mandate of the UN to address human rights, while stated in general terms, led to an initial focus on reaching agreement on the content of the rights the UN should protect. The Charter contains numerous references to human rights but only expressly mentions two basic principles: the right to self-determination[8] and the right to non-discrimination.[9] The Charter states as one of the UN's objectives 'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples'.[10] In respect to equality and non-discrimination, it is significant that the phrase 'human rights and fundamental freedoms' in the Charter is followed in every instance, except once, by the words 'without discrimination on the basis of race, sex, language or religion'. Having this firm treaty basis, the combined focus on equality and self-determination has directed much of the work of the UN political bodies on human rights issues. This process has often been a difficult one,

[7] The proposal to have the UN organization ensure respect for human rights and fundamental freedoms without discrimination was initially submitted by Brazil, the Dominican Republic and Mexico. Amendments and Comments on Dumbarton Oaks Proposals, reprinted in the United Nations Conference on International Organization, San Francisco, California, 25 April–26 June 1945 – Selected Documents 87, 93 (1946). Uruguay proposed that the organization endorse the essential rights of mankind, internationally established and guaranteed (United Nations Conference on International Organization, 1946, p. 110). See also Humphrey (1984, pp. 14–17) (acknowledging the key role of Panama in efforts to draft an international bill of rights); Lauren (1998, p. 217) (discussing the role of key states and specifically the role of Panama in drafting the International Bill on Human Rights).

[8] UN Charter art. 1, ¶ 2; art. 55.

[9] UN Charter art. 1, ¶ 2 ('without distinction as to race, sex, language or religion').

[10] UN Charter art. 1, ¶ 2 ('without distinction as to race, sex, language or religion').

being caught up in Cold War politics and de-colonization and a seemingly permanent debate over the universality of human rights.

The first stage of defining human rights concluded when the General Assembly adopted the Universal Declaration of Human Rights (UDHR) without dissent on 10 December 1948.[11] The Declaration refers to itself 'a common standard of achievement for all peoples and all nations'. Eleanor Roosevelt said it might well become 'the Magna Carta of all mankind'. The Declaration today represents an agreed statement of the definition of 'human rights' as that term is used in the United Nations Charter and it has been reaffirmed in global and regional treaties and in the United Nations Conferences on Human Rights (Teheran, Vienna).

Also in 1948, the General Assembly adopted the Convention on the Prevention and Punishment of Genocide.[12] Standard-setting continued with a focus on non-discrimination and equality for disadvantaged groups. The 1965 Convention on the Elimination of All Forms of Racial Discrimination[13] was the first of a series of treaties addressing equal rights (Buergenthal et al., 2006, pp. 20–21). The UN subsequently adopted instruments concerning women, children, migrant workers and the disabled (Buergenthal et al., 2006). The UDHR became two Covenants, one on Civil and Political Rights, the other on Economic, Social and Cultural Rights.[14] The standard-setting process continues as member states place items on the agenda for action. Standard-setting will not end, because new problems arise, and fears of a 'devalued currency' are probably overstated given the need to obtain consensus before a new instrument can be adopted.

While the conclusion of binding treaties has been a key component of UN law-making, perhaps the most visible one, it has not been the only method of reaching agreement on evolving standards. The UN also conducts studies, organizes global conferences such as the 1993 Vienna Conference on Human Rights and facilitates other meetings where standards may be elaborated. Heinz Guradze (Chapter 3) examines one aspect of the law-making process, the adoption of norm-setting resolutions by the General Assembly. It is clear that the General Assembly adopts resolutions that express standards and create expectations of compliance; it has done so since the Universal Declaration of Human Rights. Whether or not such resolutions are 'law-making' in any traditional sense is the topic of the essay. Regardless of the process, the question of whether the outcome reflects international consensus and a universal approach to which all regions and states can adhere is the topic of Makau Mutua's contribution (Chapter 4). Significantly, every UN member state had ratified at least one of the core human rights treaties.

