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The Development of United Nations Mechanisms for the Protection and Promotion of Human Rights

Elsa Stamatopoulou*

I. Introduction

The development of human rights protection mechanisms at the United Nations has been inextricably linked with the organization's efforts to promote human rights. The two approaches have been mutually reinforcing and have created strong human rights constituencies. In fact, this process itself has been gradually depoliticizing the international mechanisms in the area of human rights.

The concept of human rights has always been dynamic, as has the entire discipline of international law. Human rights concepts and mechanisms have developed historically along with interventions by civil society and by states. The right to self-determination is one of the most eloquent examples. The development of international human rights mechanisms over the past five decades since the adoption of the Universal Declaration of Human Rights has been linked as much with the rise of pro-democracy and pro-human rights movements around the world as with the end of the Cold War and the growing interdependence of states, markets, and peoples.

I therefore discuss the development of United Nations human rights protection mechanisms from this broader angle and try to explain the "whys" and "why nots" accordingly. For the purposes of this discussion, I concentrate on the human rights mechanisms of the United Nations proper without including the mechanisms of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labour Organisation (ILO).

I first discuss the treaty-based human rights mechanisms and their significance in the protection and promotion of human rights. I then refer to the extra-conventional system of protection of human rights. Third, I discuss the contribution of the World Conference on Human Rights in 1993 to the protection and promotion of human rights. Fourth, I discuss the United Nations human rights field presences and their contribution. Fifth, I examine recent efforts to mainstream human rights in the areas of peace and security, humani-

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tarian issues, and development. Finally, I outline some of the main challenges ahead in protecting and promoting human rights.

II. *A Treaty-Based System of Protection and Promotion of Human Rights*

After the adoption of the Universal Declaration of Human Rights (Universal Declaration),¹ the United Nations faced the challenge of preparing binding international human rights instruments. One day before the adoption of the Universal Declaration on December 9, 1948, however, the General Assembly had already adopted the first United Nations human rights treaty, the Convention on the Prevention and Punishment of the Crime of Genocide.² Initially, the ascending Cold War ideological rift between civil and political rights on the one hand and economic, social, and cultural rights on the other was bridged by the inclusion of both families of rights in one unified document, the Universal Declaration. This was due in part to the overwhelming momentum after the tragedies of World War II and in part to the leadership of Eleanor Roosevelt and her peers. Yet, this rift reemerged during the subsequent two decades when it became obvious that the polarized world around the table was not ready to allow the same fusion when preparing binding legal instruments. Thus in 1966, the United Nations separately adopted the International Covenant on Economic, Social and Cultural Rights³ and the International Covenant on Civil and Political Rights⁴ and its (First) Optional Protocol.⁵ The year before, the United Nations had adopted the International Convention on the Elimination of All Forms of Racial Discrimination.⁶

These three treaties corrected an omission of the earlier antigenocide convention by establishing the first three human rights monitoring mechanisms in the form of "treaty bodies," as this type of mechanism is now called.⁷ The first treaty bodies were later joined by three others under the following subsequent human rights treaties: the Convention on the Elimination of All

1. Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).

2. Convention on the Prevention and Punishment of the Crime of Genocide, *opened for signature* Dec. 9, 1948, 78 U.N.T.S. 277.

3. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

4. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171.

5. Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 302.

6. International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195.

7. See International Covenant on Economic, Social and Cultural Rights, *supra* note 3, at 9-10; International Covenant on Civil and Political Rights, *supra* note 4, at 179-84; International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 6, at 224-34.

Forms of Discrimination Against Women,⁸ the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁹ and the Convention on the Rights of the Child.¹⁰ The International Convention on the Suppression and Punishment of the Crime of *Apartheid*¹¹ had also established a treaty body, the Group of Three on *Apartheid*, which stopped meeting after the change of regime in South Africa. The treaty bodies are composed of independent experts elected in their individual capacities, although proposed by governments. Their main mandate is to examine periodic reports of states parties to the treaties on the measures taken by those states to implement their treaty obligations. Moreover, the Human Rights Committee, which is the treaty body under the Covenant on Civil and Political Rights, the Committee on the Elimination of Racial Discrimination (CERD), and the Committee Against Torture (CAT) also examine individual complaints submitted, respectively, under the Optional Protocol to the Covenant, optional article 14 of the antiracism Convention, and article 22 of the antitorture Convention.

