

Thematic unit 2: International protection of human rights: universal scope

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1. The international protection of human rights at the universal level: the work of the UN

In the preamble to the UN Charter, the states that adopted it declare themselves ‘resolved... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women...’. Article 1.3 of the charter includes among the purposes of the United Nations ‘respect for human rights and fundamental freedoms for all’.

References in the UN Charter to the promotion of human rights are also mentioned in the following articles:

Article 55: ‘For the purpose of creating conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the *Organization 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 76: ‘*to promote respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and recognition of the interdependence of the peoples of the world; and to ensure equal treatment for all members of the United Nations and their nationals in social, economic and commercial matters, and equal treatment of such nationals in the administration of justice*’.

Articles 55 and 76 outline the obligations of the United Nations in the promotion of human rights, which in turn must be followed by its member states (Article 56 of the UN Charter).

Relevant UN bodies in the field of human rights:

→ The UN General Assembly - relevance to human rights issues:

Article 13.2 states that the General Assembly shall promote studies and make recommendations for the purpose of ‘assisting in the realization of human rights and fundamental freedoms for all’.

→ ECOSOC - relevance to human rights issues:

Article 62: ‘The Economic and Social Council may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all’.

Article 68: ‘The Economic and Social Council shall establish commissions for economic and social affairs and for the promotion of human rights, and such other commissions as may be necessary for the performance of its functions’.

A. THE 1948 UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Charter is silent on the enumeration of the human rights and fundamental freedoms whose protection it promotes. This lacuna was soon filled by the General Assembly, which adopted Resolution 217 (III) proclaiming the Universal Declaration of Human Rights.

The rights and freedoms enumerated in the declaration, which include civil and political rights as well as economic, social, and cultural rights, are recognised for all human beings.

The Universal Declaration is not formally binding on member states, nor does it establish any legal mechanism to ensure the effective realisation of the rights recognised.

But it can be affirmed, as Professor Pastor Ridruejo points out, that international norms on the protection of human rights form part of international *ius cogens* and therefore constitute obligations *erga omnes*.

The United Nations Charter assigns to the Economic and Social Council (ECOSOC) the task of making recommendations to promote respect for human rights and fundamental freedoms (also the mission of establishing commissions) as was established the **Commission on Human Rights, composed of 54 member states, through a system aimed at equitable geographic representation.** The UN General Assembly created the Office of the High Commissioner for Human Rights in 1993 with the mandate to promote and protect the enjoyment and exercise of human rights (training/publications).

The Human Rights Commission was replaced by the Human Rights Council in 2006.

B. THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS OF 1966.

The human rights contained in the Universal Declaration were positivised by the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. In this way, the human rights set out in the covenants have been transformed into treaty obligations.

- THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 1966

This Covenant does not appear to confer rights directly, but commits states to take all appropriate means, individually and through international assistance and cooperation, to the maximum of their available resources (Art. 2.1 of the Covenant on ESC rights). And to guarantee all rights without discrimination (Art. 3.1 of the Covenant on ESC rights).

The International Covenant on Economic, Social and Cultural Rights enshrines one article on the rights of peoples to freely dispose of their natural wealth and resources and the rest on the rights of 'everyone' without discrimination in relation to:

- Right to work.
- The right to just and favourable conditions of work.
- Trade union rights.
- Right to strike.
- Right to social security and social insurance.
- Right of everyone to an adequate standard of living for his or her entire family.
- Right to the enjoyment of the highest attainable standard of health.
- Right to education.
- The right to participate in cultural life and to enjoy the benefits of scientific progress.

Compliance monitoring systems:

Reporting system. States are required to submit reports on the measures taken and the progress made in implementing the covenant to the **Committee on Economic, Social and Cultural Rights** (composed of 18 independent persons which submits reports with general recommendations for the implementation of these rights). These reports are public and exert moral pressure on states.

Reporting procedure - PESC

Reporting system - reporting on compliance with the Covenant.

