| Chapter 3 |

Human Rights Protection in the UN: A General and Institutional Overview (The Former Commission on Human Rights, Human Rights Council, High Commissioner for Human Rights, the International Court of Justice and the Protection of Human Rights)

István Lakatos

ABSTRACT

This chapter provides an overview of the role of human rights within the UN Charter, in view of the political motivations of the organisation's founders. In connection with the creation of the United Nations, it also explores the human rights vision of renowned French jurist René Cassin, particularly his concept of "limited sovereignty." The majority of the chapter is dedicated to a detailed analysis of the work of the UN's most prominent intergovernmental human rights body, the Human Rights Council, which replaced the Commission on Human Rights in 2006. Understanding the Human Rights Council's work is challenging without first exploring the context of the Commission on Human Rights, its predecessor, and its operation during the Cold War. Given the critical role of the UN High Commissioner for Human Rights since 1994 in supporting the UN human rights system, the chapter outlines the establishment and function of the High Commissioner's mandate, highlighting the main political characteristics of the nine High Commissioners to date. The final section addresses a less frequently discussed topic: the human rights aspects of the International Court of Justice's work.

KEYWORDS

UN Human Rights Council, UN Commission on Human Rights, UN High Commissioner for Human Rights, International Court of Justice, René Cassin, UN Charter

1. The Protection of Human Rights Provided under the UN Charter

There were high hopes that human rights would be prominently features in the outcome document of the 1944 Dumbarton Oaks Conference, which served as the draft for the UN Charter. Unfortunately, these expectations were not realised, as the

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draft included only an "incidental reference" to human rights. This limited reference was a result of the Russian and British delegations refusal to agree to anything more substantial. 'The emphasis was on determining the relations between large and small states and the rules to govern their representation and voting in various governing bodies. There was a tendency to avoid the problem of human rights.'[1]

At the same time, President Franklin D. Roosevelt enlisted foreign affairs experts to assist the US State Department Delegation during the San Francisco Conference, which was tasked with drafting the United Nations Charter. As a result, 42 American NGOs were invited to send a consultant to the US delegation. Prior to the conference, the American Jewish Committee commissioned renowned British scholar Hersch Lauterpacht to prepare a study titled *An International Bill of the Rights of Man*. This led to a declaration signed by over 1,300 distinguished Americans advocating for an International Bill of Rights. As the deadline for submitting amendments to the Charter approached, a small group of American NGOs drafted a memorandum for the US delegation, which included four specific proposals: adding human rights as a purpose of the organisation, incorporating respect for human rights into the principles section of the Charter, adding human rights to the General Assembly's functions, and ensuring the mention of the Commission on Human Rights in the Charter. Ultimately, Washington reached an agreement with the other members of the "Big Four" (Britain, the Soviet Union, and China) to propose amendments that aligned with the spirit of the consultants' suggestions. In conclusion, the inclusion of human rights in the UN Charter and their formal recognition as a legitimate international concern was largely the result of effective NGO advocacy.[2]

Despite the eventual inclusion of human rights in the UN Charter, the document is not primarily focused on human rights. Nevertheless, it contains nine provisions that explicitly or implicitly refer to them. Among the eight direct references, the first appears in the second paragraph of the *Preamble*, where the peoples of the United Nations reaffirm their 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women(...)'.

The aim of the Preamble is to explain the philosophy and purpose of the whole Charter, so the pivotal role of human rights in the Preamble accords a great significance to this issue, acknowledged by the international community. The inclusion of human rights in the Preamble is symbolic and aspirational. It frames the entire Charter with a normative commitment to human dignity and equality, but it does not in itself impose binding obligations. Nevertheless, its rhetorical force shaped the post-1945 international consensus on the moral centrality of human rights in global governance.

The second explicit reference appears in Article 1(3), which defines one of the core purposes of the UN as 'to achieve international co-operation (...) in promoting and

1 Cohen, 1949, pp. 430–431.
2 Gaer, 2020, p. 2.

encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'.

This provision is significant in that it introduces the principle of universality of human rights and explicitly links human rights to non-discrimination.[3] It represents the first articulation in international treaty law of the notion that human rights are not confined to national jurisdictions but are a matter of international concern. However, the article remains programmatic rather than prescriptive, lacking enforcement mechanisms or detailed obligations.

Article 13(1)(b) outlines one of the functions of the General Assembly, namely to 'initiate studies and make recommendations for the purpose of (...) assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.

This article provides the General Assembly with a soft-law mechanism to shape the human rights agenda, through studies and recommendations. It reinforces the UN's role as a norm entrepreneur, yet it does not empower the Assembly to impose binding legal obligations on states, underscoring the consultative and cooperative nature of early UN human rights action.

Article 55, in the context of international economic and social cooperation, states that the United Nations shall promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'.

Article 55 is a cornerstone in articulating the link between peace, development, and human rights. By tying the promotion of human rights to the broader goal of international stability, the article anticipates the idea that rights are integral to peace-building. Yet, its effectiveness depends on state cooperation, which was deliberately left voluntary, as evidenced by the wording of the related Article 56, where Member States merely "pledge" to cooperate toward this goal. While this appears to be a commitment, the term "pledge" is non-binding and lacks any mechanism for accountability or review. It reflects the political compromise at San Francisco: to recognise human rights as an international goal while avoiding direct intervention in domestic affairs.

Article 62(2) grants the Economic and Social Council (ECOSOC) the authority to 'make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all'. This article institutionalises human rights as part of the UN's economic and social agenda, empowering ECOSOC to play a coordination role. It laid the groundwork for later institutional development, but again, the Council's role is recommendatory, not supervisory.

From a practical standpoint, Article 68 is one of the most consequential human rights provisions, as it authorises ECOSOC to 'set up commissions (...) for the promotion of human rights'. Based on this article, the Commission on Human Rights was established in 1946.

3 Zakariah, 2017, p. 186.

Article 68 has had enduring institutional consequences. It allowed for the creation of the Commission (and later, the Human Rights Council), thus facilitating the development of a UN human rights architecture. It demonstrates how a procedural provision can have transformative long-term effects, even if it was not framed as a substantive human rights guarantee.

The final explicit reference is found in Article 76(c), related to the UN Trusteeship System, which lists among its basic objectives: 'to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'.

This article applies human rights language to non-self-governing territories, reflecting the growing discourse of self-determination and the gradual shift toward decolonisation. However, it also exposes the paradox of colonial powers overseeing trusteeships while committing to human rights, highlighting the tension between imperial interests and universalist ideals.

In addition to these explicit references, the Charter contains several implicit references to human rights. Article 8, for example, provides that the UN 'shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality (...)'. Though not framed in human rights terms, Article 8 affirms the principle of gender equality in UN staffing and participation, offering an early recognition of equal access to public service as a right-like guarantee.

Article 10 allows the General Assembly to 'discuss any questions or matters within the scope of the present Charter,' thereby enabling deliberation on human rights issues. This article outlines the role of the United Nations General Assembly (UNGA) as a global forum for debates on human rights, despite lacking enforcement authority. The broad scope of its mandate has made it possible for the Assembly to serve as a platform for naming and shaming and norm diffusion throughout the Cold War and beyond.

Finally, Article 2(7), which states that 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state,' reveals the Charter's most fundamental constraint regarding human rights. Article 2(7) reflects the principle of state sovereignty and constitutes a significant legal and political limitation on UN human rights action. Although exceptions exist in cases of threats to peace under Article 39, this safeguard has historically been invoked cautiously. The Charter thus reflects a delicate balance between the protection of state sovereignty and the promotion of universal rights – a tension that remains central to international human rights law today.

1.1. Conclusion

In conclusion, the UN Charter laid the foundational framework for the development of international human rights norms but stopped short of defining or enforcing them. The references to human rights are mostly declaratory, designed to express international ideals without constraining state sovereignty. In light of the post-WWII context and the composition of the founding members – including colonial powers

and states with poor domestic rights records – this was a strategic compromise.[4] Nonetheless, these initial provisions became the legal and political springboard for later developments, including the Universal Declaration of Human Rights and the core human rights treaties. The Charter's human rights clauses must be understood both as reflective of their time and as generative norms that catalysed the evolution of modern human rights law.

In summing up the discussion on the legal (obligatory) nature of the human rights provisions in the UN Charter, it can be stated that while Article 2(7) effectively limits the enforceability of these provisions by prohibiting interference in matters essentially within the domestic jurisdiction of states, positive human rights obligations can nevertheless be inferred from Articles 55(c) and 56. These articles reflect a commitment by Member States to cooperate with the United Nations in promoting universal respect for, and observance of, human rights and fundamental freedoms.

At the time of the Charter's adoption, the drafters clearly prioritised the principle of state sovereignty, agreeing that any external interference in the domestic affairs of a state would be inadmissible under international law.[5] This foundational compromise explains the cautious and often inconsistent approach that Member States have taken toward human rights in the Charter's early implementation. As a result, the human rights-related provisions of the Charter remained broad in scope and focused more on the promotion of human rights than on their protection or enforcement.

Notably, key parts of the Charter – particularly Chapters VI and VII, which deal with the peaceful settlement of disputes and enforcement measures – contain no explicit reference to human rights.[6] This omission underscores the limited role human rights played in the operational mechanisms of international peace and security at that time.

However, the Charter's repeated references to human rights – especially in the Preamble and Articles 1, 55, and 56 – undeniably elevated the normative status of human rights in international law. Over time, these provisions helped shift human rights from a purely domestic concern to a matter of legitimate international interest, laying the foundation for the development of a legally binding international human rights framework under the auspices of the United Nations, including instruments such as the Universal Declaration of Human Rights and the core UN human rights treaties.

4 Ibid., p. 193.
5 Ibid., p. 196.
6 Schrijver, 2007, p. 82.

2. René Cassin's Concept and Vision about the International Protection of Human Rights

The emergence of the modern concept of human rights cannot be discussed without acknowledging René Cassin, the renowned French jurist and co-author of the Universal Declaration of Human Rights. In 1968, he was awarded the Nobel Peace Prize 'for his struggle to ensure the rights of man as outlined in the UN Declaration'.[7] Cassin proposed the creation of a position of an Attorney-General for Human Rights,[8] which could have been a precursor to the role of the UN High Commissioner for Human Rights. He also believed the Commission on Human Rights should have the authority to investigate individual complaints. His proposal suggested that individuals or states dissatisfied with the outcome of a petition to the Commission could appeal to the Court of Human Rights, with the Attorney-General assisting the complainant.[9] However, at the time, the international community was not ready to embrace such innovations.

Cassin's concept on human rights was already influenced by different intellectual circles in the 1920s. He started to work in the League of Nations in 1924 and became part of a team of jurists that formulated far-reaching critique about the original concept of absolute state sovereignty. There were two main platforms, the University Institute of Advanced International Studies in Geneva and the Hague Academy of International Law, where the above-mentioned experts criticised the current concept of state sovereignty, which completely ignored the individuals. Their idea was a "limited sovereignty", or a "sovereignty limited by international law".[10] He put together the right of domicile and the right of nationality, claiming that nationality is not the only and primary bond among members of a nation. To put domicile over nationality is one of the main tools to defend vulnerable groups from nationalist movements. He was of the view that 'the principle of nationality has exhausted its beneficial effects and has become a germ of doctrines destructive to the international community and oppressive to the individual'.[11] In light of the Nazi aggression and the Soviet war in Finland, he started to use the term of "the Leviathan state". He believed that the only viable way to address this phenomenon was for the Allies to engage in war for the defence of human rights. That was one of the main reasons to propose the creation of a "Universal declaration of the rights of the human person".[12] In conclusion, René Cassin was convinced that it was the problem of sovereignty which was one of the main causes of the failure of the League of Nations, and therefore there was a

7 See more: The Nobel Peace Prize [Online]. Available at: https://www.nobelprize.org/prizes/peace/1968/summary/ (Accessed: 10 June 2025).
8 Thérien and Joly, 2014, p. 389.
9 Hobbins, 2001, p. 41.
10 Winter and Prost, 2013, pp. 222–224.
11 Ibid., p. 226.
12 Ibid., p. 227.

need to create the constraints for state power. Not surprisingly, the term "state" only appears three times in the Universal Declaration of Human Rights as it focuses on the inherent rights we all share.