[11] Universal Declaration of Human Rights, GA Res. 217A (III) at 71, UN Doc. A/810, 10 December 1948); the Vienna Convention on the Law of Treaties indicates that in interpreting treaties, any subsequent agreement or practice of the parties regarding its interpretation or the application of its provisions shall be taken into account to give meaning to its terms. Vienna Convention on the Law of Treaties art. 31(3), 23 May 1969, 1155 UNTS 331, 8 ILM 679.

[12] Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, 78 UNTS 277.

[13] International Convention on the Elimination of All forms of Racial Discrimination, 7 March 1966, 660 UNTS 195.

[14] International Covenant on Civil and Political Rights, GA Res. 2200A, UN Doc. A/6316 (XXI), 19 December 1966; International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XXI), UN Doc. A/6316 19 December 1966.

Compliance and Enforcement

Law-making is undoubtedly and deliberately a political process. Various interests press their agendas to obtain favourable decisions on laws they propose or support. Once laws are adopted, however, politics supposedly disappear from enforcement and compliance; the fundamental principle of equality before the law demands fair and principled enforcement, with a hearing before an independent and impartial body.[15] It is an ideal that not even the most advanced legal systems always fulfil, and the UN does not fall within this category. Indeed, the mechanisms for supervising the UN Charter obligations of member states were initially very limited, because the UN legal office insisted that the UN human rights bodies could not take action with respect to petitions alleging human rights violations (ECOSOC, 1947).

Over time, UN human rights compliance mechanisms and enforcement procedures have evolved and become gradually stronger. UN organs devoted to dealing with human rights matters have multiplied and the main organs have increased the time allotted to human rights issues within their mandates. This expansion has often been reactive and unplanned. More importantly in limiting their effectiveness, many UN human rights procedures involve states investigating and judging allegations against themselves for violating the norms they have adopted. The main UN organs concerned with human rights, including the General Assembly, the Security Council and the Human Rights Council, consist of governmental representatives of the member states.[16] Only the former Sub-Commission on the Prevention of Discrimination and Protection of Minorities (renamed in 1999 the Sub-Commission on the Promotion and Protection of Human Rights) was a body of independent experts, nominated by states and elected by the Human Rights Commission.[17] The decision to transform the Commission into the Council was coupled with the demise of the Sub-Commission. The UN High Commissioner on Human Rights is an independent official, with a mandate to act on behalf of the organization and to administer the office for human rights.[18] The Charter guarantees independence for the secretariat working under her administration,[19] but it has been subject to outside political pressure at times.[20] Finally, the 15 judges of the International Court of Justice (ICJ), the 'principal judicial organ of the United Nations',[21] have jurisdiction to decide inter-state cases and issue advisory opinions.[22] Relatively few cases involving human rights matters

[15] International human rights instruments typically provide for the right, in full equality, to a fair and public hearing by an independent and impartial tribunal in the determination of rights, obligations and criminal charges. See UDHR, UN Charter, art. 10.

[16] See UN Charter arts 9 and 23; GA Res. 60/251 (*supra* note 6, 2006, ¶ 7).

[17] The Commission on Human Rights created the Sub-Commission at its first session in 1946. UN Charter art. 68. The General Assembly abolished the Commission and replaced it with the Council in 2006. GA Res. 60/251 (*supra* note 6, 2006). The Sub-Commission was also abolished.

[18] See GA Res. 48/141, UN Doc. A/RES/48/141, 20 December 1993. The General Assembly created the post of High Commissioner for Human Rights in 1993, with a mandate to promote observance of the Charter of the UN, the UDHR and other human rights instruments. GA Res. 48/141, ¶¶ 1, 3.

[19] UN Charter art. 100.

[20] See Guest (1999) (describing pressure placed on UN human rights machinery during the 1980s).

[21] Statute of the International Court of Justice art. 1.

[22] Statute of the International Court of Justice art. 1.

have come before the court,[23] but litigating states have insisted on the human rights and duties reflected in the UN Charter.[24]

The self-judging political bodies inevitably reflect the policies of the governments that sit on them. Governments generally respectful of human rights take into account trade, security, ability to influence and other issues of national interest in deciding what issues to examine and how to vote. Governments violating human rights seek to avoid condemnation, often by lobbying for election to the human rights bodies. As Egon Schwelb noted in looking back over the first 25 years of UN practice, 'neither the vagueness and generality of the human rights clauses of the Charter nor the domestic jurisdiction clause have prevented the U.N. from considering, investigating, and judging concrete human rights situations, provided there was a majority strong enough and wishing strongly enough to attempt to influence the particular development' (1972, p. 341, emphasis added).

