C. Flinterman and J. Gutter

The United Nations and Human Rights: Achievements and Challenges

1. Introduction

In his book, International Law and Human Rights, the late Sir Hersch Lauterpacht, eminent international scholar and former judge at the International Court of Justice, strongly rejected the view that the provisions of the Charter of the United Nations referring to human rights and fundamental freedoms were devoid of any legal commitment, that they were to be considered a mere declaration of principle. He wrote:

> "These provisions are no mere embellishment of a historic document; they were not the result of an afterthought or an accident of drafting. They were adopted, with deliberation and after prolonged discussion before and during the San Francisco Conference, as part of the philosophy of the new international system and as a most compelling lesson of the experience of the inadequacies and dangers of the old."[1]

Indeed, the international promotion and protection of human rights and fundamental freedoms was meant to become and, as we will discover, has effectively become a corner-stone of the work of the United Nations and its Member States. "[T]he inadequacies and dangers of the old" Lauterpacht pointed at, are a clear reference to the system existing before the establishment of the United Nations - the system of the League of Nations - which had been unable to prevent the Second World War and the barbarous violations of human rights by Hitler Germany. On the other hand, it must be admitted that the League of Nations had not been totally indifferent to human rights. The Covenant of the League of Nations, its founding treaty, *inter alia* referred to "fair and humane conditions of labor for men, women and children", to "just treatment of the native inhabitants of territories under their control" and, of course, within the framework of the League of Nations there had been established a system for the protection of minorities in Central and Eastern Europe. In its quest for peace, however, the League of Nations lacked an overall perspective on human rights and an overall philosophy linking respect for human rights and fundamental freedoms - the inherent dignity of every human being - and peace. At the end of the Second World War, more than ever, it was felt a comprehensive humanitarian dimension should be added to international relations and international law.

This is where the life of the United Nations begins. This is where the Peoples of the United Nations have declared their determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and

small." By signing the Charter of the United Nations, by becoming a Member State of the United Nations, states commit themselves to the new philosophy Lauterpacht spoke about; they have declared their willingness to participate in an irreversible process - a revolutionary process - to construct, consolidate and strengthen human rights and fundamental freedoms.

Which principles have guided the United Nations and its Member States in the fulfilment of their commitment? Two fundamental principles proclaimed by the Charter of the United Nations stand out in this respect. These are the principle of international co-operation and the principle of equality of all human beings and its complement the principle of non-discrimination.

Historically speaking, it would not be correct to say that the era of international co-operation started in 1945 with the establishment of the United Nations. Already in the nineteenth century states felt the need to "open up" towards each other and established international organisations for the fulfilment of common aims. The first of these organisations dealt with "technical matters" such as the administration of international rivers, railways and postal and telecommunication services. A "human touch" was added with the establishment of the League of Nations and the International Labour Organisation (ILO) in 1919. Until 1945, however, no international organisation had taken a comprehensive approach towards international co-operation. The Charter of the United Nations has provided such a comprehensive perspective: it institutionalised international co-operation. It elevated international co-operation to being one of the main purposes of the Organisation, specifying the fields of co-operation: economic, social, cultural, humanitarian, political and legal co-operation. In particular, the Charter of the United Nations linked international co-operation to the issue of human rights and fundamental freedoms. But the Charter went further than that: it also established the necessary institutional framework or it provided for the possibility of establishing the necessary institutions in the future. This institutional framework is open and flexible enough to raise issues of human rights and fundamental freedoms in various organs and bodies, thereby effectively recognising that these issues come in a variety of ways at different policy levels. More than fifty years after the establishment of the United Nations we know that the institutional edifice of the United Nations system within which human rights matters are or may be debated is impressive. It includes the principal (policy) organs of the Organisation: the General Assembly, the Economic and Social Council and, as will be shown, increasingly the Security Council; it includes the United Nations High Commissioner for Human Rights, subsidiary commissions such as the Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights (formerly known as the Sub-Commission on Prevention of Discrimination and Protection of Minorities), the Commission on the Status of Women, the Commission on Sustainable Development; it includes other subsidiary bodies such as the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP); finally it includes a whole range of specialised agencies such as the ILO, the World Health Organisation (WHO), the Food and

[1] H. Lauterpacht, International Law and Human Rights, London: Stevens and Sons Limited, 1950, p. 147.

Agriculture Organisation (FAO) and the United Nations Educational, Scientific and Cultural Organisation (UNESCO).