3. The Former United Nations Commission on Human Rights

3.1. Establishment of the United Nations Commission on Human Rights

In line with Article 68 of the UN Charter,[13] ECOSOC established a preparatory committee composed of nine highly qualified and experienced individuals, led by Eleanor Roosevelt, a former First Lady and prominent human rights advocate.[14] As the U.S. representative, Roosevelt served as the chair of the Commission on Human Rights (CHR) for its first six years.[15] René Cassin was also member of that preparatory committee. Considering the tension between the international promotion and protection of human rights, as outlined in Article 1(3) of the UN Charter,[16] and the principle of national sovereignty, emphasised in Article 2(7),[17] the preparatory committee recommended that the CHR be composed of independent experts rather than governmental representatives.[18] Unsurprisingly, states did not accept this recommendation. Instead, the CHR was established as an intergovernmental body through ECOSOC Resolution 5(I), adopted on February 16, 1946.[19] The reluctance of certain key actors to support a body composed of independent experts was "understandable" given the totalitarian regime of the Soviet Union, racial issues in the United States, and the colonial question in the United Kingdom.[20] Due to these political considerations, the CHR was initially not granted any investigative authority, nor the ability to receive or review communications from individuals. This changed, at least partially, in 1947 when ECOSOC acknowledged its authority to receive communications. However, Resolution 75 (V)

13 Art. 68 of the UN Charter: 'The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.'
14 Lauren, 2007, p. 310.
15 Boyle, 2009, p. 22.
16 Art. 1(3) of the UN Charter: 'The Purposes of the United Nations are: (...) 3. To achieve international cooperation 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.'
17 Art. 2(7) of the UN Charter: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.'
18 Lauren, 2007, p. 314.
19 Sunga, 2009, p. 170.
20 Forsythe and Park, 2008, p. 3.

emphasised that the CHR had 'no power to take any action in regard to any complaints concerning human rights'.[21]

For an objective evaluation of the CHR's overall performance, it is important to recognise that before 1945, human rights – aside from labour and minority rights – were not regarded as a "legitimate matter of international legal concern".[22] However, the atrocities of World War II and the Holocaust made it evident that the policy of absolute sovereignty could not persist, and human rights could no longer be solely a matter of domestic political considerations.

In 1946, ECOSOC established the CHR under its supervision. Initially composed of 18 Member States, it became the first universal intergovernmental human rights body. As UN membership expanded, the CHR grew to 21 members by 1962, to 32 by 1967, and to 43 by 1980, eventually reaching its final size of 53 in 1992.[23] However, the Secretariat did not expand accordingly, and the annual session remained at its originally designated length of six weeks.[24]

3.2. First Two Decades of Standards-Setting

Between 1947 and 1967, the CHR was largely influenced by Western States and their allies, with no sub-Saharan African representation until 1964.[25] During this period, the CHR prioritised setting human rights standards rather than overseeing individual states' policies. Its primary and most significant task was drafting an International Bill of Rights, envisioned as a three-part framework: a declaration of rights, a legally binding convention, and the creation of implementation and enforcement mechanisms.[26] However, this plan was stalled due to international disagreements over the "role of international bodies in implementation".[27] In just two years, the CHR made its most significant contribution to the international promotion and protection of human rights by drafting the Universal Declaration of Human Rights (UDHR). This document became the first pillar of the International Bill of Rights, serving as a non-binding declaration of the human rights recognised by the international community at the time. It was notable that the drafters of the UDHR succeeded in creating a text that was adopted on December 10, 1948, with 48 votes in favour and 8 abstentions. The lack of "no" votes indicated a strong international consensus in support of the Declaration.

The first legally binding human rights treaty, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which was also drafted by the CHR, was adopted by the United Nations General Assembly (UNGA) in 1965.[28] This was followed a year later by the adoption of two key human rights treaties: the

21 Sunga, 2009, pp. 170–171.
22 Ibid., p. 170.
23 Freedman, 2013, p. 84.
24 Ibid., p. 15.
25 Boyle, 2009, p. 22.
26 Lauren, 2007, pp. 315–316.
27 Mertus, 2009, p. 52.
28 Lauren, 2007, p. 319.

International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).[29] Initially, the UNGA tasked the CHR with drafting a single document encompassing civil, political, economic, social, and cultural rights. However, in 1951, after the CHR submitted a report with 73 draft articles, ECOSOC recommended that the UNGA reconsider its decision to combine all rights into one treaty. The UNGA was deeply divided on this issue, and a compromise was finally reached with a vote of 29 to 25, with 4 abstentions, to separate civil and political rights from economic, social, and cultural rights.[30] This decision stemmed from the divergent views of states, with some advocating for the primacy of civil and political rights, while others supported the priority of economic, social, and cultural rights. The resulting two treaties allowed states to accede to just one of them.[31] During this period, often referred to by some experts as the "era of inaction" due to the lack of authority to address individual complaints, the CHR viewed itself more as a technical body than a political one.[32] Additionally, three other legally binding treaties drafted by the CHR are worth mentioning: the International Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984), the Convention on the Rights of the Child (1989), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). It is also important to note that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was negotiated and drafted outside the CHR.[33]

The high expectations placed on the CHR were reflected in the fact that between 1947 and 1957, it received nearly 65,000 individual petitions. This number continued to rise over time, sometimes reaching as many as 20,000 petitions annually.[34] Petitioners sought assistance in response to human rights violations by their governments and urged the application of the human rights provisions in the Charter to their situations.[35] However, many members of the CHR were concerned about the potential for public criticism from their own citizens in the international spotlight. As a result, they instructed their delegations to assert that the CHR had no authority to take action on these complaints.[36]

3.3. Country Situations and Thematic Special Procedures

The creation of the Special Committee on the Policies of Apartheid by the UNGA in 1961 served as a significant source of inspiration for the CHR, as this committee was

29 Although ECOSOC already submitted the two drafts to the UNGA in 1954, they were not adopted till 1966.
30 Shelton, 2008, p. 18.
31 Mertus, 2009, p. 52.
32 Gutter, 2007, p. 96.
33 Forsythe and Park, 2008, p. 5.
34 Buergenthal, 2001, p. 78.
35 Lauren, 2007, pp. 314–315.
36 Ibid., p. 315.

also empowered to review communications.[37] In a similar vein, ECOSOC Resolution 1235(XLII) of June 6, 1967, followed this model by granting the CHR and the Sub-Commission on the Prevention of Discrimination and Protection of Human Rights the authority 'to examine information relevant to gross violations of human rights and fundamental freedoms, as exemplified by the policy of apartheid as practiced in the Republic of South Africa and in the territory of South West Africa [...]'[38] There were debates among Member States whether this reference intended to 'limit the procedure to human rights abuses in South Africa or whether this was merely an illustration of a situation where the Commission should act'.[39] The efforts by those states that wanted to 'restrict the reach of the 1235 procedure' failed, making it possible to apply to any human rights violations.[40] The expanded mandate of the CHR was quickly put to use after its adoption, with Arab states utilising it to condemn Israel for its occupation of certain Arab territories during the Six-Day War.[41] Resolution 1235 was also invoked in October 1967 to address the human rights situations in Greece and Haiti.[42] One of the key impacts of Resolution 1235 was that it allowed the CHR to hold annual debates on human rights violations in any Member State, laying the foundation for the creation of country-specific Special Rapporteurs.[43] In 1967, the CHR established an ad hoc Working Group on South Africa with the mandate to investigate and report on human rights violations occurring in the country.[44]

A significant development took place in 1970 when ECOSOC adopted Resolution 1503 (XLVIII)[45], granting the Sub-Commission the authority to appoint a working group to investigate communications related to specific allegations of human rights violations. A key aspect of this procedure was its strict confidentiality until the investigations were completed. Once the investigations were concluded, the CHR could choose to publicise the findings and take action under the 1235 procedure.[46] This resolution, in conjunction with ECOSOC Resolution 1235, enabled the CHR to move beyond merely setting human rights standards. It played a crucial role in establishing the CHR as the leading global forum for addressing urgent human rights issues.[47]

37 Sunga, 2009, p. 171.
38 ECOSOC Resolution 1235 (XLII). 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. Adopted by ECOSOC on 6 June 1967 [Online]. Available at: http://hrlibrary.umn.edu/procedures/1235.html (Accessed: 10 June 2025).
39 Cowell, 2019, p. 77.
40 Mertus, 2009, p. 54.
41 Wheeler, 1999, pp. 75–76.
42 Cowell, 2019, p. 77.
43 Subedi, 2011, p. 206.
44 Boyle, 2009, p. 25.
45 ECOSOC Resolution 1503 (XLVIII) on the Procedure for dealing with communications relating to violations of human rights and fundamental freedoms [Online]. Available at: http://hrlibrary.umn.edu/procedures/1503.html (Accessed: 10 June 2025).
46 Wheeler, 1999, pp. 75–76.
47 Sunga, 2009, p. 172.

The first individual country-specific Special Rapporteur was appointed in 1979, regarding the human rights situation in Chile 'after Pinochet overthrew the democratically elected Allende government in 1974'.[48] This was followed by subsequent appointments in the early 1980s related to the human rights situations in El Salvador, Equatorial Guinea, Bolivia, and Guatemala, and in 1984 regarding Afghanistan and Iran.[49]

The first thematic mandate was the Working Group on Enforced or Involuntary Disappearances, created by CHR Resolution 20 on February 29, 1980.[50] While it initially addressed the situation in Argentina, the issue-oriented approach provided a less confrontational way to tackle the problem.[51] The first individual thematic mandate, focusing on extrajudicial, summary, or arbitrary executions, was established in 1982, followed by the appointment of a Special Rapporteur on torture in 1985.[52] This second mandate applied to all states, regardless of their ratification of the ICCPR or UNCAT.