Under the above-mentioned treaties, the treaty bodies are expected to make "general comments" as well, a task that during the Cold War era precluded any formal value judgments or conclusions by the treaty bodies regarding the performance of specific governments after the examination of their reports.¹² The general comments thus consisted of authoritative interpretations by the treaty bodies of the articles of the human rights treaties. This, however, changed in the early 1990s, and the treaty bodies, one after the other (the Committee on the Elimination of Discrimination Against Women (CEDAW) was the last), started adopting conclusions and recommendations after examining the specific country reports in addition to adopting interpretative statements to the articles of the conventions. This practice, along with the increasing acceptance of the role of Non-Governmental Organizations (NGOs) as information-providers to the treaty bodies, has resulted in an objective system of treaty monitoring. The system has been further strengthened by the adoption of some innovative working methods, including requests for extraordinary or supplementary reports from governments when necessary and especially including linking technical assistance to the areas of weakness

8. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, 21-22.

9. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 23 I.L.M. 1027, 1031-36.

10. Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1448, 1472-74.

11. International Convention on the Suppression and Punishment of the Crime of *Apartheid*, Nov. 30, 1973, 1015 U.N.T.S. 243.

12. See, e.g., Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 8, at 22; International Covenant on Civil and Political Rights, *supra* note 4, at 182; International Covenant on Economic, Social and Cultural Rights, *supra* note 3, at 10.

identified in each country by the treaty bodies. The latter approach, initiated by the Committee on the Rights of the Child, is a fundamental step in the operationalization of human rights. Not only is the United Nations's Programme of Technical Cooperation in the Field of Human Rights expected to respond to areas identified by the treaty bodies, but other parts of the United Nations also are gradually expected to do so.

III. Extra-Conventional System for the Protection of Human Rights

For two and a half decades, the Commission on Human Rights restrictively interpreted the original words in article 1 of the United Nations Charter¹³ that identify the promotion of human rights as one of the United Nations's aims. The Commission definitely viewed "promotion" as softer than "protection," and, in a polarized ideological environment, the United Nations Commission on Human Rights had no power to establish any monitoring mechanisms protective of human rights.

The breakthrough came in the late 1960s when the situation in southern Africa allowed the Commission to create the Ad Hoc Working Group on Southern Africa, a group in charge of monitoring the situation in that part of the world. At the same time, the Commission was able to gather adequate political will to establish a procedure for considering, on a confidential basis, gross and systematic violations of human rights. The procedure, which became known as the "1503 procedure" from the number of the resolution of the Economic and Social Council¹⁴ which established it, received information about human rights violations from victims, NGOs, and others in specific countries. Since then, nongovernmental actors have received official standing at the Commission on Human Rights as recognized information-providers about human rights violations. Significantly for the United Nations, virtually during the same period in the late 1960s, the Economic and Social Council officially adopted a procedure for granting consultative status to NGOs that was valid in the whole economic and social area, not only in the area of human rights. This procedure, which has been significantly expanded since the global United Nations conferences of the 1990s,¹⁵ has allowed a significant input of civil society in the development of international human rights norms and

13. U.N. CHARTER art. 1 ("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 . . .").

14. E.S.C. Res. 1503, U.N. ESCOR, Resumed 48th Sess., Supp. No. 1A, at 8, U.N. Doc. E/4832/Add.1 (1970).

15. Economic and Social Council Resolution 1996/31, E.S.C. Res. 1996/31, U.N. ESCOR 48th plen. mtg., Supp. 1, at 53, U.N. Doc. E/1996/96 (1996), redefined the relationship between the United Nations and NGOs.

mechanisms and, consequently, the relative defusion of governmental politics in the United Nations human rights bodies. I also believe that the very recognition of such consultative status for NGOs was obviously a result of the rising strength and significance of the nongovernmental part of society and of powerful movements against colonialism and for democracy and human rights.