At the heart of the United Nations approach to human rights and fundamental freedoms lie the principle of equality of all human beings and the complementary principle of non-discrimination. This approach has become known as the inclusive character of human rights and fundamental freedoms. Repeatedly, the Charter of the United Nations refers to the phrase "without distinction as to race, sex, language and religion." However "self-evident" one would like these two principles - "these truths" - to be, however self-evident they are, their inclusion in the Charter of the United Nations has only been the beginning of a long struggle to eradicate all forms of discrimination and to achieve true equality. Throughout its history mankind has struggled with the principles of equality and non-discrimination and their implementation. The American Declaration of Independence (1776) and the French *Déclaration des droits de l'homme et du citoyen* (1789), containing these fundamental principles, were drafted at a time when all human beings were far from equal. The practice of slavery and slave-trade were still legal. And what about the position of women? And the position of peoples living under colonial rule? And the position of peoples and independent states other than Western (European) states? More than a century later, during the negotiations of the Covenant of the League of Nations equality and non-discrimination were at the top of the agenda again. As a Japanese newspaper wrote at that time: "No other question is inseparably and materially interwoven with the permanency of the world's peace as that of unfair and unjust treatment of a large majority of the world's population." The question proved too controversial to reach agreement upon. In 1945, the United Nations took on the formidable challenge, a permanent challenge as will be shown next, to achieve equality of all human beings, all peoples, and to eliminate discriminatory practices.

At the beginning of a new millennium, time has come to take stock of the achievements of the United Nations in the field of human rights and to evaluate the way in which the Organisation and its Member States have so far kept their promise to "reaffirm faith in fundamental human rights." At the same time, this is the moment to confront the future, to look ahead at the challenges that still lie in front of us. The following overview will take us through the past and future work of the United Nations. Chapter 2 will lead us through the standard-setting activities initiated by the Organisation. Chapter 3 is devoted to the mechanisms that have been established within the (broader) context of the Organisation to monitor the implementation of human rights and fundamental freedoms. Chapter 4 will point at some important recent developments in the field of human rights, including the creation of the post of United Nations High Commissioner for Human Rights, the increasing awareness and recognition of the importance of adopting a human rights perspective in all policy areas at all levels and the gradual acceptance of individual criminal responsibility for gross violations of human rights. Chapter 5 will round off this overview with some concluding observations and future challenges.

2. Standard-setting in the field of human rights and fundamental freedoms

The International Bill of Rights

Although a proposal to append a declaration of human rights to the Charter of the United Nations did not get the necessary support at the San Francisco Conference, it was commonly understood that such a declaration should be drawn up within the context of the Organisation. As a matter of fact, the first and foremost task of the newly established Commission on Human Rights (1946) was to work on the formulation of an international bill of rights. In 1948 the Commission on Human Rights finalised drafting the Universal Declaration of Human Rights (the "Universal Declaration") and presented it for adoption to the General Assembly. Subsequently, the General Assembly adopted the document on 10 December 1948. The significance of the Universal Declaration of Human Rights is not easily over-estimated: it stands out as a continuous source of inspiration and lays down the foundations for the international promotion and protection of human rights and fundamental freedoms by the United Nations and its Member States.

In the first place, building on the principles of the Charter of the United Nations, the Universal Declaration firmly proclaims the universality of all human rights. Universality should be understood as an overriding principle without which there can be no international respect for human rights. On the other hand, universality of human rights should not be understood as uniformity of application of human rights. In a world of great variety, a world of different cultures, some human rights may be interpreted and applied differently by different states. This does not mean, however, that states have a right to do as they please, to go their own way by emphasising diversity. States should always keep in mind that by the very act of becoming a Member State of the United Nations, by subscribing to the principles of the Organisation as elaborated upon in the Universal Declaration, they committed themselves to observing the universal culture of human rights, and to respecting a core of inalienable human rights and fundamental freedoms. Indeed, it will be shown below that over the past fifty years, the world community has confirmed its commitment towards the principle of universality of all human rights.

Secondly, the Universal Declaration of Human Rights was the first international document to contain a comprehensive, though not necessarily exhaustive, list of human rights and fundamental freedoms. On the basis of the above-mentioned equality and non-discrimination principle, it posited what has become known as the indivisible nature of all human rights. The Universal Declaration does not differentiate between the so-called civil and political rights on the one hand and economic, social and cultural rights on the other; both groups are included, the realisation of both groups of rights are essential for a dignified existence. For a long time, however, the indivisible nature of all human rights has been overshadowed by ideological conflict. It has never ceased to exist, though. Quite on the contrary, at international human rights conferences, first at the World Conference on Human Rights in Tehran in 1968, but most of all, at the Second World Conference on Human Rights held in Vienna in 1993, the world community has shown that it has not forgotten about the unity of all human rights. In

particular, the unanimous re-affirmation, at the latter conference, of the indivisibility, the interrelatedness and interdependence of all human rights should be understood as an important reinforcement of the principles the drafters of the Universal Declaration had in mind.[2]