By the end of the CHR's mandate in June 2006, there were 28 thematic[53] mandates and 13 country-specific[54] mandates. This number was even higher in 1998, with 53 mandates, but by 2006, some country-specific mandates had been terminated, and several thematic mandates had been combined.[55] This rapid and significant increase in the number of special procedures was primarily a result of CHR's flexible nature and its ability to address emerging challenges promptly, unlike the treaty-based system.[56] However, this flexibility also led to an ad hoc approach. Mandates were created through resolutions adopted by the CHR majority, often drafted in vague terms, allowing mandate holders considerable freedom to determine their own working methods.[57] Until the 1990s, most special procedures focused on civil and political rights. However, by 2006, many mechanisms and mandates were addressing economic and social rights, including the right to adequate housing, the right to food,

48 Subedi, 2011, p. 207.
49 Ibid.
50 Tomuschat, 2007, p. 28.
51 Gutter, 2007, p. 98.
52 Tomuschat, 2007, p. 28.
53 Enforced or involuntary disappearances (established in 1980), extrajudicial, summary or arbitrary executions (1982), torture (1985), freedom of religion or belief (1986), sale of children, child prostitution and child pornography (1990), arbitrary detention (1991), freedom of opinion and expression (1993), racism, racial discrimination (1993), independence of judges and lawyers (1994), violence against women (1994), toxic wastes (1995), right to education (1998), extreme poverty (1998), migrants (1999), right to food (2000), adequate housing (2000), human rights defenders (2000), economic reform policies and foreign debt (2000), indigenous people (2001), people of African descent (2002), physical and mental health (2002), internally displaced persons (2004), trafficking in persons (2004), mercenaries (2005), minority issues (2005), international solidarity (2005), countering terrorism (2005), and transnational corporations (2005).
54 Myanmar (in operation since 1992), Cambodia (1993), Palestinian Occupied Territories (1993), Somalia (1993), Haiti (1995), Cuba (2002), Liberia (2003), Belarus (2004), Burundi (2004), DPRK (2004), Democratic Republic of the Congo (2004), Sudan (2005) and Uzbekistan (2005).
55 Sunga, 2009, p. 173.
56 Subedi, 2011, p. 225.
57 Domínguez-Redondo, 2017, p. 36.

the right to education, the issue of human rights and extreme poverty, and the right to health, among others.[58]

The World Conference on Human Rights, held in Vienna in 1993, had a significant impact on the special procedures system in two key ways. It marked the first time that various mandate holders gathered to discuss matters of shared interest. Additionally, it was at this conference that the decision was made to establish the position of High Commissioner for Human Rights, transforming the UN Centre for Human Rights into the Office of the High Commissioner for Human Rights (OHCHR) and providing the secretarial support for the special procedures.[59]

Unfortunately, cooperation with mandate holders, particularly those focusing on specific countries, was not always straightforward. For instance, Cuba, Belarus, and Sudan refused to cooperate with the Special Rapporteur assigned to examine the human rights situation in their countries. These nations did not permit Special Rapporteurs to enter their territory, forcing them to gather information from outside the country.[60]

3.4. Assessment of the Work of the Commission on Human Rights

The CHR had a relatively weak mandate, shaped by the political considerations of UN Member States, and was sometimes referred to by certain experts as a "moral talk shop".[61] During its early years (1947–1967), the body was largely dominated by Western States and focused primarily on setting standards. No Chair of the CHR during this period came from the Eastern Bloc, and African countries had minimal participation.[62] The CHR's role in supervision began to take shape during its second phase (1967–1979), following the adoption of ECOSOC Resolutions 1235 and 1503. In the subsequent period (1979–1991), CHR members worked to strengthen its policy oversight functions, despite the political constraints of the Cold War. The early years of the post-Cold War period saw near-consensus resolutions, but by its final years (2001–2006), inter-regional tensions intensified, leading to the eventual replacement of the CHR by the Human Rights Council (HRC).[63]

In his study on the period between 1955 and 1985, Jack Donnelly noted that nearly 30% of the CHR's meeting time was spent on discussing civil and political rights, while social and cultural rights accounted for only 5.5% of the time. However, these figures take on a different perspective when considering that almost half of the 30% dedicated to civil and political rights was focused on racial discrimination, which was the top priority for the Third World during this period, alongside the issue of the right to self-determination (10%).[64]

58 Sunga, 2009, p. 173.
59 Gutter, 2007, pp. 99–100.
60 Tomuschat, 2007, p. 29.
61 Forsythe and Park, 2008, p. 4.
62 Boyle, 2009, p. 26.
63 Forsythe and Park, 2008, p. 4.
64 Donnelly, 1988, p. 279.

Economic and social rights began to be discussed only after 1965, and even if we accept the argument that their implementation may be gradual, this still doesn't fully explain their minimal presence on the CHR agenda. Donnelly argued that part of the reason for this was that developing countries had much to conceal regarding their performance on economic and social rights, as not all the issues could be attributed solely to external factors.[65]

Donnelly was absolutely correct in pointing out that while Israel committed significant human rights violations, these were certainly not the most severe. There were numerous countries in Africa, Asia, and Latin America – along with members of the Soviet Bloc – that faced similar human rights issues, yet were never singled out by any CHR resolution. The most apparent bias in addressing country situations was that only three states – South Africa, Israel, and Chile – received a separate agenda item both in the CHR and in the Third Committee.[66]

According to Donnelly's survey, Africa was nearly entirely absent from critical discussions during this period. Asia and the Middle East received somewhat more attention, with the human rights situations in Afghanistan, Iran, Kampuchea, and East Timor being addressed. However, the human rights situations in Vietnam, North and South Korea, and the Philippines were notably absent from the CHR's discussions. Donnelly believed that Latin America received the most balanced treatment among all regions, with resolutions concerning Bolivia, El Salvador, Guatemala, and Nicaragua. However, the exclusion of Argentina, Cuba, and Uruguay from this list is particularly striking.[67]

Frederick Cowell effectively highlighted the significant role that the campaign against apartheid played in driving institutional changes, enabling the CHR to investigate human rights violations in various countries.[68] Ron Wheeler's important work on the CHR's targeted resolutions reveals that, prior to 1982, specific country situations could not be discussed publicly until the confidential procedures had been completed.[69] Over the 16-year period (1982–1997) he studied, the CHR reviewed 1,216 draft resolutions. Of these, 1,196 were passed, 3 failed, and in 17 cases, the CHR either voted to take "no action" or suspended the debate. Of the resolutions, 68% were thematic and did not address specific human rights violations in individual countries. During this period, 391 draft resolutions focused on human rights violations committed by specific actors. The number of targeted resolutions steadily increased from 1982 to 1997. Only three country-specific drafts – concerning the USA, China, and Nigeria in 1995 – were not adopted.[70] The list of adopted targeted resolutions clearly shows that

65 Ibid., p. 281.
66 Ibid., pp. 290–292. One of six main committees at the UNGA, dealing with human rights, humanitarian affairs and social matters.
67 Donnelly, 1988 p. 293.
68 Cowell, 2019, p. 69.
69 Wheeler, 1999, pp. 75–76.
70 Ibid., pp. 78–81.

they mainly focused on a few "regional outcasts" like South Africa and Israel, as well as other unpopular regimes such as Guatemala, Iran, and Iraq.

Wheeler highlighted the regional imbalances in the targeted countries during the period from 1982 to 1997, when 294 resolutions – representing 76% of the total – named African, Asian, and Latin American states. This was unsurprising, as the most severe human rights violations occurred in these regions, with the resolutions mainly focusing on civil and political rights, which were often lacking in many Third World countries. Without the large number of resolutions addressing the human rights situations in Israel and South Africa, the percentage for Asia would drop from 44% to 20%, and for Africa, it would decrease from 35% to 17%.[71] Interestingly, no African members of the CHR – except for the targeted countries – voted against the 66 resolutions concerning the human rights situations of other African states (such as Equatorial Guinea, Western Sahara, Rwanda, Nigeria, Burundi, and Angola). This was likely due to the soft and moderate language used in these initiatives, which were designed to garner the support of African states.

Between 1982 and 1997, 63 CHR resolutions focused on the human rights situation in seven Latin American countries (Bolivia, Chile, Cuba, El Salvador, Guatemala, Haiti, and Paraguay). While most of these resolutions were co-sponsored or occasionally even drafted by Latin American states, major players such as Mexico and Brazil were notably absent from the drafts, similar to the situation in other regions.[72]

The CHR rarely targeted West Asian states, excluding resolutions on Israel. During the examined period, only 10 resolutions were adopted, with 9 focusing on Iraq and the tenth on Cyprus. In South and East Asia, only a few countries were named in CHR resolutions: Sri Lanka, Afghanistan, Iran, Vietnam, Cambodia, Myanmar, and Indonesia.[73]

Wheeler's survey reveals that no resolutions were adopted concerning the human rights situation in Western European states, with a few exceptions. One notable case involved Portugal being held partially responsible for human rights violations in East Timor. Additionally, there were a few resolutions condemning certain Western States for providing aid to South Africa. Although the situation in Northern Ireland was discussed, it never became the subject of a resolution. The USA was targeted five times, mostly implicitly, in resolutions addressing its strategic cooperation with Israel or its military actions in Panama and Grenada. Two resolutions specifically accused the USA of racism and other systematic human rights violations. The first was blocked by a no-action motion, and the second was defeated by a wide margin.[74]

In Eastern Europe, the first country to be named in a CHR resolution was Poland in 1982 and 1983 due to the implementation of martial law measures. Albania followed with seven resolutions between 1988 and 1994. Romania was the focus of

71 Ibid., pp. 86–88.
72 Ibid., pp. 88–89.
73 Ibid., p. 89.
74 Ibid., pp. 90–91.

five resolutions between 1989 and 1993. After that, the former Yugoslavia became a regular topic on the CHR's agenda, with ten resolutions passed between 1993 and 1997. The Soviet Union was condemned in several resolutions for its intervention in Afghanistan, and there were multiple attempts to condemn its policies in Chechnya. However, no resolution on the Chechnya issue was ever adopted.[75]

Altogether 37 states (including Croatia and Bosnia-Herzegovina separately) were targeted by the CHR during this period, which indicated a substantial improvement compared to the previous period when only Israel and South Africa were highlighted.[76]

Steven Seligman analysed the post-Cold War period of the CHR and the early years of the HRC, focusing on country-specific resolutions. His study of 330 resolutions concerning 34 different states, adopted by the CHR between 1992 and 2005, revealed that democratic states were more inclined to support resolutions targeting countries other than Israel. He also found that Western democracies were more willing to back targeted resolutions than non-Western democracies. As expected, non-democratic states were the least supportive of country-specific resolutions. However, Seligman noted that, contrary to expectations, democracies did not show more support for resolutions condemning Israel than non-democracies.[77] He concluded that the CHR was often used by states to defend allies and criticise adversaries, with resolutions on Israel typically drafted in a "one-sided manner," while resolutions on other countries, such as Sudan, were framed to minimise criticism.[78] The disproportionate focus on Israel was highlighted by the fact that, during the examined period, 24% of country-specific resolutions targeted Israel.

3.5. The Road to the Downfall of the UN Commission on Human Rights

Many critics overlook the fact that the CHR operated for sixty years, striving to advance the international human rights agenda despite the challenging constraints of the Cold War era. It is no surprise that in 1945[79] then U.S. Secretary of State Edward Stettinius regarded the establishment of the CHR as one of the greatest accomplishments of the San Francisco Conference.[80]

Before examining the key factors that led to the CHR's decline in credibility, it is important to acknowledge that no other UN body has done more to involve civil society representatives in international human rights diplomacy[81] – a legacy that fortunately continues under the HRC. Despite these contributions, the CHR faced mounting criticism in its final years. The first clear indication of these concerns emerged in 2004[82]

75 Ibid., pp. 91–92.
76 Ibid., p. 98.
77 Seligman, 2011, p. 538.
78 Ibid., p. 538.
79 United Nations, n.d.
80 Lauren, 2007, p. 310.
81 Ibid., p. 324.
82 Scannella and Splinter, 2007, p. 42.

with the UN Secretary-General's High-level Panel on Threats, Challenges, and Change report, *A More Secure World: Our Shared Responsibility*,[83] followed by Kofi Annan's 2005 response, *In Larger Freedom: Towards Development, Security, and Human Rights for All*.[84]

The process that ultimately led to the replacement of the CHR by the HRC had begun several years earlier. A key turning point came in May 2001 when the United States lost its seat on the CHR. That year, four candidate countries competed for three available seats allocated to the WEOG, with three European countries and the US in contention.[85] A majority of developing countries favoured the European candidates over the US. When Washington regained its seat in 2003, it launched an active campaign against the election of states with poor human rights records to the Commission. That same year, despite US opposition, the CHR elected Libya's Ambassador as its chair, rejecting Washington's objections in a formal vote.[86]

With the end of the Cold War, the political vacuum was quickly filled by regional confrontations, replacing the previous East-West divide. As the CHR's membership expanded, so did its agenda, leading to an increase in country-specific initiatives. This, in turn, contributed to the growing politicisation of its work. The Commission faced mounting criticism for applying double standards when assessing the human rights situations of UN Member States.[87] Procedural disputes became increasingly prevalent, with the frequent use of the "no action motion" – a tactic employed by influential states like China to prevent discussions on certain country situations. Although there were efforts to introduce fundamental reforms, only moderate adjustments to the CHR's agenda and working methods were ultimately agreed upon by Member States.

