

THE IMPORTANCE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IN THE PAST AND FUTURE OF THE UNITED NATION'S HUMAN RIGHTS EFFORTS

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I. INTRODUCTION

After fifty years since the adoption of the Universal Declaration of Human Rights [hereinafter UDHR] it is legitimate to ask whether the UDHR is at the root of all the positive international action in the last five decades. At the root of these developments were, of course, the suffering and the struggles of people. But, the UDHR was a breakthrough and a revolution in international relations and has remained a continuing source of inspiration since 1948. It is a living document in United Nations practice, by now part of international customary law. The United Nations has, through its history, held countries responsible under the high standards of the UDHR, whether they were United Nations member states or not. International human rights standards drafted subsequently had to keep in line with and always draw inspiration from the UDHR. And, yes, in a certain sense we believe that from the UDHR sprang the *by now expanded* net of human rights mechanisms for the promotion and protection of human

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rights, including the institution of the United Nations' High Commissioner for Human Rights.

II. EVALUATION: A HUMBLING PROCESS

The Fiftieth Anniversary of the UDHR we commemorate this year is a unique opportunity for us to evaluate what has been achieved for human rights at the international, regional, national, and local level. The High Commissioner for Human Rights, Mrs. Mary Robinson, has cautioned us to be modest in this evaluation, as, in her words, the results of action on human rights are often quite underwhelming.

Throughout these fifty years, the development of human rights protection mechanisms at the United Nations has been inextricably linked with the organization's efforts to promote human rights. The two approaches have been mutually reinforcing and have created strong human rights constituencies. This process itself has gradually *de facto* depoliticized and enhanced the international mechanisms in the area of human rights.

Today, I will divide my comments into five parts and give the historical perspective of the past half-century. I will first speak about the human rights treaties and treaty-based mechanisms and their significance in the protection and promotion of human rights. I will then refer to the extra-conventional system of protection of human rights. Thirdly, I will refer to the contribution of the World Conference on Human Rights in 1993, which deals with the protection and promotion of human rights. Fourthly, I will speak of the United Nations human rights field presence and their contribution, as well as the recent efforts to integrate human rights in the areas of peace and security, humanitarian issues, and development. Finally, I will outline some of the main challenges ahead in protecting and promoting human rights.

III. TREATY-BASED SYSTEM OF PROTECTION AND PROMOTION OF HUMAN RIGHTS

After the adoption of the Universal Declaration of Human Rights, the United Nations faced the challenge of preparing binding international human rights instruments. One day before the adoption of the Universal Declaration, on December 9, 1948, the General Assembly had already adopted the first binding United Nations Human Rights treaty, the Convention Against Genocide, whose fiftieth anniversary we commemorate this year. The ascending Cold War ideological rift between civil and political rights, on the one hand, and economic, social and cultural rights on the other, had found a happy solution in the inclusion of both families of rights in one unified document, the UDHR; partly thanks to the overwhelming momentum after the tragedies of World War II, and partly thanks to the leadership of Eleanor Roosevelt and others. Yet, this dichotomy was not avoided when it became obvious during the subsequent

two decades that the polarized world around the table was not ready to allow the same fusion when preparing a binding legal instrument. Thus in 1966, the United Nations adopted the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its Optional Protocol. The year before, the United Nations had adopted the Convention on the Elimination of All Forms of Racial Discrimination. These three treaties established the first three human rights monitoring mechanisms in the form of *treaty bodies*, as this type of mechanism is now called, thus correcting what the anti-genocide Convention clearly lacked.

The first treaty bodies were later joined by others and to date there have been three subsequent human rights treaties: The Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Degrading Treatment or Punishment and the Convention on the Rights of the Child.

The Human Rights Committee, the treaty body under the Covenant on Civil and Political Rights, the Committee Against Racial Discrimination (CERD) and the Committee Against Torture (CAT) also examine individual complaints that are submitted, respectively, under the Optional Protocol to the Covenant, Optional Article 14 of the Anti-Racism Convention and Article 22 of the Anti-Torture Convention. Under the above-mentioned treaties, the treaty bodies are expected to make general comments as well, a task which during the Cold War era precluded any formal value judgments or conclusions by the treaty bodies regarding the performance of specific governments after the examination of their reports. The general comments thus consisted of authoritative interpretations by the treaty bodies of the articles of the human rights treaties. This however, changed in the early 1990's as the treaty bodies, one after the other, in addition to adopting interpretative statements to the articles of the conventions, also started the practice of adopting conclusions and recommendations after examining the specific country reports. This, and the increasing acceptance of the role of NGO's as information providers to the treaty bodies, has resulted in an objective system of treaty monitoring. The system has been further strengthened by the adoption of some innovative working methods, including the request for extraordinary or supplementary reports from governments, if circumstances so require, and especially by the linkage between technical assistance and the areas of weakness identified in each country by the treaty bodies. The latter approach, initiated by the Committee on the Rights of the Child, is a fundamental step in the operationalization of human rights. Not only is the United Nation's Programme of Technical Cooperation in the Field of Human Rights expected to respond to areas identified by the treaty bodies, but also other parts of the United Nations are gradually expected to do so.