The Universal Declaration has served as a starting-point for further standard-setting activities initiated within the framework of the United Nations. An important part in this process was to complete the drafting of the International Bill of Rights which, in addition to the Universal Declaration, should comprise an international treaty containing a further elaboration of the rights contained in the Declaration. The original idea to draft one single human rights treaty on the basis of the Universal Declaration has never been realised, however. Instead, two separate treaties have been negotiated: one dealing with civil and political rights and another dealing with economic, social and cultural rights. Indeed, on 16 December 1966, eighteen years after the Commission on Human Rights was first asked to prepare a covenant on human rights, the General Assembly unanimously adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights (the "two Covenants"). Almost ten years later, on 3 January 1976, the two Covenants entered into force and at present both of them have been widely ratified: some 140 states have done so.[3] Taken together, the two Covenants constitute a comprehensive codification of human rights and fundamental freedoms. It is, therefore, no exaggeration to consider, as the Austrian human rights scholar Manfred Nowak did in his Commentary on the Covenant on Civil and Political Rights, the two Covenants to represent "the most authoritative universal minimum standard of present international human rights law."[4]

Other human rights instruments adopted within the context of the United Nations

The two Covenants were indeed the first United Nations human rights treaties of a general nature, but they were not the first human rights treaties. At an earlier stage, on 9 December 1948, the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention")had been adopted by the General Assembly. With the Nazi atrocities fresh in mind, the Genocide Convention constituted the first attempt by the Member States of the United Nations to learn from history and to make punishable by law what is considered the gravest violation of human rights: the international crime of genocide. The importance of this treaty lies in providing the basis for an effective international legal regime for the prevention and punishment of genocide. Failure to provide for such a regime may in itself be a cause for (further) conflict; it may drive states to pursue unilaterally aims in which all states have an interest and which, therefore, should be dealt with collectively. It would be a mistake, however, to think that an international treaty alone can prevent the crime of genocide from occurring. A preventive strategy requires much more than that. Interestingly enough, the Genocide

[2] Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, Doc. A/Conf.157/23, Part I, par. 5.
[3] As of November 1999 144 states are party to the ICCPR and 142 states are party to the ICESCR.

Convention itself points at an important aspect of such a strategy, namely the existence of an "international penal tribunal" and international criminal responsibility of "constitutionally responsible rulers, public officials or private individuals." As will be shown below, the provision for an international criminal court in the Genocide Convention has not remained a dead letter: international human rights law has recently made an important move in this direction with the adoption of the Statute of an International Criminal Court (Rome, 1998).

Another important international human rights treaty predating the two Covenants is the International Convention on the Elimination of All Forms of Racial Discrimination (the "Convention Against Racial Discrimination") which was adopted on 21 December 1965. In contradistinction to the Genocide Convention which deals with one particular human right in more detail, the Convention Against Racial Discrimination deals with a particular form of discrimination in all its aspects: racial discrimination, i.e. discrimination based on race, colour, descent, national or ethnic origin. As already mentioned equality and non-discrimination have been leading principles within the context of the United Nations and from this perspective it does not come as a surprise that an international treaty on this topic has been negotiated at a rather early stage of the development of international human rights norms. But there is more to the history of this treaty. The drafting of the Convention Against Racial Discrimination cannot be separated from two other events taking place at the time. These were the process of decolonisation set in motion following the famous General Assembly resolution of 1960: the Declaration on the Granting of Independence to Colonial Countries and Peoples[5] and the institutionalised racism and racial discrimination in South Africa. In their struggle against colonial domination and apartheid newly independent states were able to generate the necessary support within the United Nations and, as a result, the Organisation was able to move swiftly in this field. In 1962, the Commission on Human Rights and its Sub-Commission on the Prevention of Discrimination and Protection of Minorities had been asked to draw up a declaration and a convention on the elimination of all forms of racial discrimination. A year later, the General Assembly was able to adopt the Declaration on the Elimination of All Forms of Racial Discrimination and it only took another year to finish preparations for the Convention on the Elimination of All Forms of Racial Discrimination. More than thirty years later, former colonies have become independent states; in South Africa, the policy of apartheid has been abolished. The relevance of the Declaration and the Convention on the Elimination of All Forms of Racial Discrimination has not faded away, however. It still cannot be said that the type of racial discrimination which was the original focus of the Declaration and the Convention, i.e. discrimination based on racial superiority, colonial practices and racist régimes, has been completely eliminated. In addition, "new" forms of racial discrimination have come to the surface relating to the position of indigenous peoples, minorities, immigrants and asylum seekers just to name a few. Therefore, in the future, the existing international instruments and especially the Convention Against

[4] M. Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary, Kehl am Rhein [etc.]: Engel, 1993, p. XVII.
[5] G.A. Res. 1514 (XV) of 14 December 1960.

Racial Discrimination [6] as a legally binding international agreement will remain at the very heart of the United Nations approach towards the elimination of racial discrimination. The latest evidence of this is the upcoming World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance to be held in 2001.