Although NGOs had unique privileges within the CHR, they increasingly voiced criticism against the Commission for failing to address key human rights issues due to the application of double standards. Many countries also expressed concern that human rights issues related to the P5 – the five permanent members of the UN Security Council (the United States, China, Russia, the United Kingdom, and France) – such as the situations in Tibet, Chechnya, or Guantánamo, were never placed on the CHR's agenda. Kofi Annan referred to this growing issue as a "credibility deficit".[88]

This credibility deficit was also partly due to the fact that many countries with poor human rights records sought membership in the Commission to shield themselves from international scrutiny. With the loose membership criteria, securing twenty-eight votes within the fifty-four-member ECOSOC was a relatively easy task.[89]

83 United Nations, 2004.
84 UN Secretary-General, 2005.
85 WEOG – Western European and Others Group of States.
86 Boyle, 2009, p. 27.
87 Spohr, 2010, p. 173.
88 Terlingen, 2007, p. 169.
89 Davies, 2010, p. 452.

Kofi Annan explicitly stated that the excessive politicisation and selective approach of the CHR had eroded its credibility, negatively affecting the overall reputation of the UN. Consequently, he proposed the establishment of a new body, the HRC.[90]

In conclusion, the international community initiated preparations to replace the CHR with a new body, aiming to extend meeting durations, enhance membership composition, improve responsiveness to emerging crises between sessions, and elevate the body's status.[91] The goal was to overcome the selectivity, politicisation, and double standards that had plagued the CHR.[92] The political decision to establish the HRC as its successor was made at the World Summit in September 2005.[93]

4. United Nations Human Rights Council

4.1. The Establishment of the UN Human Rights Council and its Comparison with the Commission on Human Rights

After challenging negotiations, the UN General Assembly successfully adopted Resolution 60/251, establishing the HRC.[94] However, the international community failed to reach a consensus on the framework for the UN's primary human rights body. While three countries – Belarus, Venezuela, and Iran – abstained, the resolution faced opposition from the United States, Israel, the Marshall Islands, and Palau. Despite this, it was ultimately approved on 15 March 2006 with 170 votes in favour.[95]

The key differences between the HRC and its predecessor, the CHR, are as follows: a) the HRC holds a higher status within the UN compared to the CHR. While the CHR functioned as a committee under ECOSOC, the HRC was established as a subsidiary body of the UNGA; b) the HRC has 47 Member States, whereas the CHR had 53. This decline in membership was accompanied by a shift in regional representation, favouring countries from the Global South; c) HRC members are not eligible for immediate re-election after serving two consecutive terms; d) unlike the CHR, where members were elected by a majority within ECOSOC (54 members), HRC members are elected by a majority of the entire UNGA, which currently consists of 193 Member States; e) in cases of serious and systematic violations, the UNGA can suspend the membership of an HRC member by a two-thirds majority of the countries present and voting; f) while no formal membership criteria are in place for the HRC, elections take into account candidates' contributions to the promotion and protection of human rights and their voluntary commitments in this area; g) the number and duration of sessions have increased. The CHR held a single six-week session annually, whereas the HRC convenes at least three sessions per year, including one main session, lasting

90 Ramhani-Ocara, 2006, p. 15.
91 Ibid., p. 16.
92 Landolt and Woo, 2017, p. 407.
93 Warbick, 2006, p. 697.
94 UN General Assembly, 2006.
95 Spohr, 2010, p. 176.

a minimum of ten weeks; h) unlike the CHR, where fifty percent of members were required to call an extraordinary session, the HRC can do so with just one-third of its members; i) the Universal Periodic Review (UPR) is a prominent new mechanism of the HRC, under which the human rights situation of all UN Member States is reviewed every four and a half years (originally every four years). All elected HRC members must undergo this review during their term; j) the former Sub-Commission on the Promotion and Protection of Human Rights has been replaced by the Advisory Committee; k) a new complaints mechanism has been established, replacing the previous 1503 procedure.

4.2. A Critical Review of the Human Rights Council's Activities and Some of Its Institutions

4.2.1. Membership, Regional Groups, Voluntary Commitments, Extraordinary Sessions, Agenda, Status of the Council

In its 2004 report, the High-Level Panel recommended replacing the CHR with the Human Rights Council, suggesting that the new body should have universal membership and serve as the primary body under the UN Charter, rather than continuing as a functional committee of ECOSOC. The Panel's objective was to address the criticisms of the CHR's composition, which had been increasingly voiced in its later years, and to prevent potential disputes over membership criteria.[96] While Kofi Annan agreed with the Panel's assessment, he advocated for a smaller body, either as the main UN organ or as a subsidiary body of the UNGA.[97] Annan envisioned the HRC as a "society of the committed", consisting of members dedicated to achieving higher human rights standards. He proposed a smaller body, closer in size to the Security Council's fifteen members, rather than the CHR's fifty-three.[98]

Washington strongly supported this proposal, particularly endorsing the Secretary General's suggestion that HRC members should be elected by the UNGA with a two-thirds majority (currently requiring 128 votes in favour).[99] The United States, along with EU Member States, also backed the idea that countries subject to Security Council measures under Chapter VII of the UN Charter[100] for human rights violations or terrorist activities should be excluded from membership.[101] The magnitude of the body's membership sparked extensive debate among Member States. While many agreed that a smaller body would be more effective, they also felt it would lack sufficient representation.[102] As Conall Mallory pointed out, strict membership criteria

96 Freedman, 2013, pp. 44–45.
97 Spohr, 2010, p. 175.
98 Warbick, 2006, p. 700.
99 Boyle, 2009, p. 30.
100 UN Charter Chapter VII 'Procedure in cases of threat to the peace, breach of the peace and acts of aggression.'
101 Mallory, 2013, p. 22.
102 Warbick, 2006, p. 700.

could have led to an underrepresented body, both geographically and in terms of the diverse religious, political, and cultural backgrounds of its members.[103]

The issue of universal membership was also considered by Member States to prevent the over-politicisation of the body. However, the majority ultimately did not support this approach, as many diplomats viewed it as a potential duplication of the Third Committee of the UNGA, which already addresses human rights issues.[104]

In the final compromise, the new body is slightly smaller, with forty-seven members instead of fifty-three, and candidates are elected by a simple majority of the UNGA (currently ninety-seven out of one hundred and ninety-three votes). To maintain proportional geographical representation, the majority of seats (twenty-six out of forty-seven) were allocated to the African and Asia-Pacific Groups. The African Group received thirteen seats (27.6%), down from fifteen, while the Asia-Pacific Group saw an increase from twelve to thirteen seats (27.6%). The influence of the Western European and Others Group (WEOG) was reduced from ten seats to seven (14.8%). The Eastern European Group (EEG) gained one additional seat, increasing from five to six (12.7%), while the Latin American and Caribbean Group (GRULAC) lost three seats, decreasing from eleven to eight (17%).

The HRC became a subsidiary body of the UNGA, which did not require any amendments to the UN Charter.[105] While countries committed to human rights worked hard during negotiations to make the Human Rights Council one of the main bodies of the United Nations, alongside the General Assembly, the Security Council, the Trusteeship Council,[106] the International Court of Justice, the Secretariat, and the Economic and Social Council, Member States were unwilling to engage in lengthy drafting negotiations, which could take years and require a two-thirds majority for a Charter revision. There was a consensus that such a process would require a comprehensive revision. The five amendments made to the Charter so far have primarily expanded the membership of certain bodies (such as the Security Council [SC] and the UN Economic and Social Council [ECOSOC]). Achieving the status of a principal organ would have been a significant advancement for human rights diplomacy, addressing the fact that human rights issues were not adequately emphasised in the original UN Charter. However, over the past few decades, the importance of human rights has increased, and they are now a central focus of foreign policy for all nations. In fact, the previous Commission on Human Rights had a more significant political role in the organisation and in international relations than either the Trusteeship Council or the Economic and Social Council.

According to the founding resolution, candidate countries are expected to uphold the highest standards in the protection and promotion of human rights. They must fully cooperate with the HRC and undergo the UPR process as part of their membership.

103 Mallory, 2013, p. 10.
104 Freedman, 2013, p. 48.
105 Schrijver, 2007, p. 87.
106 Today, the Guardianship Council exists only on paper. It was suspended in November 1994, following Palau's independence.

The Member States responsible for electing them should consider their contributions to human rights protection and promotion, as well as the voluntary commitments they make during their candidacy.[107] In recent years, however, many countries have only made vague statements of good intentions, and some governments have stopped updating their previous commitments altogether. In fact, Uganda, for the first time in 2010, did not even submit any voluntary commitments with its candidacy.[108] Early on in the HRC's activities, there were instances where expectations regarding the human rights performance of candidate countries had a deterrent effect. For example, Sudan and Zimbabwe were discouraged from standing for election, and Iran and Belarus eventually withdrew their candidacies after realising that their poor human rights records would prevent their election.[109]

Human rights standards become ineffective when there is no competition among Member States to enter the HRC. This was a problem with the CHR and, unfortunately, the HRC has also struggled with this issue, except for its first year and a few other instances. The so-called "clean slate" phenomenon, where a regional group nominates exactly as many candidates as it is entitled to, leaves the UNGA with no other choice but to elect all the nominated candidates. In 2006, all regional groups nominated more candidates than the number of seats available, resulting in sixty-five nominations for forty-seven seats.[110] Unfortunately, this competition has largely disappeared since then. In 2018, for example, there were exactly eighteen nominations for eighteen seats.[111]

While the situation improved slightly in 2019, with seventeen countries nominated for fourteen spots, there was still no competition in the African Group and WEOG.[112] The "clean slate" voting system, combined with secrecy, has negatively impacted the composition of the HRC, reducing the significance of voluntary human rights commitments. Many decisions are now driven by trade, regional, or political alliances rather than a country's human rights record.[113] The only way to change this "clean slate" situation is to encourage more countries that prioritise human rights to run for HRC membership. However, in some regions, smaller countries are hesitant to take the initiative, as it could be seen as a diplomatically unfriendly move towards their larger, more influential neighbours.