These first mechanisms of human rights monitoring and protection were soon followed by the Working Group on Chile in 1974, after the coup against President Salvador Allende, and, in the late 1970s, by the Working Group on Enforced or Involuntary Disappearances. The 1980s and 1990s were characterized by the establishment of a series of protection mechanisms, both country-specific and thematic. Currently, there are seventeen thematic mandates¹⁶ (enforced or involuntary disappearances; arbitrary detention; summary or arbitrary executions; independence of judges and lawyers; torture and cruel, inhuman, or degrading treatment or punishment; internally displaced persons; religious intolerance; use of mercenaries as a means of impeding the right to self-determination; freedom of opinion and expression; racism, racial discrimination, and xenophobia; sale of children, child prostitution, and child pornography; violence against women; effects of toxic and dangerous products on the enjoyment of human rights; protection of children affected by armed conflict; impact of external debt on human rights; the right to education; and the right to development) and sixteen country-specific mandates¹⁷ (Israeli practices in the occupied territories, Afghanistan, Cuba, Equatorial Guinea, Iran, Iraq, Myanmar, Sudan, former Yugoslavia, Zaire, Rwanda, Burundi, Cambodia, Haiti, Somalia, and Nigeria). Additional country-specific or thematic mandates are occasionally given to the Secretary-General and to the High Commissioner for Human Rights.

The methods of work of the Commission's Special Rapporteurs/Representatives and Working Groups consist of collecting and analyzing information received by individuals, NGOs, church groups, opposition groups, and others; conducting country visits; sending urgent action appeals to governments on individual cases; and presenting annual public reports with specific conclusions and recommendations to the Commission on Human Rights as well as, in many cases, to the General Assembly. This methodology of the United Nations's extra-conventional human rights procedures allows for a considerable depolitization of human rights mechanisms. The development of specific technical and procedural tools places these procedures beyond the political whim of specific governments. Thus, it is not necessary for the Commission on Human Rights to adopt a specific resolution on a country for that

16. *Commission of Human Rights, Report of the Fifty-Fourth Session*, U.N. ESCOR, U.N. Doc. E/1998/23 (forthcoming 1998).

17. *Id.*

country to appear in the reports of the thematic mechanisms of the Commission on the basis of information received from NGOs and others.

IV. The Contribution of the World Conference on Human Rights

Following are the main points of consensus at the World Conference on Human Rights in 1993¹⁸ that have added significantly to the international protection and promotion mechanisms of human rights:

1. Human rights are universal. Human rights are a legitimate concern of the international community; *all* human rights – civil, cultural, economic, political, social – must be respected; human rights are interrelated and interdependent (forty-five years after the adoption of the Universal Declaration, the world again came to view human rights holistically); *all* states, irrespective of their regional, cultural, or political particularities, must respect internationally recognized human rights; *all* states should ratify human rights treaties (the Child Convention by 1995, the Women's Convention by the year 2000).¹⁹

2. The right to development is part of fundamental human rights, and the High Commissioner for Human Rights, established at the end of 1993 at the behest of the World Conference, is to promote the right to development.²⁰

3. Women's rights are human rights and must be fully integrated in human rights protection procedures. Violence against women, whether in the public or private sphere, is a human rights issue, and states must eliminate cultural or religious practices that violate the human rights of women.²¹

4. Human rights are linked with peace and, thus, must be integrated as appropriate in United Nations peace-keeping operations.²²

5. Development, democracy, and human rights are inextricably linked.²³

6. Human rights institutions must be strengthened, and the United Nations should provide comprehensive assistance in this respect. Human rights education is crucial and the United Nations should proclaim a Decade for Human Rights Education (the General Assembly did so in 1993).²⁴

7. The General Assembly was called upon to consider the establishment of a High Commissioner for Human Rights and did so in 1993, thus adding to the system of protection and promotion of human rights.²⁵

18. WORLD CONFERENCE ON HUMAN RIGHTS, VIENNA DECLARATION AND PROGRAMME OF ACTION, U.N. Pub. DPI/1394-39339-August 1993-20M (1993).

19. *Id.* at 28-30, 35, 55.

20. *Id.* at 31-33, 49.

21. *Id.* at 33-34, 53-57.

22. *Id.* at 70.

23. *Id.* at 30-31.

24. *Id.* at 66-67.

25. *Id.* at 49.