While the equal rights of men and women have been proclaimed and laid down in various United Nations instruments such as the Charter of the United Nations and the International Bill of Rights, there has nevertheless been the need to take specific action to eliminate discrimination against women. As was the case with racial discrimination, a first step in the process of achieving equality of men and women was the adoption of a declaration by the General Assembly. Indeed, in 1967, after four years of debate, the General Assembly unanimously adopted the Declaration on the Elimination of Discrimination Against Women. The Declaration brings together a set of important principles and rights specifically relevant for women. Such principles and rights relate to such issues as the participation in public life, education, labour rights and family rights. The adoption of the Declaration has paved the way for the drafting and adoption of the Convention on the Elimination of All Forms of Discrimination Against Women in 1979. The Convention - sometimes called the international bill of rights for women - further elaborates upon the Declaration. It is based on the same holistic approach and, being adopted twelve years later, it has been able to benefit from developments that have occurred since the adoption of the Declaration in 1967.[7]

During the 1980s the family of United Nations human rights treaties has been enlarged with two other treaties: the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (the "Convention Against Torture"), dealing in depth with a particular right, i.e. the right not to be subjected to torture and the 1989 Convention on the Rights of the Child, providing for special protection for a particularly vulnerable group, i.e. children. The former convention has also been preceded by a declaration, the Declaration Against Torture and Other Cruel, Inhuman or Degrading Treatment. This Declaration, adopted without a vote by the General Assembly in 1975, provided the building-blocks for the Convention. The Declaration not only defines torture, but also lays down, in considerable detail, the steps to be taken by states to prevent torture and other cruel, inhuman or degrading treatment. Such steps range from making torture a criminal offence, training of law enforcement officials to ensuring a right of complaint and compensation at the national level. At the time of the adoption of the Declaration the Member States of the United Nations already recognised that, however detailed the Declaration might be, it would not be enough to prevent and eliminate torture and, once again, by consensus, they adopted another resolution indicating the need to further elaborate the norms and standards of the Declaration. One of the options mentioned in this resolution was the adoption of a legally binding convention. Although, it took another nine years before the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment was finally

[6] As of November 1999 155 states are party to the CERD.
[7] As of November 1999 165 states are party to the CEDAW.

adopted, it is significant that so many states participated in the drafting of the Convention and that it was adopted without a vote by the General Assembly. Thus, adding an important pillar to the international protection of human rights.[8]

The Convention on the Rights of the Child has been the result of a long process in which the world community recognised that specific attention should be given to the position of children. In the so-called Declaration of Geneva of 1924, the much smaller community of states Members of the League of Nations first recognised that "mankind owes to the child the best it has to give." Subsequently, after the Second World War, the United Nations took up the matter and an increasing number of states, Members and Non-Members of the Organisation participated in this process. Within the context of the United Nations we have witnessed the adoption of the seven-point 1948 Declaration on the Rights of the Child followed by the more detailed 1959 Declaration on the Rights of the Child. In 1979, the International Year of the Child, negotiations began on the Convention on the Rights of the Child. Here too, the increase in participation of states, either as Member of the Commission on Human Rights or as observers and other entities is remarkable. On 20 November 1989 the Convention was finally adopted and within a year it had received the number of ratifications required for its entry into force. At present, participation is truly universal.[9]

Process of universalisation

Listing and describing the background of the above-mentioned international human rights instruments, some striking points should be highlighted. These points all relate to a process, *the process of the universalisation of human rights*. Sometimes, objections have been raised against the universal nature of all human rights on the ground that, in 1948, when the Universal Declaration was adopted the number of states which had participated in the drafting process was limited. It was limited in absolute numbers since the United Nations only counted 58 Member States at the time; it was also limited in geographical and cultural terms, many African and Asian states were still colonies and not directly represented. Should the Universal Declaration, therefore, be presented as a Western product, not representative of important values in other cultures or religions? Although it must be admitted that the composition of the world community has gone through great changes since 1948, it should at the same time be emphasised that these changes have also led to an increased degree of participation in the process of further elaborating the fundamental norms of the Universal Declaration. History teaches us that all states, including the newly independent ones, have directly and actively participated in the drafting and adoption of the major United Nations human rights instruments. Moreover, all instruments have been carefully prepared, in the sense that the objective of the United Nations in its standard-setting activities has always been to bring states closer to each other, to build a consensus, to negotiate a generally acceptable instrument for all, rather than to drive states apart. In this respect, it is

[8] As of November 1999 116 states are party to the CAT.
[9] As of November 1999 191 states are party to the CRC.

significant that the United Nations in its approach to standard-setting has never considered the adoption of a legally binding treaty the first and only step to be taken. With the exception of the Genocide Convention, the adoption of a binding treaty has always come at the end of the process. The process often started off with the drafting of declarations, in which the world community declared its intentions, its common commitment towards the fulfilment of a certain objective. These declarations have had the great advantage of preparing all states for future action by defining the problem, by indicating the fundamental principles involved and by formulating the kind of rules and measures to be adopted at the national level to solve the problem. They have stimulated the international debate and contributed to a better understanding of the issues to be tackled. With respect to the adoption of both declarations and treaties, it has to be acknowledged that most of them have been widely supported; a great number of them have even been adopted either unanimously or without a vote. In this light, it is not surprising that at different commemorative events, at the two World Conferences on Human Rights, the enlarged world community of states has endorsed the fundamental notion that the universal nature of all human rights is beyond question.[10]