Procedures to advance compliance with the UN Charter's human rights obligations range from debates in the General Assembly to investigations of particular countries or issues to decisions of the Security Council (see Bailey, 1992; Cassese, 1992). Most of these techniques have to be initiated by a member state or group of states and require the cooperation of other members (see Bailey, 1992; Cassese, 1992). In quite a few instances, the debates have led to investigations or denunciations of human rights violations in member states, but the political pressure placed on states sitting on the former Commission to vote for or against such actions considerably increased during its latter years and led to concerns about the entire process.[25]

The UN Charter references to equal rights allowed NGOs and governments to speak out against systematic discrimination from the outset (see Lauren, 1998, p. 207). India, for example, criticized segregation in the United States, which responded by pointing to the caste system in India (see Lauren, 1998). During the first session of the UN General Assembly, Egypt, supported by Latin American states, introduced a resolution, which passed unanimously, to condemn racial and religious persecution.[26] India then sought a resolution to condemn South Africa for its policies of racial discrimination, accusing the government of gross and systematic human rights violations in breach of the principles and purposes of the Charter.[27] The resolution passed with the required two-thirds majority, despite opposition

[23] See, for example, The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosn. & Herz.* v. *Yugo.*), 1993 ICJ 3 (7 October); Legal Consequences for States of the Continued Presence of South Africa in Namibia, Advisory Opinion, 1971 ICJ 16 (21 June); Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 ICJ 15 (28 May).

[24] See, for example, Memorial of United States; United States Diplomatic and Consular Staff in Tehran (*U.S.* v. *Iran*), 1980 ICJ Pleadings 182 (12 January 1980) (asserting that the existence of fundamental rights for all human beings, with the existence of a corresponding duty on the part of every state to respect and observe them, are reflected in the Articles 1, 55 and 56 of the UN Charter).

[25] See Bayefsky (2002, p. A27; 'A United Nations high commissioner for human rights will always need to withstand political pressure from member states to engage in a highly selective application of human rights norms'); Fanton (2006, p. C17; 'Politics, which should not be a consideration, have come too often to dominate the [UN Human Rights] Commission's work').

[26] GA Res. 103 (I), at 200, UN Doc. A/RES/1031, 19 November 1946.

[27] Letter from the Indian Delegation to the Sec'y Gen. of the United Nations, UN Doc. A/149, 22 June 1946.

from Australia, Great Britain, Canada and the United States, each of which had its own racial policies that contravened the Charter guarantees.[28] The first session of the General Assembly also produced action on genocide, declaring it to be a crime under international law.[29]

In subsequent sessions, specific allegations of human rights violations were brought against Bulgaria, Romania, Hungary[30] and the Soviet Union.[31] Other member states pressed for action on sex discrimination: the Economic and Social Council (ECOSOC) voted to create the Commission on the Status of Women (ECOSOC, 1946), and the General Assembly urged states to grant political rights to women.[32] In 1949, the General Assembly declared that measures taken by the Soviet Union to prevent the wives of citizens of other nationalities to leave in order to join their husbands was not in conformity with the UN Charter.[33] In 1959, 1961 and 1965, the General Assembly condemned violations of human rights in Tibet.[34] By the 1980s, the General Assembly was taking up human rights violations in Kampuchea,[35] Guatemala,[36] Chile,[37] El Salvador[38] and Afghanistan.[39] Indeed, human rights issues have always been on the agenda of the General Assembly, its committees or ECOSOC.

In sum, the focus of condemnation has been on gross violations of core civil and political rights, particularly in the colonial context or when racial discrimination has been at issue.[40] No state has been condemned for economic deprivations. It must be kept in mind, however, that these are not the policies of the UN, but of its members. They choose to raise or not to raise the issue of human rights violations in other countries for a variety of reasons, including domestic politics, ideological differences, strategic interests and, on occasion, altruism. States that are targets of censure often cry 'double standard' where in earlier years they would have

[28] See GA Res. 44(I), at 69, UN Doc. A/64/Add.1, 8 December 1946. The issue of South Africa's racial policies remained on the agenda of the UN in every session until the end of apartheid.