8. The international community was called upon to expedite the establishment of an international criminal court. (The ICC mandate was adopted in June 1998.)²⁶

9. The United Nations should substantively increase its resources for human rights.²⁷

V. Human Rights Field Presence

The peace and human rights areas of United Nations organizations have had an uneasy relation over the years. Members of the Security Council generally have been hesitant to formally recognize any role for the Council to intervene and protect human rights. This, however, has not been absolute, and in the last few years the Council was able to recognize such a role, for example, in Iraq (regarding the Kurds in the north), El Salvador (establishment of ONUSAL, the United Nations mission in El Salvador, a human rights field presence), the former Yugoslavia, Rwanda, and Georgia.

This tension regarding human rights issues in the Security Council has been counterbalanced by other avenues for the United Nations to establish human rights field presences through the General Assembly in Haiti and Guatemala, through the Commission on Human Rights in Cambodia, former Yugoslavia, and the Democratic Republic of Congo, or through initiatives of the High Commissioner for Human Rights in agreement with the governments in, for example, Rwanda, Burundi, Malawi, and Colombia. Currently, apart from the human rights operations in Guatemala and Haiti, which do not fall under the aegis of the High Commissioner for Human Rights, there are twenty-two field presences of the High Commissioner in Rwanda, Burundi, former Yugoslavia, Abkhazia, Georgia, Cambodia, Colombia, Gaza, Malawi, Mongolia, and the Democratic Republic of Congo. Additionally, there is a recent trend to attach human rights advisors or units to the Special Representatives of the Secretary-General in charge of political missions in affected areas or in peace-keeping operations.

Until now, the work of the peace and security mechanisms of the United Nations undoubtedly has not adequately included human rights elements. Funding has been a major challenge for the human rights field presences. With the exception of Cambodia, where the regular United Nations budget funds some ten posts, voluntary contributions fund the rest of the field operations. Consequently, they suffer from financial precariousness. Moreover, the United Nations has been unable to adequately protect the human rights of populations in extreme situations, although United Nations human rights presences sometimes have a dissuasive effect. The High Commissioner has

26. *Id.* at 16, 69.

27. *Id.* at 42, 46-47.

recently conducted an evaluation of human rights field presences in order to improve their approaches.

The United Nations increasingly has been combining both protection and promotion of human rights in almost all these human rights operations. The United Nations has become aware that human rights institution-building, human rights education and training, the creation of a civil society aware of human rights, assistance to local human rights NGOs, and the creation of human rights infrastructures must be addressed as early as possible.

VI. Mainstreaming of Human Rights

Gender and human rights are now the two cross-cutting themes in the four Executive Committees established by the Secretary-General.²⁸ These four committees, the Executive Committee on Peace and Security (ECPS), the Executive Committee of the United Nations Development Group (EC-UNDG), the Executive Committee on Humanitarian Affairs (ECHA), and the Executive Committee on Economic and Social Affairs (ECESA), have been functioning since April 1997. The ECPS, the ECHA, and the EC-UNDG are the most challenging for human rights. The High Commissioner's position is that in the area of peace, human rights should be part of the thinking from the phase of prevention of crises to the phase of conceptualization of an operation, whether in fact a peace-keeping presence will be decided or not. Also, human rights should be an integral part of postconflict peace-building. Furthermore, the potential of women in peace-building initiatives should be fully explored.

Moreover, there now is a push to incorporate human rights advisors in the teams of Special Representatives of the Secretary-General, and this is happening increasingly. Human rights advisors could be covered by a budget provided by the Security Council in the same way that military advisors can be so funded. Another interesting issue in connection with the presence of human rights observers and advisors within peace-keeping or political missions is the line of reporting, for example, whether the human rights observers should report to the High Commissioner, the Special Representatives of the Secretary-General, or in some other way. This is not yet clarified in the system, but the desired solution would be for the human rights staff to report to the High Commissioner through the Special Representatives of the Secretary-General. This issue touches upon a core question: To what extent is the *full* integration of human rights in peace or political negotiations possible or even desirable? I would like to leave the question open for discussion. For now, I contend that there definitely is merit in the United Nations having

28. The Secretary-General's reform proposals were presented to the General Assembly in *Renewing the United Nations: A Programme for Reform, Report of the Secretary-General*, U.N. GAOR, 51st Sess., Agenda Item 168, U.N. Doc. A/51/950 (1997).

different angles. The human rights angle, with its inherent, although relative, independence, should continue to have an independent voice. Furthermore, I believe at the same time that this may be quite useful not only for the cause of human rights but for political reasons as well.