So far only the most important or, at least, the most well-known United Nations human rights instruments have been mentioned. The entire standard-setting record of the United Nations in the field of human rights is much larger than that, however. Over the years, more than one hundred human rights instruments have been adopted within the context of the United Nations. It would go far beyond the scope of this paper to mention all these documents by name, but we cannot avoid mentioning some of them. For example, in 1951 the United Nations Conference on the Status of Refugees adopted the Convention relating to the Status of Refugees. Initially, the application of this treaty had been limited to Europe, where in the aftermath of the Second World War more than a million refugees had to be resettled. The problem of refugees was not, of course, solely a European matter. All countries in the world have had to deal with it. For this reason, in 1967, the geographical scope of the Convention was enlarged to the rest of the world with the adoption of a protocol. The Convention and Protocol continue to have relevance, especially today, where the refugee problem has become a truly global issue. A treaty of a more recent date is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted in 1990. Until now, the treaty has only been ratified by a small number of states. It nevertheless deals with an important issue which will probably become increasingly relevant in the years to come and which will need to be addressed in order to avoid creating a second class of people.

Over the years, an interesting characteristic of the standard-setting activities initiated within the context of the United Nations has been the further refinement of the human rights contained in the more general instruments. More and more, the United Nations has attempted to work out as accurately as possible the contents of particular rights or prohibitions. Similarly, it has attempted to work out certain categories of rights which are particularly relevant to certain vulnerable groups in society.

[10] Supra note 1, Part I, par. 1.

Thus, the General Assembly has adopted in 1981 the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; in 1992 it adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; at present the Commission on Human Rights is working on a draft submitted by its Sub-Commission on the Promotion and Protection of Human Rights to provide for a similar instrument on indigenous peoples.

Human rights instruments adopted at other (functional and regional) levels

Much has been realised in the field of standard-setting over the past fifty five years, not just within the context of the United Nations. It should not be forgotten that important standard-setting work has been done at a functional and regional level. What to think of the impressive number of conventions adopted within the context of the ILO? Or the diplomatic conferences on international humanitarian law held under the supervision of the International Committee of the Red Cross which led to the adoption of the four 1949 Geneva Conventions and the two 1977 Protocols? At the regional level human rights instruments have been adopted in Europe, in the Americas and in Africa which have been largely inspired by the Universal Declaration. In Europe, the Council of Europe has been the leading organisation in the field of human rights and fundamental freedoms and the most important instruments adopted within that context are the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the European Social Charter (1961), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) and the more recent Framework Convention on National Minorities (1994). In the American context, the work of the Organisation of American States should be mentioned. In 1948 this organisation adopted the American Declaration on the Rights and Duties of Man which constituted in fact the first international document of its kind. The Declaration, being of a non-legally binding nature, has provided the basis for the later adoption of the American Convention on Human Rights (1969). Other relevant instruments in this region include conventions relating torture, disappearances and violence against women. Equally noteworthy is the preparation of an American Declaration for the Protection of Indigenous Peoples. The youngest of regional human rights treaties has been the African Charter on Human and Peoples' Rights adopted within the context of the Organisation of African Unity in 1981. The Charter is of great interest for various reasons: it comprises both civil and political rights and economic, social and cultural rights; it also provides for the so-called collective "peoples'" rights and for state and human duties.

Dynamic nature of standard-setting

In light of the immense international and regional framework of human rights instruments, one would perhaps be tempted to say that the era of standard-setting is over. Time has come to put these instruments into practice. It cannot be denied that time has come to put much effort in implementing

the instruments adopted thus far. At the same time there is no time for laying back and considering the standard-setting job done. At different levels important works remains to be done.

In the first place, there are still quite a number of drafting efforts on their way which still need to be finished. The above-mentioned United Nations Draft Declaration on the Rights of Indigenous Peoples is just one of these efforts. Another one is draft International Convention on the Protection of all Persons from Forced Disappearance submitted to the Commission on Human Rights.

Secondly, there are still important lacunae that need to be filled. One such lacuna concerns the right to reparation for victims of violations of human rights. At this moment, no international instrument dealing with this matter has been adopted. Yet, it is of the utmost importance that the world community not only pays attention to violations of human rights as facts and practices, but that it also recognises that these facts and practices have a face, that they are committed by man and suffered by man. Recognition of a right to compensation in its broadest sense, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, constitutes an essential requirement of justice and a precondition for reconciliation and for coming to terms with the past. The adoption of an international instrument laying down the victim's right to compensation would provide a first important step in this process. Another area of concern remains the status of economic, social and cultural rights. There still is a need to work out in more detail - as this has been done in the case of civil and political rights - the contents of these rights and indicate as precisely as possible the steps that need to be taken for their realisation.