State reports are submitted to the Economic and Social Council (ECOSOC) - Commission on Human Rights - General Assembly (which submits recommendations and a summary of the state party report).

(NGOs can submit information to the HR Committee and the Committee on Economic, Social and Cultural Rights)

In 2008, the **Optional Protocol** to the Covenant was adopted, which allows for **individual complaints** to be submitted to the committee for violations committed by states.

- THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS OF 1966.

The International Covenant on Civil and Political Rights devotes one article to the rights of peoples: 'all peoples have the right to self-determination of peoples' and the rest to the rights of individuals, i.e. 'all individuals within its territory and subject to its jurisdiction'.

DCP PACT

- Right to life.
- To be free from torture (prohibition of torture or other cruel, inhuman, or degrading treatment or punishment).
- Prohibition of slavery and serfdom.
- Right to liberty and security of person.
- Right to humane treatment of persons deprived of their liberty.
- Prohibition of imprisonment for debt.
- Right to freedom of movement within the territory of the state where a person is lawfully residing.
- Expulsion of foreigners in accordance with the law.
- Right to access to justice, procedure, and guarantees.
- Recognition of legal personality.
- Right to privacy.
- The right to freedom of thought, conscience, and religion.
- Right to freedom of expression.
- Right to peaceful assembly.
- Right to freedom of association.
- Right to vote and to stand as a candidate.
- Right to equality before the law.

What is the mechanism for mandatory monitoring by the signatory states of the DCP Pact?

Reporting system. National reporting system to the Human Rights Committee for its examination. Public report moral pressure.

Reporting Procedure-PDCP-Mandatory

State reports to be submitted to the UN Secretary-General-Human Rights Committee

What is the optional monitoring mechanism for states that are signatories to the CPR Covenant and the ESCR Covenant?

Inter-state complaints/submission of communications from one state to another (the state must have accepted the competence of the Committee, Article 41 of the Covenant on Civil and Political Rights). In the Covenant on Economic, Social and Cultural Rights, inter-state complaints are set out in the protocol to the Covenant on Economic, Social and Cultural Rights (Art.10).

Individual communications by persons who consider themselves to be ‘victims’ can be submitted against states that have signed the optional protocol to the Covenant on Civil and Political Rights and have exhausted domestic remedies – also in the covenant on ESC rights in its respective protocol.

3.The Committee of the ESCR Covenant may also, in certain circumstances, undertake enquiries into gross or systematic violations of any of the economic, social, and cultural rights set forth in the covenant (Art. 11 ESCR Covenant).

State and individual complaints system. Optional in both covenants.

C. OTHER UN HUMAN RIGHTS CONVENTIONS

The UN has also made a great effort to codify human rights through numerous specific international treaties: prevention and punishment of the crime of genocide, imprescriptibility of war crimes and crimes against humanity, elimination of racial discrimination, status of refugees and stateless persons, political rights of women and nationality of married women, repression of trafficking in human beings, rights of the child, etc.

D. ADDITIONAL CONTROL MECHANISMS: EXTRA-CONVENTIONAL PROCEDURES

The UN has also established additional intergovernmental monitoring procedures, which are carried out under the aegis of the Commission on Human Rights established in 1946. These are the ‘extra-conventional procedures’ and are based on the general powers that the charter attributes to the UN in this area.

On this basis, the Economic and Social Council has developed two types of **extra-conventional procedures: the ‘confidential procedures’ and the ‘public special procedures’**. These mechanisms are applied when communications are received concerning situations of widespread violations of human rights, either in a specific territory or in respect to specific rights. **In such cases, a fact-finding mission is carried out by collective or unipersonal bodies set up for this purpose to identify and assess the situation.**

Working groups/experts/special rapporteurs e.g. on violence against women, by country, anti-trafficking/genocide fact-finding missions.

Based on the reports received, the Human Rights Council makes general recommendations for action which are not formally legally binding, but which have a lobbying and moral effect.



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