[29] GA Res. 96 (I), at 188–89, UN Doc. A/64/Add.1, 11 December 1946.

[30] Australia and Bolivia requested that the General Assembly consider the question of the observance of human rights and fundamental freedoms, including religious and civil liberties, in Bulgaria and Hungary. See UN GAOR, 3d Sess., Annex, at 31, UN Doc. A/820, 16 March 1949; UN GAOR 3d Sess., Annex, at 31–32, UN Doc. A/821, 19 March 1949; UN GAOR, 3d Sess., Annex, at 35–36, UN Doc. A/829, 9 April 1949. The General Assembly took up human rights in all three countries during its fourth session. See UN Res. 294(V) adopted 22 October 1949, UN GAORFourth Session, 235th plenary, UN Doc A/RES/294/IV.

[31] GA Res. 285 (III), at 34, UN Doc. A/900, 25 April 1949.

[32] GA Res. 56 (I), at 90, UN Doc. A/64/Add.1, 11 December 1946.

[33] See GA Res. 285 (III); Bailey (1992); Cassese (1992).

[34] GA Res. 1353 (XIV), at 61, UN Doc. A/4354, 21 October 1959; GA Res. 4723 (XVI), at 66, UN Doc. A/5100, 20 December 1961; GA Res. 2079 (XX), at 3, UN Doc. A/6014, 18 December 1965.

[35] GA Res. 38/3, at 14, UN Doc. A/RES/38/3, 27 October 1983.

[36] GA Res. 38/100, at 203, UN Doc. A/RES/38/100, 16 December 1983.

[37] GA Res. 38/102, at 205, UN Doc. A/RES/38/102, 16 December 1983.

[38] GA Res. 38/101, at 204, UN Doc. A/RES/38/101, 16 December 1983.

[39] GA Res. 37/37, at 25, UN Doc. A/RES/37/37, 29 November 1982.

[40] See UN ESCOR, 7th Sess., 2d mtg at 2, UN Doc. E/C.12/1992/SR.2, 13 April 1993 (criticizing the emphasis on civil and political rights).

invoked 'exclusive domestic jurisdiction'. States lobby to find supporters in order to avoid censure. States learn to use the system.[41]

If states are reluctant to complain of human rights violations by others in the club, victims and their representatives have no such reticence. But until 1959, the UN received and considered only petitions from non-self-governing territories;[42] other claims of violations were met with silence.[43] ECOSOC began to open the door more widely with a resolution that permitted the UN Human Rights Commission to review summaries of communications received by the UN Secretary-General about human rights violations.[44] The resolution, however, denied the Commission the power to take any action.[45] After a controversial 1966 ICJ judgment concerning South Africa,[46] ECOSOC changed its mind. In 1967, with Resolution 1235, it approved the Commission adding a new agenda item, 'Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories'.[47] There was no doubt about the focus of attention, because the resolution expressly mentioned South Africa and Southern Rhodesia.[48] The resolution also authorized the Commission and Sub-Commission to examine information relevant to gross violations of human rights.[49] The Commission could then 'in appropriate cases, and after careful consideration ... make a thorough study of situations which reveal a consistent pattern

[41] See Kent (1999, pp. 49–83) (arguing that China used its political and economic power to defeat efforts to condemn its human rights record at the UN).HuH

[42] Article 87(b) of the UN Charter provides that the Trusteeship Council has authority to accept and examine petitions concerning trust territories. UN Charter art. 87(b). The last trusteeship terminated in 1994 and the Council no longer meets regularly. Letter from the President of the Trusteeship Council to the President of the Sec. Council, UN Doc. S/1994/1234, 3 November 1994. In 1961, the General Assembly created the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. GA Res. 1654 (XVI), UN Doc. A/RES/1654(XVI), 27 November 1961. The Special Committee may receive petitions from individuals and groups and, with the permission of the administering state, conduct on-site visits to territories. See Department of Public Information (2005). Sixteen non-self-governing territories remain within its mandate. General Assembly (2007).