Thirdly, the question has to be asked whether it can ever be said that we have finished the process of standard-setting. In this respect the international legal system is no different from national legal systems; there will always remain a need to respond to new demands by adopting new standards, by revising or deleting others. Standard-setting is not a once and for all business, but a dynamic process in which the world community seeks to implement the fundamental principles of the Charter of the United Nations and the Universal Declaration of Human Rights as the basis for justice and peace in the world.

3. Supervising the implementation of human rights and fundamental freedoms

General remarks

The standard-setting activities initiated by the United Nations and other (functional or regional) organisations may certainly be labelled revolutionary. Never before in the history of international law have human rights and fundamental freedoms been written down in such a detailed and comprehensive way as in the period of time after 1945. It is obvious, however, that standard-setting alone is not enough to promote and protect human rights. There is another, equally important, side of the very same medal of the promotion and protection of human rights. This other side relates to the international supervision of the implementation of human rights and fundamental freedoms.

The promotion and protection of human rights would be an empty shell, it would mean nothing, without the existence of supervisory mechanisms. The solemn commitments and pledges that states have accepted when joining the United Nations and other organisations, when subscribing to the aims and purposes of the Charter of the United Nations, the Universal Declaration and all the other relevant instruments both of a universal and a regional nature, are real; these solemn commitments and pledges are not to remain printed words on a piece of paper, they are to be implemented and respected. In this regard, international supervision is of the utmost importance. It is to ensure that the implementation of human rights and fundamental freedoms is taking place in an effective manner. The basic thrust of international supervision is to establish the separate and joint accountability of all states, large and small, for the implementation of human rights in accordance with articles 55 and 56 of the Charter of the United Nations.

Within the context of the United Nations it was not until the mid-1960s before the first supervisory mechanisms were created. In fact, the 1965 Convention on the Elimination of All Forms of Racial Discrimination was the first human rights treaty of universal application to provide for a mechanism of supervision. This mechanism subsequently served as a model for other human rights treaties, notably the International Covenant on Civil and Political Rights. These kind of supervisory mechanisms, i.e. mechanisms established within the context of a specific human rights treaty have become known as treaty-based procedures. Around the same time, in 1967, certainly influenced by the developments which took place in the context of the above-mentioned human rights treaties, another system of supervision emerged. This system of supervision did not find its basis in a specific human rights treaty. It was established by resolutions of the Economic and Social Council of the United Nations and, therefore, is ultimately based on the Charter of the United Nations. As a result, these procedures have become known as Charter-based procedures. This overview will start with the latter type of procedures.

Charter-based procedures

To begin with, it must be said that despite its name, Charter-based procedures are by no means a unique feature of the United Nations alone. Similar procedures, i.e. procedures based on the (values enshrined in the) constitutional document of an international organisation or a decision by an organ of such an organisation, have already existed within the context of the ILO since the beginning of the 1950s. In 1950, the Governing Body of the ILO established the Fact-Finding and Conciliation Commission on Freedom of Association as part of a procedure designed to deal with complaints of violations of trade union rights. In 1951, it established the Committee on Freedom of Association as part of the same procedure. This procedure has been established independently of a specific provision to this end in the Constitution of the ILO and independently of the adoption of specific norms in the form of a convention. Rather, the ILO itself has assumed its general competence in this field and

considered that, constituting one of the fundamental values of the Organisation, freedom of association had to be respected and protected for this reason alone.

From the moment of its establishment the United Nations has received complaints - communications - of violations of human rights from individuals, groups and non-governmental organisations. These individuals and organisations turned to the Organisation in light of its general competencies in the field of human rights. As a matter of fact, before 1948 such complaints could only be based on the general human rights provisions of the Charter of the United Nations, the Universal Declaration not having been adopted yet. In an initial phase, the Member States of the United Nations did not empower the Organisation to deal with such complaints. In a famous statement dating from 1947 the Commission on Human Rights declared that it had "no power to take any action in regard to any complaints concerning human rights."[11] Despite the clear words of the resolution, it did not have a deterrent effect on victims of violations of human rights. As a last resort, they continued to turn to the United Nations for help. Where else could they go?

In 1959, the Economic and Social Council adopted another resolution consolidating the situation as it had grown since 1947.[12] However, the Secretary-General of the United Nations was requested to compile and distribute two lists to the Commission on Human Rights: a first non-confidential list of all communications received dealing with the general principles involved in the promotion and protection of human rights and a second confidential list, furnished in private meeting, giving a brief indication of substance of other communications. A particular state referred to in such a communication was to receive a copy of it and requested to reply to it, if it wished to do so. It is obvious that from a victim's perspective this procedure produced no relief at all. The resolution only requested the Secretary-General "to inform the writers of all communications concerning human rights ... that their communications will be handled in accordance with this resolution, indicating that the Commission has no power to take any action in regard to any complaints concerning human rights."