The decision that an HRC member cannot be nominated for re-election after two consecutive terms was undoubtedly a positive step. Additionally, the provision allowing for the suspension of a member that commits significant and systematic

107 Ramcharan, 2015, p. 2.
108 Mallory, 2013, pp. 24–25.
109 Ibid., p. 26.
110 Ibid., p. 30.
111 See: HRC elections 2018 [Online]. Available at: https://www.un.org/en/ga/73/meetings/elections/hrc.shtml (Accessed: 10 June 2025).
112 See: HRC elections 2019 [Online]. Available at: https://www.un.org/en/ga/74/meetings/elections/hrc.shtml (Accessed: 10 June 2025).
113 Mallory, 2013, p. 30.

human rights violations during their tenure by a two-thirds majority vote in the UNGA was an important safeguard.[114] Despite the high threshold required for suspension, the HRC decided in March 2011 to suspend Libya's membership. It was noteworthy that the proposal for suspension was presented to the UNGA by Lebanon, a member of the OIC (Organization of Islamic Cooperation, formerly the Organization of the Islamic Conference), with support from Mauritius representing the African Group.[115] The second such instance occurred on April 7, 2022, when the UN General Assembly adopted a resolution calling for Russia's suspension from the Human Rights Council. The resolution passed with a two-thirds majority of the voting members (excluding abstentions), with 93 countries in favour and 24 against.[116]

According to UNGA resolution 60/251, the HRC is required to meet at least three times a year for a minimum of ten weeks, compared to the six weeks allocated to the CHR. This change facilitates a more effective and thorough response to global human rights issues.[117] Additionally, the new rules regarding extraordinary sessions will allow the HRC to better address exceptional human rights situations, provided these provisions are utilised appropriately. These adjustments have positively influenced the WEOG's support for the HRC, compensating for the reduction in their representation compared to the CHR.[118]

The impact of the eased conditions for convening special sessions was substantial, as thirty-six special sessions were held between 2006 and 2024. From the outset, it was evident that the OIC was using this mechanism to exert pressure on Israel, with nine sessions focusing on the human rights situation in the occupied Palestinian territories. The Syrian crisis followed closely, with five sessions dedicated to it. Myanmar/Burma's human rights situation was the focus of three special sessions. Other special sessions addressed various crises, including those in South Sudan, Sudan, Iran, Ukraine due to Russian aggression, Burundi, Afghanistan, Boko Haram, Islamic State, Central African Republic, Libya, Côte d'Ivoire, Haiti, Ethiopia, Sri Lanka, the global economic and financial crises, the Democratic Republic of Congo, the world food situation, and Darfur.[119]

The HRC's agenda[120] consists of ten items, compared to the CHR's twenty-one. However, one item remained unchanged: CHR agenda item 8 on *Human Rights Violations in the Occupied Arab Territories, including Palestine*, became HRC agenda item 7 on the *Human Rights Situation in Palestine and other occupied Arab territories*. Unfortunately, during the negotiations, the CHR majority chose to retain this specific and

114 Joosten, 2011, p. 6.
115 Mallory, 2013, p. 21.
116 UN Affaires, 2022.
117 Maitya, 2010, p. 318.
118 Cox, 2010, p. 105.
119 See: UN Human Rights Council Special Sessions [Online]. Available at: https://www.ohchr.org/en/hr-bodies/hrc/special-sessions (Accessed: 10 June 2025).
120 See: UN Human Rights Council agenda [Online]. Available at: https://www.ohchr.org/en/hr-bodies/hrc/year-round-activities (Accessed: 10 June 2025).

arguably discriminatory agenda item focusing on the human rights situation of one country, while all other country situations were addressed under agenda item 4.

4.2.2. Special Procedures

The Special Procedures of the HRC consist of independent human rights experts who prepare reports and offer advice on both thematic and country-specific human rights issues based on their mandates. UN Secretary-General Kofi Annan referred to the Special Procedures as the "crown jewels" of the UN human rights system,[121] aptly highlighting their crucial role in the international protection and promotion of human rights. When the CHR's work ended in June 2006, there were twenty-eight thematic mandates and thirteen country-specific mandates. In the course of negotiations on the framework for the UPR, it became apparent that some countries saw the establishment of the UPR as an opportunity to eliminate country-specific resolutions and mandates. China, for instance, referred to country-specific decisions as "a chronic disease of the CHR".[122]

Given this context, it was no surprise that Beijing sought to introduce a two-thirds majority for the adoption of country resolutions when establishing the UPR. Ultimately, a compromise was reached, where supporters of country resolutions had to secure broad support for their initiatives – preferably at least fifteen members – before a vote on the resolution could be held.[123] The EU and other countries in favour of country-specific resolutions were fortunate that the Chinese proposal could have complicated matters for Arab countries regarding their resolutions on the occupied Arab territories, which helped ensure the adoption of the compromise. As a result, two country-specific mandates, those concerning Cuba and Belarus, were eliminated due to member-state disputes over country situations. This reflected the ongoing trend of reducing country-specific mandates, which dropped from twenty-six in 1998 to thirteen in 2006.[124]

HRC Resolution No. 5/1 on institutional development,[125] adopted on 18 June 2007, established a more transparent, though rigid, process for selecting mandate holders. A five-member Consultative Group, with representatives from each regional group, now plays a leading role. This group reviews applications, interviews the best candidates, and makes recommendations to the President of the HRC, who typically accepts the group's suggestions.[126] If the President chooses a different candidate, they must provide a detailed and well-reasoned explanation for the decision. In contrast,

121 Freedman, 2013, p. 110.
122 Joosten, 2011, p. 17.
123 Ibid., pp. 17–18.
124 Spohr, 2010, p. 186.
125 See: HRC Resolution 5/1 on institution building of the UN Human Rights Council [Online]. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=a/hrc/res/5/1 (Accessed: 10 June 2025).
126 Tomuschat, 2007, p. 30.

under the CHR[127], the President, after consulting the Bureau,[128] made the decision unilaterally, without requiring plenary approval.[129] It is also notable that, in addition to countries, regional groups, international organisations, and NGOs can propose candidates, who are then evaluated by the Consultative Grou.[130] Country-specific mandates are renewed annually, while thematic mandates are renewed every three years. The only exception to this is the mandate on the human rights situation in the occupied Arab territories, which remains in place 'until the end of the Israeli occupation of these territories' and does not require annual renewal like other country-specific mandates.[131]

In response to strong criticisms of mandate-holders' work from certain countries, the HRC made a regrettable decision in June 2007 with the adoption of the Code of Conduct for Special Procedures mandate-holders (HRC Resolution 5/2).[132] The Code's unspoken objective seemed to be to limit the operational freedom of Special Rapporteurs. It prioritises information from governments, which can unfortunately be used as a mechanism to suppress civilian voices while reinforcing government narratives. This undermines the impartiality of the Special Rapporteurs' work, diminishing its ability to remain critical and independent.

As of November 2023, there were forty-six thematic mandates[133] and fourteen country-specific mandates.[134] Over the past fourteen years, eighteen new thematic mandates have been established, while the number of country-specific mandates has increased by one since the HRC's inception in 2006.[135] As Marc Limon pointed

127 Nowak, et al., 2011, p. 67.

128 In the case of the CHR and the HRC, the Bureau is composed of the President, the three Vice-Presidents and the Rapporteur.

129 See more on: Basic information on the selection and appointment of independent experts of the HRC [Online]. Available at: https://www.ohchr.org/en/hr-bodies/hrc/sp/basic-information-selection-independent-experts (Accessed: 10 June 2025).

130 Joosten, 2011, p. 26.

131 Ibid., p. 24.

132 See: HRC Resolution 5/2. On Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council [Online]. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=a/hrc/res/5/2 (Accessed: 10 June 2025).

133 The thematic special procedures of the HRC cover the following issues: people of African descent, albinism, arbitrary detention, business and human rights, cultural rights, development, disability rights, disappearances, education, environment, executions, food, foreign debt, freedom of expression, freedom of assembly and association, hazardous substances, health, housing, human rights defenders, judicial independence, indigenous peoples, internally displaced persons, international order, international solidarity, leprosy, mercenaries, migrants, minority issues, elderly, poverty, private sphere, racism, religion, belief, child trafficking, sexual orientation and gender identity, slavery, terrorism, torture, trafficking, justice, unilateral coercive measures, violence against women, water and sanitation, women, girls, and the last mandate on the human rights impact of climate change.

134 Country-specific procedures of the HRC: Afghanistan, Belarus, Burundi, Cambodia, Central African Republic, Democratic People's Republic of Korea, Eritrea, Islamic Republic of Iran, Mali, Myanmar, Sudan, Somalia, Palestinian Territories occupied since 1967, Syria.

135 See more: Special Procedures of the Human Rights Council [Online]. Available at: https://www.ohchr.org/en/special-procedures-human-rights-council (Accessed: 10 June 2025).

out, if this trend persists, the total number of mandates could reach 100 by 2030.[136] This trend is not surprising, as creating a new mandate is typically more challenging than renewing an existing one, and there have only been few instances of mandates being discontinued.[137]

Rosa Freedman and Jacob Mchangama have highlighted this phenomenon in an insightful study on the proliferation of special procedures. Their research revealed that "free" states, as classified by Freedom House, are increasingly supportive of civil and political rights mandates, but show much less enthusiasm for economic and social rights mandates.[138] These countries tend to be more sceptical of "third-generation" rights, which are primarily championed by "non-free" states, who, in turn, rarely support mandates focused on civil and political rights. One key finding of their study was that semi-free and non-free states, often with poorer human rights records, tend to favour the expansion of mandates, shifting the focus beyond civil and political rights to include more costly mandates addressing economic, social, and third-generation rights.[139]

Their research indicates that special procedures have evolved from being solely focused on promoting and protecting human rights to becoming a significant tool in the ideological and political battles among Member States, each pursuing their own agenda to further their objectives.[140] It is hard to disagree with Freedman and Mchangama's final conclusion that increasing the number of mandates without sufficient financial support will negatively affect the entire special procedures system. A telling statistic from the OHCHR's 2012 financial report shows that only 24% of targeted funding[141] was allocated to civil and political rights mandates, while 44% went to economic, social, and cultural rights, and 32% supported initiatives for vulnerable groups (such as minorities, indigenous peoples, persons with disabilities, women, and children). In my view, there are currently several thematic mandates that fail to deliver practical, tangible outcomes for the international human rights system, yet drain significant financial resources, hindering the work of more vital and effective mechanisms. These mandates, which address issues like foreign debt, toxic waste, international order, international solidarity, or unilateral coercive measures, often serve political rather than human rights purposes.

Since 1994, CHR/HRC mandate holders have gathered annually in Geneva, providing an excellent platform for experts to share best practices and align their working methods. Their annual report to the HRC presents key data on the special procedures system. According to the 2024 report, the system included 83 seats, with 59% held

136 Freedman and McHahgama, 2016, p. 165.
137 Ibid., p. 173.
138 Ibid., pp. 180–181.
139 Ibid., p. 187.
140 Ibid., p. 190.
141 Ibid., p. 193.

by women and 41% by men.[142] The report also highlighted significant information regarding cooperation with special procedures. It revealed that 172 Member States have accepted at least one mandate holder, while 21 countries have not yet hosted a visit from any mandate holder. Of these, four countries have never received an invitation for such a visit, sixteen have declined any request, and one country agreed to a visit that has yet to take place.[143] An important aspect of this context is the concept of a "standing invitation," where a government extends an open invitation to all thematic mandates, expressing its readiness to respond to any request for a visit. As of June 2024, 128 Member States and one observer have made this declaration.[144]

4.2.3. Universal Periodic Review (UPR)

The UPR is the only universal process that reviews the human rights situation of all UN Member States. Administered by Member States within the HRC framework, it gives each country the opportunity to report on the actions they have taken to enhance their human rights record and meet their human rights obligations. The UPR was created to ensure that all countries are treated equally in the assessment of their human rights situations. The primary goal of the process is to improve human rights worldwide and address violations wherever they occur.[145]

The launch of the UPR was widely regarded as the most significant new institution of the HRC, characterised by its emphasis on constructive dialogue and cooperation, marking a clear departure from the "naming and shaming" approach of the former CHR, especially in the eyes of many developing countries. Many nations had hoped that the UPR would serve as an alternative to the widely criticised country decisions and mandates.[146] However, as highlighted by the Netherlands in its UPR review,

> 'The UPR is an additional tool for human rights monitoring that complements, rather than duplicates, the work of treaty bodies[147] and special procedures.