IV. EXTRA-CONVENTIONAL SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

The original words in Article 1 of the United Nation's Charter setting as one of the United Nation's aims the promotion of human rights, were restrictively interpreted for two and a half decades by the Commission on Human Rights. *Promotion* was definitely seen as softer by comparison to *protection* and, in a polarized ideological environment, the United Nation's Commission on Human Rights had no power to establish any monitoring mechanisms that were protective of human rights.

The breakthrough came in the late 1960's when the situation in southern Africa allowed the Commission to gather a majority view for the creation of the Ad Hoc Working Group on Southern Africa, a group in charge of monitoring the situation in that part of the world. At the same time, the Commission was able to gather adequate political will to establish a procedure for considering, on a confidential basis, gross and systematic violations of human rights in specific countries based on information received from victims, NGO's and others. This procedure became known as "1503 procedure" from the number of the resolution of the Economic and Social Council which established it.

From that time on, the non-governmental actors received official standing at the Commission on Human Rights in that they became recognized information providers about human rights violations. It was quite significant for the United Nations that, virtually during the same period in the late 1960's, the Economic and Social Council officially adopted a procedure that was valid not only in the human rights area, but in the whole economic and social area, of granting consultative status to non-governmental organizations. This procedure, which has been significantly expanded since the global United Nation's conferences of the 1990's, has allowed the significant input of civil society in the development of international human rights norms and mechanisms.

I would also argue that the very recognition of such consultative status for NGO's was obviously a result of the rising strength and significance of the non-governmental part of society and of powerful movements against colonialism, and for democracy and human rights.

These first mechanisms of human rights monitoring and protection were soon followed by the Working Group on Chile in 1974, after the coup against Allende, and, in the late 1970's, by the Working Group on Enforced or Involuntary Disappearances. The 1980's and 1990's were characterized by the establishment of a series of protection mechanisms, both country-specific and thematic. There are, in 1998, seventeen thematic mandates: enforced or involuntary disappearances; arbitrary detention; summary or arbitrary executions; independence of judges and lawyers; torture and cruel, inhuman or degrading treatment or punishment; internally displaced persons; religious intolerance; use of mercenaries as a means of impeding the right to self-determination; freedom of opinion and

expression; racism, racial discrimination and xenophobia; sale of children, child prostitution and child pornography; violence against women; effects of toxic and dangerous products on the enjoyment of human rights; protection of children affected by armed conflict; impact of external debt on human rights; the right to education; the right to development; and fifteen country-specific mandates.

Thousands of complaints are processed by the United Nations under these procedures every year. The methods of work of the Commission's Special Rapporteurs/Representatives and Working Groups consist in collecting and analysing information received by individuals, non-governmental organizations, church groups, opposition groups, and others, conducting country visits, sending urgent action appeals to governments on individual cases, and presenting public reports annually to the Commission on Human Rights and, in many cases, to the General Assembly, with specific conclusions and recommendations.

This methodology of the United Nation's extra-conventional human rights procedures allows for a considerable depoliticization of human rights mechanisms. Thus it is not necessary for the Commission on Human Rights to adopt a specific resolution on a country for this country to appear in the reports of the thematic mechanisms of the Commission, on the basis of information received from NGO's and others.

V. THE CONTRIBUTION OF THE WORLD CONFERENCE ON HUMAN RIGHTS

I will highlight nine main consensus proclamations at the World Conference on Human Rights in 1993 as having added in a significant way to the international protection and promotion mechanisms of human rights:

(1) The universality of human rights: human rights are a legitimate concern of the international community; all human rights must be respected including civil, cultural, economic, political, social; human rights are interrelated and interdependent (forty-five years after the adoption of the UDHR the world came to again view human rights holistically); all states, irrespective of their regional, cultural or political particularities, must respect internationally recognized human rights; call for the universal ratification of human rights treaties;

(2) The right to development is part of fundamental human rights and the High Commissioner for Human Rights, established at the end of 1993 at the admonition of the World Conference, is to promote the right to development, along with the other human rights;

(3) Women's rights are human rights and must be fully integrated in the work of the human rights protection procedures; violence

against women, whether in the public or private sphere, is a human rights issue and states must eliminate cultural or religious practices which violate the human rights of women;

(4) Human rights are linked with peace and thus should be integrated *as appropriate* in United Nations peacekeeping operations;

(5) Development, democracy and human rights are inextricably linked;

(6) Human rights institutions must be strengthened and the United Nations should provide comprehensive assistance in this respect. Human rights education is crucial and the United Nations should proclaim a Decade for Human Rights Education (the General Assembly did so in 1993);

(7) The General Assembly was called upon to consider the establishment of a High Commissioner for Human Rights and did so in 1993, thus adding to the system of protection and promotion of human rights;

(8) The international community was called upon to expedite the establishment of an International Criminal Court; and

(9) The United Nations should substantively increase its resources for human rights.