It is in the 1960s that significant changes took place in the attitude of the United Nations and its Member States when it comes to dealing with violations of human rights. In 1966, the General Assembly in a memorable resolution invited the Economic and Social Council to give urgent consideration to ways and means of improving the capacity of the United Nations to put a stop to violations of human rights wherever they might occur. The Chairman of the General Assembly's Third Committee, the Austrian Eric Nettel added to that that the resolution was "in accordance with an entirely new doctrine, namely that it is the right and duty of the United Nations to consider specific violations of human rights and to recommend appropriate measures to halt such violations wherever they might occur."[13] Following this invitation, it only took eight months before the Economic and Social Council approved the arrangements set up by the Commission on Human Rights in which it

[11] C.H.R. Report of the First Session, E/259, par. 22.
[12] ECOSOC Res. 728 F (XXVIII) of 30 July 1959.
[13] U.N. Office of Public Information Newsletter No. 8, Supp. 1 at 31 (1969).

asked its Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare a report containing information, from all available sources, on human rights violations and to bring to its attention any situation which revealed a consistent pattern of human rights violations in any country, including policies of racial discrimination, segregation and apartheid, with particular reference to colonial and dependent territories. It also approved the request by the Commission on Human Rights for authority for itself and its Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine, in public, information contained in communications that was relevant to gross violations of human rights and authority to make a thorough study and investigation of situations which revealed a consistent pattern of violations of human rights. The decisions of the Economic and Social Council being embodied in Resolution 1235[14], the procedure has subsequently become known as the 1235 procedure.

In practice, the 1235 procedure has evolved into an annual public debate on human rights violations anywhere around the world. In this debate not only government representatives (as Members of the Commission on Human Rights or as observers) take part, but a very important role is played by non-governmental organisations providing important information on human rights situations and actively taking part in the discussions. What is more, towards the end of the 1970s and the beginning of the 1980s, on the basis of the 1235 procedure, the Commission on Human Rights has gradually developed a practice of appointing special rapporteurs, special representatives, experts, working groups and other envoys competent to study human rights violations in specific countries or competent to study particular human rights violations all over the world. These special rapporteurs and others have become known as "country-procedures" and "thematic procedures". At present country-procedures have been established with respect to 16 states and more than twenty thematic procedures have been appointed dealing with such issues as disappearances, torture, religious intolerance, violence against women, education and, the latest, appointed in 1999 relating to the rights migrant workers. Country and thematic procedures have probably been the most effective response of the United Nations to violations of human rights so far. True defenders of the Universal Declaration of Human Rights, these two types of "special procedures", as they are also called, constitute the "front troops" of the United Nations. They act on a permanent basis, they receive information from all possible sources, including individuals and non-governmental organisations. Thus, they are the first to be confronted with information concerning violations of human rights. In their approach towards allegations of human rights violations they have developed a variety of practices. These range from the preparation of a report for the Commission on Human Rights on a particular country situation or human rights situation in general, responding to urgent cases, establishing a dialogue with governments, visiting countries and making recommendations for the improvement of the situation.

Despite the fact that, in 1967, the 1235 procedure constituted an important departure from existing United Nations doctrine, it still did not enable the Organisation to respond to or to analyse the

[14] ECOSOC Res. 1235 (XLII) of June 6 1967.

communications themselves. There still existed an important gap to be filled. For this reason, another procedure has been established at the level of the Commission on Human Rights, alongside the 1235 procedure. This procedure has become known as the 1503 procedure, named after the corresponding Economic and Social Council Resolution 1503, and was established in 1970.[15] Under this procedure, which involves the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights and as a last instance the Economic and Social Council itself, communications are subjected to a screening process. Starting at the level of a working group of the Sub-Commission only those communications will be passed on to the plenary body and, in the end, to the Commission on Human Rights and the Economic an Social Council which "appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms." The whole process remains confidential until it reaches the Economic an Social Council which, in practice, has rarely happened. Confidentiality has been lifted to a limited extent since 1979 when the Chairman of the Commission on Human Rights established the practice of giving the names of the states subjected to this procedure. Similarly, as from 1984, he has also announced the names of states which are no longer considered. The progressive adoption of steps should be the main advantage of this procedure, thereby inducing a particular state to enter into a dialogue with the United Nations concerning the human rights situation on its territory. It must be admitted, however, that this procedure is not geared towards providing relief for individual victims of violations of human rights since a "consistent pattern of gross violations" is the decisive criterion.

From the "no power" situation of 1947 to the present system with two procedures, country and thematic rapporteurs, it cannot be denied that significant progress has been achieved over the last fifty years. At the same time, the system suffers from important deficiencies at different levels, ranging from the length and confidentiality of procedures, their relevance from the perspective of victims of violations of human rights to the continuing financial restraints within which the Office of the High Commissioner of Human Rights has to operate.

Treaty-based procedures

A more advanced system of supervision has been developed within the context of specific human rights treaties. For this purpose, supervisory bodies, the so-called "treaty-bodies" have been established. Usually such bodies consist of a number of persons of a high moral character and recognised competence in the field of human rights. Moreover, these persons act in their personal capacity, which means that although they are a national of a State party to the treaty in question, they are not accountable for their actions towards their respective governments. Different types of supervisory procedures may be distinguished which are usually categorised in four different groups: reporting procedures, state complaint procedures, individual complaint procedures and inquiry procedures. One should, however, be aware of the fact that this classification is by no means inclusive.