142 A/HRC/55/69, Report on the activities of Special Rapporteurs, independent experts and working groups of the special procedures of the Human Rights Council undertaken in 2023, including updated information on special procedures and on the twenty-ninth annual meeting of special rapporteurs, independent experts and chairs of working groups. 27 March 2024. Para. 3., A/HRC/55/69: Activities of special rapporteurs, independent experts and working groups of the special procedures of the Human Rights Council undertaken in 2023, including updated information on special procedures and information on the twenty-ninth annual meeting of special rapporteurs, independent experts and chairs of working groups | OHCHR.

143 A/HRC/55/68 para. 7.

144 See more: Standing Invitations to thematic special procedures [Online]. Available at: https://spinternet.ohchr.org/StandingInvitations.aspx (Accessed: 10 June 2025).

145 See more on Universal Periodic Review: https://www.ohchr.org/en/hr-bodies/upr/upr-home (Accessed: 10 June 2025).

146 Joosten, 2011, p. 32.

147 The UN human rights treaty monitoring bodies, composed of independent experts, which discuss the periodic reports on the implementation of the treaty by the States Parties to the treaty.

> Moreover, the review should not change the mandate of the HRC to address serious human rights violations in specific countries'.[148]

A key benefit of the UPR is its ability to foster a cooperative environment where countries can collaborate on human rights initiatives aimed at improving conditions on the ground through the exchange of best practices.[149] An essential aspect of the UPR is its seamless connection to technical assistance and capacity-building programmes, which help ensure the more effective implementation of UPR recommendations. The creation of the Voluntary Fund for Financial and Technical Assistance is designed to support this objective.[150]

Some experts and academics have raised concerns that the UPR may become a mere formality, where participation no longer reflects a genuine intent to bring about meaningful changes in the human rights situation.[151] The cooperative and non-confrontational nature of the intergovernmental process – lacking punitive sanctions – was a concession made to gain support from some developing countries, despite HRC Resolution 5/1 clarifying that the UPR 'should not diminish the Council's capacity to respond to urgent human rights situations'.[152] In this context, it is crucial that the process evolves from being a ritual into a genuine commitment. 'States must not be allowed to mask their low commitment to human rights by mere participation in the process.'[153]

The UPR process has the potential to create a more inclusive international human rights agenda than previously seen, offering a comprehensive range of human rights issues aligned with the Universal Declaration of Human Rights. This is especially significant in regions with low ratification of international human rights conventions, as it enables more peripheral regions of the world to engage in a shared human rights dialogue.[154] The UPR's focus on bilateral, state-to-state relations represents a shift from the more regionalised approach and North-South divide seen in other parts of the HRC.[155] Research by Edward McMahon and Marta Ascherio reveals that the African and Asia-Pacific Groups have made 40% of their recommendations to countries within their own regions, while this proportion is much lower for the other three regional groups (EEG, GRULAC, and WEOG).[156] Consistent with this trend, countries in the African and Asia-Pacific Groups have been more receptive to accepting recommendations from countries within their own regions.[157]

148 Carey, 2009, p. 469.
149 Vega and Lewis, 2011, p. 385.
150 Charlesworth and Larking, 2014, pp. 6–7.
151 Ibid., p. 10.
152 McMahon and Ascherio, 2012, p. 234.
153 Charlesworth and Larking, 2014, p. 12.
154 Ibid., p. 13.
155 McMahon and Ascherio, 2012, pp. 234–235.
156 Ibid., p. 237.
157 Ibid., p. 242.

In conclusion, the process clearly reflects regional differences, with Asian and African countries often adopting a more lenient stance on human rights issues, while the WEOG (Western European and Other States Group) tends to make the most critical recommendations demanding concrete action. The GRULAC (Group of Latin American and Caribbean States) and EEG (Eastern European Group) can serve as intermediaries between African/Asian countries and the WEOG, given their unique historical contexts. A key insight from McMahon and Ascherio is that the long-term success of the HRC hinges on whether states acknowledge that criticism can be a valuable aspect of cooperation.[158]

4.2.4. Complaint Procedure[159]

Due to the lack of interest from Member States in reforming the previous CHR's 1503 procedure, it continued with only minor adjustments, such as easing eligibility criteria and increasing the frequency of case committee meetings.[160] The complaints procedure is designed to address serious human rights violations occurring anywhere in the world, under any circumstances, provided they show a consistent pattern and can be substantiated. The inclusion of the phrase "under any circumstances" broadens the scope, making it difficult for challenges to be raised based on substance or geographical scope. This means that emergency situations or internal conflicts no longer prevent the HRC from examining a case. Additionally, the admissibility criteria have been updated, allowing for cases that fall under the mandate of a special procedure or are subject to the public procedure of the HRC. The only grounds for inadmissibility now are *litis pendent,*[161] where a similar complaint is already in process.

4.2.5. Participation of NGOs and National Human Rights Institutions in the Work of the Human Rights Council

The CHR had the most liberal participation rules for NGOs within the UN system. NGOs accredited by ECOSOC were permitted to attend all public meetings, speak during agenda discussions, and distribute written materials to Member States.[162] These rights were granted to NGOs with a consultative status, which was granted by the NGO Committee, a body made up of representatives from nineteen Member States meeting in New York. The criteria for a consultative status were outlined in ECOSOC Resolution 1996/31.[163] Currently, more than six thousand NGOs hold consultative

158 Ibid., p. 246.
159 See more on Human Rights Council Complaint Procedure: https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/hrc-complaint-procedure-index (Accessed: 10 June 2025).
160 Spohr, 2010, pp. 169–218.
161 *Litis pendentia*: as a ground for dismissal of a civil action, *lis pendens* refers to a situation where two actions are pending between the same parties on the same cause of action, rendering one of them redundant.
162 Abraham, 2016, p. 88.
163 Mertus, 2009, p. 62.

status with ECOSOC.[164] According to the founding resolution of the HRC, NGO and National Human Rights Institution (NHRI)[165] participation follows the same model as the CHR, and these rules apply to the HRC as well.[166]

Research by Laura K. Landolt and Byungwon Woo on NGO involvement in the work of the CHR and HRC revealed that the creation of the Council has significantly improved the participation of local and regional NGOs. Their findings showed that more NGOs are now voicing concerns about human rights issues in democratic countries and those that are members of the CHR/HRC.[167] The data clearly indicates that the procedural changes introduced by the HRC have enhanced NGO participation, especially among NGOs from the Global South.[168]

Olivier de Frouville noted that, with the HRC holding three regular sessions a year, along with three UPR sessions and numerous special sessions, it has become increasingly challenging for NGOs to keep track of all the events. On top of financial constraints, the rise of government-organised NGOs (GONGOs) has become more apparent, as well as the growing restrictions on NGO activities within the HRC.[169] In response, UNHRC Resolution 24/24, introduced by Hungary on 'Cooperation with the United Nations, its representatives, and mechanisms in the field of human rights,' led to the appointment of a *UN focal point* (coordinator). This individual's role is to ensure that those who cooperate with the UN on human rights issues are not subjected to retaliation by governments or other actors, and to ensure a swift and coordinated response across the UN system in such cases.[170] Following this resolution, the UN Secretary-General appointed Andrew Gilmour as the Under-Secretary-General for Human Rights in October 2016 to address these concerns.[171] This initiative is critical to safeguarding the UN's credibility, as any intimidation or silencing of those who collaborate with the organisation would erode its moral foundation.

4.2.6. Subsidiary Bodies of the Human Rights Council

4.2.6.1. Advisory Committee[172]

The HRC made the decision to dissolve the CHR's Sub-Commission on the Promotion and Protection of Human Rights and replace it with the Advisory Committee (AC). The Sub-Commission, which was established in 1947 and initially named the Sub-Commission on the Prevention of Discrimination and Protection of Minorities

164 See more on: NGO Branch of UN Department of Economic and Social Affairs: https://ecosoc.un.org/en/ngo (Accessed: 10 June 2025).
165 National human rights institutions include ombudsman offices and some national human rights commissions.
166 Abraham, 2016, p. 91.
167 Landolt and Woo, 2017, p. 420.
168 Ibid., p. 421.
169 Frouville, 2011, p. 249.
170 United Nations General Assembly, 2013.
171 Sinclair and McEvoy, 2018, p. 2.
172 See more on HRC Advisory Committee: https://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/HRCACIndex.aspx (Accessed: 10 June 2025).

until 1999, was tasked with recommending standards for the protection and promotion of human rights.[173] Over time, its mandate expanded, and the Sub-Commission evolved into a think tank for the CHR, focusing on analysing information about severe human rights violations, researching, and interpreting international human rights standards.[174]

The AC was made slightly smaller than the Sub-Commission, with 18 members instead of 26, and the option to hold two sessions per year, each lasting up to 10 days, rather than a single three-week annual session.[175] However, under HRC Resolution 5/1, its work was limited to cases it was specifically asked to address, removing its ability to act on its own initiative. Additionally, the HRC decided to eliminate the AC's authority to create subsidiary bodies and adopt resolutions or decisions.[176] AC members are elected by secret ballot, with seats distributed geographically among the five regional groups.[177]

4.2.6.2. Forum on Minority Issues

The Forum on Minority Issues, established by Human Rights Council Resolution 6/15 in 2007 and renewed in 2012, functions as a platform for dialogue and cooperation concerning the rights of national or ethnic, religious, and linguistic minorities. It supports the Special Rapporteur on minority issues by providing thematic input and identifying best practices, challenges, and opportunities in implementing the UN Declaration on Minority Rights.[178] Meeting annually for two days, the Forum is chaired by an expert selected regionally by the HRC President and has addressed a range of topics, including minority participation in public life, education, conflict prevention, hate speech, and humanitarian crises.

4.2.6.3. Social Forum[179]

The Social Forum, also a subsidiary body of the HRC, meets each year for three days, gathering states, international organisations, and civil society to discuss key social issues[180]. Led by a Chairperson-Rapporteur appointed through regional consultations, its sessions have focused on themes such as poverty eradication, globalisation, climate change, the right to development, the rights of older persons and persons with disabilities, access to medicine, the role of sport in human rights promotion, the impact of communicable diseases like HIV and COVID-19, as well as the human rights dimensions of water and post-pandemic recovery through science and innovation.

173 Abraham, 2006, p. 52.
174 Ibid.
175 Silva, 2013, pp. 102–103.
176 Silva, 2013, p. 103.
177 Spohr, 2010, p. 188.
178 See: Forum on Minority Issues [Online]. Available at: https://www.ohchr.org/en/hrc-subsidiary-bodies/minority-issues-forum (Accessed: 10 June 2025).
179 See: The Social Forum of the Human Rights Council [Online]. Available at: https://www.ohchr.org/EN/Issues/Poverty/SForum/Pages/SForumIndex.aspx (Accessed: 10 June 2025).
180 Richardson, 2015, p. 428.

4.2.6.4. Expert Mechanism on the Rights of Indigenous Peoples[181]

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) is a subsidiary body of the HRC, established in 2007 by HRC Resolution 6/36. The EMRIP convenes annually for five days and is tasked with offering the HRC thematic advice on the rights of indigenous peoples. Additionally, it may propose recommendations for the HRC's consideration.