The human rights debate is of course entering the debates of the Security Council in several areas, one of which is the area of sanctions. Currently, discussions are taking place as to the limitation of sanctions so that they do not infringe upon fundamental nonderogable rights. Of course, the area of economic and social rights has been neglected over the decades, and the Vienna Declaration and Programme of Action clearly stated that more work needs to be done in this area.²⁹ Protection mechanisms for economic and social rights are little developed; however, this is not to criticize the Committee on Economic and Social Rights which has been doing excellent work in the last few years. At its 1998 session, the Commission on Human Rights focused on the matter. It decided to establish a Special Rapporteur on the right to education as well as new mechanisms on the right to development, on extreme poverty, and on the impact of structural adjustment on human rights.³⁰

The right to development is a high priority of the High Commissioner, and recently the EC-UNDG decided to establish an Ad Hoc Group on the Right to Development mainly in order to incorporate this right in the United Nations Development Assistance Framework (UNDAF). Our hope is that the political debates over structural adjustment and social cost, which have blocked agreement at the Commission on Human Rights Working Group on this subject, will be, in a certain sense, mooted by the United Nations itself adopting a very practical approach to give meaning to the right to development in its operations. The United Nations Development Programme (UNDP) issued a very important policy paper at the beginning of 1998 on the integration of human rights in development.³¹ In the introduction, the paper states that one-third of the United Nations's resources are devoted to governance programs.³² The United Nations Children's Fund, UNICEF, on the other hand, already is a human rights operational agency, conceptually restructured around the Convention on the Rights of the Child.

29. See VIENNA DECLARATION AND PROGRAMME OF ACTION, *supra* note 18.

30. See Commission on Human Rights resolutions 1998/45 <<http://www.unhchr.ch/html/menu4/chrres/1998.res/45.htm>> (on education), 1998/33 <<http://www.unhchr.ch/html/menu4/chrres/1998.res/33.htm>> and 1998/72 <<http://www.unhchr.ch/html/menu4/chrres/1998.res/72.htm>> (on development), 1998/25 <<http://www.unhchr.ch/html/menu4/chrres/1998.res/25.htm>> (on extreme poverty), and decision 1998/103 <<http://www.unhchr.ch/html/menu4/chrres/54dece.htm>> (on structural adjustment); *supra* note 15.

31. *Integrating Human Rights with Sustainable Development: A UNDP Policy Document*, United Nations Development Programme, January 1998.

32. *Id.*

Obviously, the promotion and protection efforts of the United Nations are intertwined. The High Commissioner has an important program of human rights advisory services and technical assistance in place, precisely for institution-building.³³ The program of advisory services, although present on paper for decades, saw a true increase in quality and quantity since 1987 and has now become a major part of the activities of the Office of the High Commissioner for Human Rights (OHCHR).

VII. Some of the Main Challenges in the Promotion and Protection of Human Rights

Below are six major challenges to the promotion and protection of human rights, some of which I have already mentioned above:

1. The core challenge of the implementation of international human rights norms;
2. The full integration of economic and social rights in the United Nations's human rights mechanisms and in all countries' approach to human rights;
3. The full integration of the human rights of women in the human rights mechanisms;
4. The integration of human rights in the peace and security areas of the United Nations, as well as regionally and nationally;
5. The extremely serious challenge of making private economic actors in our global economy accountable for the violation of human rights. It is hard, for example, to understand why it took human rights NGOs so long to realize the importance of the draft Multilateral Agreement on Investments (MAI) to the human rights of millions.
6. Finally, the civil society must continue to be mobilized.

VIII. Conclusion

Human rights movements around the world have led to the development of international human rights mechanisms that now stand on their own, and this trend must continue throughout civil society. Without solid constituencies, even strong institutions fall into disarray and wither away. Human rights education, in the largest sense of the term, must systematically penetrate each society, whether at school, in the community, in professional settings, or otherwise. The creation of a human rights culture beyond divisive ideologies is the ultimate guarantor of human rights.

33. For the most recent report on the High Commissioner's activities in this area, see *Technical Cooperation in the Field of Human Rights, Report of the Secretary-General*, Commission on Human Rights, 54th Sess., Prov'l Agenda Item 17, U.N. Doc. E/CN.4/1998/92 (1998).