[43] It is estimated that in the 1940s and 1950s, some 20,000 human rights complaints a year were received at the UN (Alston, 1992, pp. 126, 146). In 1948, the 'paradox' of individuals in trusteeships having the right to petition, while those in the administering territories lacked the right, was noted during discussions in the General Assembly's Third Committee. See Carey (1966, p. 792) (citing UN GAOR, 3d Sess., 3d Comm. at 699, UN Doc. A/C.3/SR.158 (1948)).

[44] ECOSOC, Res. 728F, ¶¶ 1–2, UN Doc. E/3290, 30 July 1959.

[45] ECOSOC, Res. 728F, ¶¶ 1–2, UN Doc. E/3290, 30 July 1959.

[46] South West Africa Cases (*Eth.* v. *S. Afr.*; *Liber.* v. *S. Afr.*) (Second Phase), 1966 ICJ 4 (18 July). The court was evenly divided, and its president cast a deciding vote to reject the claims against South Africa because Ethiopia and Liberia lacked standing. 1966 ICJ 4 (18 July) at 49. This decision effectively terminated the litigation and allowed South Africa to escape condemnation on the merits.

[47] ECOSOC Res. 1235, UN Doc. E/4393, 6 June 1967.

[48] ECOSOC Res. 1235, UN Doc. E/4393, 6 June 1967, ¶ 2.

[49] ECOSOC Res. 1235, UN Doc. E/4393, 6 June 1967.

of violations of human rights, as exemplified by ... apartheid ... and racial discrimination' and report and make recommendations to ECOSOC.[50]

Pursuant to Resolution 1235, the Commission began to examine southern Africa and the territories occupied by Israel during and after the 1967 war (Alston, 1992, p. 157). Chile, after the 11 September 1973 military coup, became the first situation on the agenda that was not part of what the majority of the Commission considered to be colonialism (Alston, 1992, p. 158). Each case was taken up on the understanding that it would not create a precedent for broader human rights investigations (Alston, 1992, p. 158). By the end of the decade, however, pressure from NGOs and the human rights initiatives of the Carter administration caused the procedure to be opened up (Alston, 1992, p. 158). As of the creation of the Human Rights Council in 2006, the Commission had under study 14 countries: Belarus; Burundi; Cambodia; Cuba; Democratic Republic of Korea; Democratic Republic of Congo; Haiti; Iran; Liberia; Myanmar; the Israeli-occupied territories; Somalia; Sudan; and Uzbekistan (UN Commission on Human Rights, 2006, pp. 1–2). Three of these states, Belarus, Korea and Iran, were condemned by the General Assembly for human rights violations in December 2006.[51] Few would argue that these states did not deserve to be censured. Many other countries are addressed by the thematic rapporteurs and working groups that the Commission authorized and the Council has maintained.[52]

In 1970, ECOSOC further expanded the process when it adopted Resolution 1503 (XLVIII),[53] which finally authorized the Commission and Sub-Commission to examine communications submitted to the UN.[54] Numerous restrictions were placed on this limited petition procedure: the examination had to be taken in closed session;[55] the consideration was limited to situations that appeared to reveal a consistent pattern of gross and reliably attested violations of human rights;[56] no hearings or redress were afforded the petitioner; and the outcome was limited to a thorough study or an investigation 'with the express consent of the state concerned'.[57]

Although the origins of the approval stemmed from efforts to combat colonialism and racism in Southern Africa,[58] other victims of widespread violations began filing complaints. It is noteworthy that the Sub-Commission had no independent authority to identify violators, but

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[50] ECOSOC Res. 1235, UN Doc. E/4393, 6 June 1967, ¶ 3.

[51] General Assembly (2006) (summarizing General Assembly Resolutions 61/174, 61/175, and 61/176).

[52] See generally 'A United Nations Priority – United Nations Human Rights Monitoring Mechanisms', at: http://www.un.org/rights/HRToday/hrmm.htm (last visited 19 March 2007). The rapporteurs and members of the working groups serve in their individual capacities ('A United Nations Priority – United Nations Human Rights Monitoring Mechanisms').