4.3. Expert Discourse on the Work of the Human Rights Council

As previously noted, inefficiency and selectivity were two key weaknesses resulting from the over-politicisation of the CHR.[182] However, it is difficult to hold a political body accountable for not fully countering its own politicisation. This implies that the work of the HRC, as its successor, should be viewed realistically and not in isolation from *realpolitik*. In 2015, a significant study by the Universal Rights Group revealed that over 55% of HRC decisions focused on general thematic issues, while country-specific decisions – covering only 12 countries – made up just 7% of the total.[183]

The research also revealed that the percentage of decisions adopted by consensus fell from 80% in 2007 to 69% in 2014. The authors noted that 56% of decisions adopted by the Third Committee correspond to those in the HRC, with 40% having significant content overlap.[184] Each year, the Third Committee – not the UNGA Plenary – adopts a brief resolution on the HRC report, usually presented by the African Group. However, in some instances, the Third Committee has expressed reservations about certain HRC initiatives, such as in 2011 with HRC Resolution 17/19 on human rights, sexual orientation, and gender identity, or in 2013 when it decided to postpone a decision on Resolution 24/24 regarding cooperation with the UN and its human rights mechanisms.[185] These examples demonstrate that the HRC's new institutional status, compared to the CHR, has certain drawbacks, as the Third Committee can revisit the HRC report, which was not the case in the relationship between ECOSOC and the CHR.

Assessing the work of the CHR/HRC is complex, as illustrated by research from Krishna Chaitanya Vadlamannati, Nicole Janz, and Oyvind Isachsen Berntsen on the impact of CHR/HRC reports on foreign direct investment (FDI). Their study found that countries condemned by the CHR or the HRC saw a decline in FDI of approximately 49% within a few years.[186] This data shows that criticism from the world's leading human rights body has a far more significant negative effect on FDI than the human rights violations themselves, which also have their own damaging consequences.[187]

181 See: Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) [Online]. Available at: https://www.docip.org/en/indigenous-peoples-at-the-un/expert-mechanism/ (Accessed: 10 June 2025).
182 Salama, 2009, p. 186.
183 Gujadhur and Lamarque, 2015, p. 2.
184 Ibid., p. 3.
185 Bichet and Rutz, 2016, p. 7.
186 Vadlamannati, Janz and Berntsen, 2018, p. 229.
187 Ibid., p. 229.

As a result, critical HRC resolutions can inflict tangible economic harm on repressive regimes by deterring foreign investors. Vadlamannati and colleagues also discovered that media coverage of human rights abuses plays a crucial role in amplifying the impact of HRC resolutions on FDI.[188] This suggests that international human rights bodies, like the HRC, can be instrumental in encouraging offending regimes to improve their human rights practices.

Peter S. Henne's research reveals a connection between HRC membership and higher levels of religious oppression, suggesting that countries with HRC membership often see an increase in religious repression. Despite this, Henne supports participation in human rights bodies rather than exclusion. His findings are significant because many countries use their HRC membership not just to deflect criticism of their human rights record, but also to conceal increasingly repressive policies against religious groups. In this context, it's not about cultural or religious factors, but rather political circumstances and the degree of international scrutiny that play a key role.[189]

Sibylle Scheipers argued that the structure of the HRC resulted from an intellectual struggle between the North, which sought an exclusive and confrontational body, and the Global South, which favoured inclusivity and cooperation.[190]

Rosa Freedman, on the other hand, believed that the HRC's new mechanisms, such as the UPR and special sessions, while not new, have gained importance by making it easier to convene them, and are being used by regional groups and other blocs in order to advance their political agendas. According to Freedman it undermines the HRC's ability to fulfil its primary mission of promoting and protecting human rights. She specifically highlighted the OIC and the African Group as dominant players utilising these mechanisms to deflect attention from their own human rights situations.[191]

Marisa Viegas e Silva, reflecting on the first six years of the HRC, believed that the political environment surrounding the Council was aligned with the realities of international relations. Her assessment was more balanced than that of the experts referred to earlier. She highlighted some positive developments, such as the semi-permanent nature of the HRC (with longer sessions compared to the CHR), changes in the election process for members, the potential to suspend the membership of offending countries, and the introduction of the UPR. However, she also pointed out that the HRC had repeated some of the CHR's mistakes, including politicisation, double standards, and the strengthening of the intergovernmental nature of the body, which had led to a reduced role for civil society.[192]

Theodor Rathgeber was highly critical of the HRC, stating that it lacked both credibility and effectiveness, with many Member States showing only a limited interest in addressing controversial issues.[193] He argued that the misplaced solidarity of the

188 Ibid., p. 234.
189 Henne, 2018, pp. 723–724.
190 Scheipers, 2007, pp. 237–238.
191 Freedman, 2011, p. 23.
192 Silva, 2013, p. 109.
193 Rathgeber, 2010, p. 193.

Global South hinders meaningful human rights monitoring by the HRC. Rathgeber emphasised that the HRC's role as a political body was unusual, given that its mandate includes 'fact-finding, assessment, and negotiation'. He believed that special procedures, NGOs, and the OHCHR should play a much more significant role in enhancing the HRC's performance.[194]

Eric Cox, on the other hand, was straightforward in asserting, 'We cannot expect the HRC to function any differently from the CHR, because both are essentially political bodies that reflect the will of the membership'.[195]

4.4. Concluding Remarks and Lege Ferenda Proposals about the Human Rights Council

The United Nations Human Rights Council plays a vital role in promoting and protecting human rights globally. However, persistent criticisms regarding its membership, politicisation, and effectiveness have spurred debate over necessary reforms.

A political body like the CHR could only operate within the limits set by its Member States and could not be faulted for adhering to political approaches. However, the international community opted to replace the CHR, believing that the new body could overcome the political shortcomings of its predecessor. It was not surprising, therefore, that a new body of nearly the same size, composed of the same actors, and operating under similar political conditions, did not result in a breakthrough in the global fight against human rights violations.

Nonetheless, the establishment of the UPR introduced a fresh approach within the UN system, ensuring a cooperative process where the human rights situation of all Member States is reviewed, with a growing emphasis on technical assistance to implement UPR recommendations. Future reforms should aim at standardising the format and content of UPR recommendations, and at enhancing the involvement of independent civil society organisations in both the review and follow-up stages which would further strengthen the credibility of the UPR mechanism.

The literature often overlooks the significance of the HRC's so-called side events, which are frequently the only platforms where sensitive human rights issues involving the P5 (such as Guantánamo, Tibet, and Chechnya) can be addressed. Civil society has played a key role in organizing these events, bringing human rights defenders and victims to Geneva and shedding light on violations that Member States may not have raised in the HRC plenary sessions.

The expanding agenda of the HRC is becoming unsustainable. There is a pressing need for a significant reorganisation, where certain issues – such as toxic waste or foreign debt – could be transferred to more specialised UN bodies. Some of the thematic mandates mentioned earlier should also be eliminated to enhance the HRC's effectiveness. This could be achieved through the use of sunset clauses, which would

194 Ibid., p. 193.
195 Cox, 2010, p. 89.

signal that the issues covered by a particular resolution are no longer necessary on the HRC's agenda and should instead be addressed by other UN bodies.

While the introduction of the UPR process has not made the adoption of country-specific resolutions redundant, the approach of naming and shaming should be more strategic and coordinated within the UN system, with a greater emphasis on the regional dimension in the world body's work. The current practice, where some resolutions that could be presented under agenda item 4 on country situations are instead placed under agenda item 10 on technical cooperation due to political pressure, can only be accepted if there are real, tangible improvements in the human rights situation of the country in question.

It would not be politically realistic to expect the HRC to become a group of countries with flawless human rights records, but governments that advocate for human rights should support the nomination of countries that view the protection and promotion of human rights as a positive political goal. The international community should adopt stricter criteria for Council membership, such as compliance with core international human rights treaties or cooperation with UN human rights mechanisms which would promote the credibility of the HRC and would reduce the risk of self-interested membership aiming at seeking protection from international criticism about the human rights policy of the concerned country through HRC membership.

An interesting aspect of the HRC is that, despite the significant influence of the African and Asian Groups and the relatively low profile of the West in the Council, there are still many important thematic and country-specific resolutions introduced or supported by Western countries. Furthermore, the standard-setting work of the CHR has continued within the HRC. These positive developments are largely the result of growing coalitions between regions, moving beyond the traditional North-South divide. On several important and sensitive issues, WEOG, the majority of EEG and GRULAC, as well as African and Asian countries with a positive view on human rights, have been able to form coalitions. The ongoing process of global democratisation,[196] which we hope will persist despite occasional setbacks, could strengthen these positive trends, improving the composition of the HRC as more democratic countries seek to join.

Finally, it is crucial for the international community to prioritise strengthening the preventive role of the HRC, strategically utilising special procedures and the databases produced through the UPR process. An enhanced composition of the HRC, coupled with greater cross-regional cooperation and a balanced approach between naming and shaming and technical cooperation, could significantly improve the HRC's capacity to fulfil its vital mandate in safeguarding and promoting international human rights. In light of the present geopolitical conditions, it is unlikely that the

196 According to Pew Research, at the end of 2017, of the 167 countries with at least 500,000 inhabitants, 57% were democracies, 28% were mixed, while only 13% were autocracies. This democratic wave began in the mid-1970s and while there has been a decline in recent years, the numbers are still not comparable to 1976, when 62% of countries were autocracies, 25% were democracies and 13% were mixed regimes. See: Desilver, 2019.

international community can adopt far reaching reform proposals regarding the global human rights architecture. However, there are certain small and concreate steps, like the better and more adequate funding of UN Special Procedures, the enhanced protection of the participation of the civil society or stricter HRC membership criteria, which could be adopted and could have measurable impact on the UN human rights protection system.

5. UN High Commissioner for Human Rights

5.1. The History of the Mandate

As referred to previously in this chapter, René Cassin was the first to propose, in 1947, the creation of a position similar to that of an Attorney-General. This role could be compared to the current role of the UN High Commissioner for Human Rights; however, it would have specifically focused on assisting individuals and states in proceedings before a proposed Court of Human Rights. Nevertheless, at that time, the international community did not support this idea, as most states deemed it unfeasible.

In 1950–1951, Uruguay proposed the establishment of an attorney-general position to assist in the implementation of the International Covenant on Civil and Political Rights, which was being drafted by the Commission on Human Rights. The attorney-general's role would have involved receiving and reviewing complaints from individuals and groups. However, this proposal ultimately failed to gain enough support for adoption.[197]

In 1965, with significant input from NGOs, Costa Rica proposed the creation of a High Commissioner for Human Rights. Interestingly, when the proposal was presented to the CHR in 1967, René Cassin strongly opposed it. However, the French delegation later supported the idea during the ECOSOC debate.[198] The Commission ultimately adopted the proposal, and ECOSOC recommended that the General Assembly create the position. Despite this, the General Assembly postponed its decision every year. Although the proposal was discussed throughout the 1970s, it failed to reach a consensus during the Cold War period, largely due to opposition from the Socialist Bloc.[199]

5.2. The Establishment of the Mandate

At the start of the 1990s, the end of the Cold War marked a shift in the global human rights landscape. While many human rights NGOs were established, human rights violations continued to rise. UN missions were deployed to countries like Yugoslavia, Cambodia, El Salvador, Guatemala, and Haiti, but the Geneva-based UN Centre for

197 Mertus, 2009, p. 9.
198 Hobbins, 2001, p. 41.
199 Mertus, 2009, p. 10.

Human Rights struggled to manage the increasing workload, and UN personnel lacked adequate human rights training. To address these challenges, the idea of a UN High Commissioner for Human Rights resurfaced. A campaign launched in 1992 advocated for the creation of this position, and it became the central proposal at the World Conference held in Vienna in 1993. Interestingly, the UN Secretary-General at the time opposed the idea, arguing that it would only add more bureaucracy and that "quiet diplomacy" was a more effective approach.[200]

The establishment of the UN High Commissioner for Human Rights in 1993, largely due to public human rights advocacy during the Vienna World Conference on Human Rights, marked a significant milestone in the international protection and promotion of human rights.[201] Although the Vienna Declaration was not legally binding, it was adopted by 171 states at the conference. In December 1993, the UN General Assembly adopted resolution 48/141, which created the Office of the High Commissioner for Human Rights (OHCHR) as the central body responsible for coordinating all UN human rights efforts. The High Commissioner holds the rank of Under-Secretary-General within the UN.