VI. HUMAN RIGHTS FIELD PRESENCE AND THE INTEGRATION OF HUMAN RIGHTS IN ALL RELEVANT AREAS OF INTERNATIONAL WORK

The peace and human rights areas of the Organization have had an uneasy relation over the decades, with members of the Security Council generally skeptical to formally recognize a role for the Council to intervene and protect human rights. This however, has not been absolute and in the last few years the Council was able to recognize such a role. South Africa's Apartheid and the protection of the Kurds in Iraq are two examples.

Since the 1993 World Conference on Human Rights and with the establishment of the post of High Commissioner for Human Rights in 1994, the operationalisation of human rights in the field has taken on a new meaning. The rapidly growing number of human rights field presences (including operations and offices), from zero in 1991 to twenty-two in 1998 speaks for itself. It is a clear indication that states are encouraging each other to refrain from committing human rights violations and that, if violations persist, the international community is ready to reach out and

witness, through the eyes of independent monitors, any situation which would endanger internationally accepted standards of human rights.

Such field presences which are established with the agreement of the country concerned, represent yet another way of ensuring compliance with international human rights standards by governments. There are several types of human rights field operations, offices and presences. Field operations may have technical cooperation components which provide assistance in revising national legislations, establishing national human rights institutions or training of police, judges and prosecutors, and/or monitoring components, by which human rights monitors observe the situation of human rights in the country. Frequently, the presence involves international human rights monitors, whether they report directly to the High Commissioner for Human Rights or to a special rapporteur mandated by the Commission on Human Rights to study the situation in the country concerned.

Human rights field presences have had a positive effect in the 1990's, including in the prevention of conflict.

The provision of technical assistance in the field of human rights has been another concrete way in which to operationalise human rights. The Office of the High Commissioner has been increasing its activities at a national level, providing assistance in training law enforcement officials, revising national legislation or reforming the justice system, with a view to creating strong national structures which both support and monitor the actions of this state.

In addition to human rights field activities carried out by the Office of the High Commissioner for Human Rights directly, as a result of the Secretary-General's reform proposal for the mainstreaming of human rights throughout the system, many other United Nations bodies and agencies also "do human rights." In effect, the integration of human rights in all relevant aspects of the work of the United Nations system has become one of the main tasks of the High Commissioner and her Office. It is encouraging to note that, for example, memoranda of understanding have been signed with the United Nations Development Programme (UNDP) and the United Nations Population Fund (UNFPA), in order to concretely pave the way for human rights in development and population activities. A growing trend in the field of United Nations activities in promoting development is the move towards a *rights-based approach*, currently pioneered by UNICEF.

Another prime example of operationalising human rights is the inclusion of human rights components within the United Nations' peacekeeping mission. These missions have increasingly complex and multidimensional characters, which may include civil affairs, humanitarian, political, as well as human rights components.

Gender and human rights are now the two cross-cutting themes in the four Executive Committees established by the Secretary-General which have been functioning since April 1997: the Executive Committee on Peace

and Security, the Executive Committee of the United Nations Development Group, the Executive Committee on Humanitarian Affairs and the Executive Committee on Economic and Social Affairs.

The right to development is a high priority of the High Commissioner and recently the EC-UNDG decided to establish a Working Group on the Right to Development in order mainly to incorporate this right in the UN Development Assistance Framework (UNDAF).

VII. SOME OF THE MAIN CHALLENGES IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

I will outline six major challenges:

- (1) The implementation of international human rights norms starting from the UDHR remains the paramount core challenge.
- (2) The full integration of economic and social rights in the UN's human rights mechanisms and in all countries' approach to human rights.
- (3) The full integration of the human rights of women in the international human rights mechanisms of protection and promotion.
- (4) The integration of human rights in the peace and security areas of the United Nations, as well as regionally and nationally, remains a major challenge.
- (5) The extremely urgent challenge of making private economic actors accountable for the violation of human rights needs to be addressed in the present climate of globalization of the economy. Today, we can't speak about human rights without addressing globalization, the weakening of the state, and the accountability of non-State actors.
- (6) Finally, I believe that in the same way that human rights movements around the world worked for the development of international human rights mechanisms that now stand on their own, irrespective of the surrounding ideological trends, civil society must continue being mobilized for the defense of human rights. Without solid constituencies, even strong institutions fall in disarray and wither away. Human rights education, in the broadest sense of the term, must systematically penetrate each society, whether at school, in the community, in the family, in professional settings or otherwise. The creation of a human rights culture in which everybody participates, beyond divisive

ideologies, is the ultimate guarantor of human rights and of the vision of the UDHR.