[53] ECOSOC Res. 1503, UN Doc. E/4832/Add.1, 27 May 1970.

[54] ECOSOC Res. 1503, UN Doc. E/4832/Add.1, 27 May 1970.

[55] ECOSOC Res. 1503, UN Doc. E/4832/Add.1, 27 May 1970.

[56] ECOSOC Res. 1503, UN Doc. E/4832/Add.1, 27 May 1970, ¶ 1.

[57] ECOSOC Res. 1503, UN Doc. E/4832/Add.1, 27 May 1970, ¶ 7(a). The procedure was revised in 2000 to reduce the role of the independent Sub-Commission and enhance the role of the political Commission. ECOSOC Res. 2000/3, UN Doc. E/2000/99, 16 June 2000.

[58] See Alston (1992, pp. 143–44) (describing how international efforts to eliminate South Africa's colonialism and racism in the 1960s led ECOSOC to adopt Resolution 1503).

depended on the communications brought to it.[59] Despite the secrecy enjoined by ECOSOC, the names of the targeted countries quickly became public (Alston, 1992, p. 148). In 1972, Greece, Iran and Portugal were referred to the Sub-Commission, which very cautiously referred them back to the working group because their governments had not replied (Alston, 1992, pp. 148–49). In addition, the Sub-Commission members probably noted that although Portugal was a colonial power, as the original sponsors of the resolution intended, the other two cases concerned widespread violations by a type of dictatorial government common throughout the world (Alston, 1992, p. 148). This made the procedure potentially dangerous to many states. Nonetheless, the following year, the Sub-Commission found the courage to refer eight countries to the Commission: Brazil; Britain; Burundi; Guyana; Indonesia; Iran; Portugal; and Tanzania (Tolley, 1987, pp. 77, 128). The confidentiality of the procedure precludes public knowledge about the existence of communications alleging widespread violations against other countries; they may have been absent from the list because no communications had been filed. Despite the evidence reported by the Sub-Commission, the Commission took no action on any of the countries.

The Resolution 1503 procedure thus began slowly, but by 2005 it had resulted in the examination of 84 countries in all regions of the world (Commission on Human Rights, no date). Nonetheless, political considerations kept several major cases off the Commission's agenda, despite referrals from the Sub-Commission.[60] The procedure is hampered by the fact that it ends up before a political body, by the length of time it takes to obtain results and by the limited options for responding when systematic violations are found. This does not mean that the procedure lacks standards or that it has a double standard. Both Resolution 1235 and Resolution 1503 are clear on the threshold for action: gross and systematic violations of internationally guaranteed human rights. This threshold reflects a decision by the UN member states to set the standard for what constitutes a material breach of the UN Charter. It is the application of the standard in a political context that is the root of the problem.

The first UN human rights treaty containing a petition process, CERD, required a separate declaration by states parties to accept the procedure set forth in article 14.[61] The ICCPR, adopted one year later, was even less accepting of petitions in that it included the possibility of individual 'communications' in an Optional Protocol requiring separate ratification.[62] The independent Human Rights Committee has jurisdiction to receive communications from victims against a state that has accepted both the treaty and the protocol, but its action is limited to reviewing the written record and issuing 'views'.[63] Many UN treaties were initially adopted

[59] ECOSOC Res. 1503, UN Doc. E/4832/Add.1, 27 May 1970, ¶ 1.

[60] The most notorious case is probably that of Uganda under President Idi Amin. Between 1974 and 1978, the Sub-Commission placed the case on the Commission's agenda, but no action was taken. See Alston (1992, p. 149). By the time the Commission decided to act and send a confidential envoy, Amin had been overthrown (Alston, 1992).

[61] International Convention on the Elimination of All forms of Racial Discrimination (CERD), 7 March 1966, 660 UNTS 195, art. 14.

[62] Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) art. 2, GA Res. 2200 (XXI), at 59, UN Doc. A/RES/2200(XXI), 16 December 1966.

[63] Optional Protocol to the ICCPR art. 5.