5.3. The High Commissioners

The first High Commissioner, José Ayala Lasso (1994–1997) (Ecuador), former foreign minister and ambassador did a lot for the development of inter-agency cooperation but was often criticised for not being sufficiently confrontational. He did not have a human rights background and always refrained from publicly criticising countries. He initiated the field presence of the OHCHR.

In 1997, Mary Robinson, (1997–2002) former President of Ireland, was appointed as the second High Commissioner. She further expanded the UN's presence in many countries, but she had a confrontational relationship with Washington because of her criticism of the human rights violations that occurred in occupied Palestinian territories (OPT) and of the US War on Terror.

Moscow and Beijing were also not very pleased with her work as she criticised Russia's policy regarding Chechnya and China's measures regarding the Muslim Uighurs in Xinjiang. Not surprisingly, she was not supported by Washington and Moscow to extend her mandate.

Sérgio Vieira de Mello (2002–2003) (Brazil) followed Mary Robinson. He had excellent diplomatic skills and managed to maintain good relations with Washington and Moscow; he was killed in 2003 in Iraq by a suicide bomber.

The acting High Commissioner, who followed Vieira de Mello, Bertrand Ramcharan (2003–2004) (Guyana) did a lot during his short tenure to raise the morale of the agency and keep human rights and humanitarian principles at the centre in case of violent conflicts. He was an outspoken defender of human rights, who frequently

200 Mertus, 2009, pp. 11–12.
201 Pillay, 2009.

carried out investigations on his own initiative, without specific authorisation from Member States. (Iraq, Darfur, Liberia)

In 2004, Louise Arbour (2004–2008) (Canada), a former prosecutor of the International Criminal Tribunals for Yugoslavia and Rwanda, was appointed as a new High Commissioner. She became quite outspoken by the end of her mandate. This led to clashes with Washington regarding her criticism of US policy on arbitrary detention and interrogation techniques. She secured major expansion of OHCHR resources. She carried out silent diplomacy concerning countries like China or Russia.

Navi Pillay (2008–2014) (South Africa) followed Arbour in 2008. A former judge of the International Tribunal for Rwanda, Pillay was very outspoken on lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights, but in other cases, she used quiet diplomacy if deemed necessary. She was very supportive of civil society. In 2012 she had a conflict with China over her statement on Tibet. She called for international inquiries in case of Libya, Syria and North Korea.[202]

The next High Commissioner was Prince Zeid Ra'ad Al Hussein (2014–2018) (Jordan), a former diplomat who became a vocal and passionate human rights advocate. He strongly criticised the Islamic State and called the international community to combat it. He expressed concern over the presidential campaign of Donald Trump, but also criticised several heads of state, like President Duarte.

Michelle Bachelet, (2018–2022) former President of Chile, succeeded Zeid Ra'ad Al Hussein of Jordan on 1 September 2018.[203] Her relationship with Washington also became hostile within a short time, as she was personally criticised by US Secretary of State Michael Pompeo for releasing a database of companies that are helping Israel to develop Jewish settlements in Palestine-occupied territory.[204] Her visit to China in 2022 was criticised by human rights organisations as she was considered being too polite with Beijing. Her report about the visit appeared just before she left the office.

The current High Commissioner for Human Rights is Volker Türk (2022 –) (Austria) who was previously Under-Secretary-General for Policy and Assistant Secretary-General for Strategic Coordination in the Executive Office of the UN Secretary-General. He had a statement on the risk of famine in Gaza, but also urged to end repression of independent voices in Russia.

5.4. The Office of the UN High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights (OHCHR) is part of the United Nations Secretariat, with a staff of approximately 1,960 people from 148 different nationalities. Its headquarters are located in Geneva, with an additional office in New York. In 2024, the Office's regular budget amounted to 171,630,000 USD, while extrabudgetary requirements were 216,673,000 USD. The OHCHR's Geneva-based headquarters comprises three main divisions: 1) Thematic Engagement, Special

202 Mertus, 2009, pp. 32–35.
203 Pease, 2016, pp. 102–112.
204 Crossette, 2020.

Procedures, and Right to Development Division (TESPRDD): This division focuses on developing policy, providing guidance, tools, advice, and capacity-building support on various thematic human rights issues. It also supports the Human Rights Council's special procedures and human rights mainstreaming efforts; 2) Human Rights Council and Treaty Mechanisms Division (CTMD): This division offers substantive and technical support to the Human Rights Council (HRC) and its Universal Periodic Review (UPR) mechanism, as well as assisting the human rights treaty bodies; 3) Field Operations and Technical Cooperation Division (FOTCD): This division manages and implements the OHCHR's work in the field.[205]

6. The Human Rights Aspects of the Work of the International Court of Justice

The International Court of Justice (ICJ), as the principal judicial organ of the United Nations, primarily adjudicates inter-state disputes and provides advisory opinions on questions of international law. It is one of the six principal organs of the United Nations, which is located in The Hague. It consists of a panel of 15 judges, elected by the UN General Assembly and the Security Council for nine-year terms. Pursuant to Article 59 of the Statute of the Court, its rulings and opinions are binding on the parties with respect to the particular case ruled on by the Court. Although it is not a human rights court in the strict sense – unlike the European or Inter-American human rights courts – the ICJ's jurisprudence increasingly engages with human rights norms, reflecting the broader international legal environment in which it operates.

6.1. Jurisdiction and Mandate: Structural Limitations and Opportunities

The ICJ's jurisdiction is based on state consent, and its statute does not explicitly mandate it to adjudicate human rights claims. Moreover, only a limited number of human rights treaties – such as the Genocide Convention and the Convention Against Torture – grant it jurisdiction.[206] As such, individuals cannot bring cases before the Court, and the ICJ does not serve as an enforcement mechanism for international human rights treaties per se. Nonetheless, as a court of general international law, it is competent to interpret and apply human rights norms when raised in inter-state disputes or advisory proceedings. Recent case law of the ICJ includes several rulings concerning human rights violations, with direct implications for individuals. This increased focus on human rights can be attributed to the growing number of

205 See Structure of the OHCHR: https://www.ohchr.org/en/about-us/where-we-work (Accessed: 10 June 2025).

206 The 5 human rights treaties which have a clause allowing proceedings to be brought before the ICJ are the following: Genocide Convention, ICERD, CEDAW, CAT and the Convention on the Political Rights of Women.

ICJ judges who have previously served on international human rights tribunals or mechanisms.[207]

Interestingly, statistical analysis of the Court's decisions between 1947 and 2018 shows that while the collective decisions of the ICJ mention "human rights" only 14 times, individual or separate opinions by judges refer to human rights over 680 times. This discrepancy highlights the evolving attitudes of judges and the growing receptivity to human rights within the ICJ's judicial culture, even if not fully reflected in the majority rulings.[208]

6.2. The Normative Elevation of Human Rights in Early Jurisprudence

In its early advisory opinions, such as *Interpretation of Peace Treaties* and *Reservations to the Genocide Convention*, the Court recognised the normative weight of human rights and underscored their universal and humanitarian character. It established that the Genocide Convention had a civilising and non-reciprocal purpose, which limited states' ability to make reservations inconsistent with its object and purpose. These decisions contributed to the normative "internationalisation" of human rights – moving them beyond exclusive domestic jurisdiction, despite Article 2(7) of the UN Charter emphasising state sovereignty.

The *Namibia* advisory opinion and the *Teheran Hostages* case further affirmed that certain human rights obligations, notably those grounded in the UN Charter and the Universal Declaration of Human Rights, hold binding force, thereby reinforcing the legal relevance of human rights principles within the UN legal framework (Though it did not comment on the legal status of the UDHR itself.).[209]

6.3. Human Rights as Obligations Erga Omnes

A major breakthrough in integrating human rights into general international law came in the *Barcelona Traction* case, where the ICJ articulated the concept of obligations *erga omnes* – duties owed by states towards the international community as a whole. These include prohibitions against aggression, genocide, slavery, and racial discrimination, as well as the right to self-determination.[210]

The Court reiterated this in *Belgium v. Senegal* (2012), (regarding the *obligation to prosecute or extradite*) holding that obligations under the Torture Convention are *erga omnes* parts—binding upon and enforceable by all States Parties. These cases established that human rights violations, particularly those involving *jus cogens* norms, transcend bilateral state relations. However, despite recognising the special status of these norms, the Court has remained cautious, affirming that core principles of state sovereignty – such as jurisdictional immunities and the requirement of consent

207 Pipan, 2018, pp. 209–210.
208 Jubilut and Sanctis, 2018, p. 226.
209 Pipan, 2018, pp. 211–212.
210 Ibid., p. 215.

– remain intact. Thus, fundamental human rights cannot override the consensual basis of the court's jurisdiction.[211]

6.4. Interpretation and Integration of Human Rights Norms

The ICJ has increasingly adopted a value-oriented and evolutive interpretative approach to human rights treaties. It considers the "object and purpose" of treaties, their humanitarian character, and the principle of effectiveness (*effet utile*), which demands that treaties be interpreted in a way that ensures practical impact.[212]

In the *Genocide* cases, the court clarified that the obligation to prevent genocide requires states to exercise due diligence, using all reasonably available means to prevent such acts, regardless of the outcome.[213] Similarly, in the *Diallo* case, the court acknowledged that diplomatic protection can be used to enforce human rights obligations, extending the traditional scope of this doctrine beyond mere injury to foreign nationals. While initially limited to the minimum standards of treatment of foreign nationals, this concept has since expanded to include, among other things, internationally guaranteed human rights.[214]

6.5. Cross-Fertilisation with Human Rights Jurisprudence

The ICJ increasingly references the jurisprudence of specialised human rights bodies. In *Ahmadou Sadio Diallo*, it cited the Human Rights Committee and the African Commission on Human and Peoples' Rights. In the *Genocide* cases, it relied on findings from the International Criminal Tribunals for the Former Yugoslavia and Rwanda. This judicial dialogue enhances the coherence and legitimacy of international human rights law and reflects the ICJ's responsiveness to evolving legal standards.[215]

6.6. Extra-Territorial and Conflict-Contextual Application

The ICJ has also affirmed that human rights obligations apply beyond a state's territorial boundaries. In its *Wall advisory opinion*, it found that the ICCPR, ICESCR, and CRC were applicable to the Occupied Palestinian Territory. In *Armed Activities on the Territory of the Congo*, the court confirmed that states are bound by international human rights law when exercising jurisdiction outside their territory. In *Nuclear Weapons*, the court held that the ICCPR continues to apply during armed conflict, except for derogable rights under Article 4 of the Covenant.[216]

211 Ibid., p. 216.
212 Crawford and Keene, 2019, p. 944.
213 Ibid., p. 946.
214 Ibid., p. 948.
215 Pipan, 2018, pp. 218–220.
216 Ibid., pp. 220–221.

7. Conclusion: A Gradual but Clear Evolution

While the ICJ is not a human rights court, it plays a vital role in integrating human rights into the mainstream of international law. Its contributions are cautious but cumulative, often shaped by the willingness of states to frame disputes in human rights terms, and by the judges' own expertise and perspectives. Through its interpretations of *erga omnes* obligations, evolving references to human rights bodies, and its embracement of value-driven treaty interpretation, the ICJ has helped elevate human rights to a central concern of international law, even within the boundaries of a state-centric legal system. Based on its recent case law, the court appears willing to adopt a more liberal and flexible approach when the text, context, and purpose allow for it.[217]

217 Crawford and Keene, 2019, p. 950.

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