[15] ECOSOC Res. 1503 (XLVII) of 27 May 1970.

A fifth group, a sixth group or may be even a seventh group could easily be added, especially since new procedures have been or are in the course of being created which do not fall in any of the existing categories.

The six most well-known human rights treaties, i.e. the two Covenants, the Conventions on the Elimination of All Forms of Racial Discrimination and Discrimination against Women, the Convention Against Torture and the Convention on the Rights of the Child all contain a mandatory reporting procedure forming an integral part of the respective treaties. Under this procedure States parties are required to report periodically to the treaty-body in question on the implementation of the provisions of the relevant treaty: i.e. they are required to report to the Human Rights Committee, the Committee on Economic Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination Against Women, the Committee Against Torture and the Committee on the Rights of the Child. The purpose of the reporting procedure is to establish a dialogue between the State party concerned and the relevant committee on the legislative, administrative and other policy measures taken to give effect to the objectives of the treaty. It provides an opportunity for both sides and especially for the committee to obtain a better view of the implementation of the treaty as a whole in national jurisdictions. Thus, it may also get a clearer view of the difficulties involved in the full realisation of human rights and may take these difficulties into account when formulating its recommendations. The reporting procedure clearly is not geared at providing relief for individual victims of violations of human rights. It must be emphasised that the reporting procedure is not an exclusive feature of the above mentioned United Nations human rights treaties or the United Nations alone; such procedures also exist at a functional level, *inter alia* within the context of the ILO and at the regional level, for example within the context of the European Social Charter.

The state-complaint procedure is based on the idea that where two or more states have accepted reciprocal obligations in the context of a treaty, they should also be held accountable towards each other in the fulfilment of these obligations. Thus, in the field of human rights and fundamental freedoms this would mean that a State party to a human rights treaty, complaining that another State party does not respect or protect the rights contained in this treaty, may initiate a formal procedure against this state. Few human rights treaties provide for this possibility, however. The International Covenant on Civil and Political Rights provides for a state-complaint procedure, but this procedure is only open for States parties which have recognised the competence of the Human Rights Committee in this respect. A similar procedure has been adopted within the context of the Convention Against Torture; a state-complaint procedure has been provided for, subject to explicit approval of the states concerned. It is only within the context of the Convention on the Elimination of All Forms of Racial Discrimination that the possibility of bringing a complaint against another state has been provided for as an integral part of the Convention, not subject to any kind of specific approval. At the regional level the state-complaint procedure also exists. For example within the context of the European Convention

for the Protection of Human Rights and Fundamental Freedoms where it is mandatory or within the context of the American Convention on Human Rights where it is an optional procedure. Whatever its precise status, mandatory or optional, the state-complaint procedure has never been a popular procedure. Rarely used, if used at all, this type of procedure has not been the most effective one, certainly not from the victim's point of view.

From the perspective of a victim of a violation of human rights the procedure which surely is most relevant to him is the individual complaint procedure. There is a lot of common sense in the availability of such a procedure. Since human rights treaties have been adopted for the benefit of individuals, should not these individuals, therefore, be provided with the means to defend their human rights themselves in the case of infringements? Over the years, this idea has increasingly gained recognition. What started out as a right of people living under the trusteeship system or in non-self-governing territories, a right which was meant to give them a weapon against colonial and racist practices, is gradually evolving to become a right of all people under the major human rights instruments. The 1965 Convention on the Elimination of All Forms of Racial Discrimination was the first human rights treaty to include an individual complaint procedure, albeit on an optional basis, in the treaty itself.[16] A year later, the individual complaint procedure was introduced as a separate protocol - the First Optional Protocol - to the International Covenant on Civil and Political Rights.[17] The 1986 Convention Against Torture also provides for an optional individual complaint procedure.[18] For a long time these three treaties, which all of them deal with the category of civil and political rights, have stood alone in providing for a procedure for individuals to bring up their grievances at the international level. This year, 1999, has brought an important change to that situation. On 15 October 1999 the General Assembly has adopted and opened for signature the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, providing for a complaint procedure for women, groups of women or on behalf of (groups of) women with their consent, who claim their rights under the Convention have been violated. This is an important development, especially in light of the fact that the Convention does not only contain civil and political rights of women, but equally covers the category of economic, social and cultural rights. Ten ratifications of this instrument are needed before it enters into force.

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women also contains another procedure, the so-called inquiry procedure. This procedure is modelled on the existing inquiry procedure under the Convention Against Torture. In the latter procedure the Committee Against Torture has been given the competence to inquire into systematic practices of torture committed on the territory of a State party. The Optional Protocol establishes a

[16] As of November 1999 the competence of the Committee on the Elimination of Racial Discrimination to receive individual complaints has been recognised by 27 states.
[17] As of November 1999 the First Optional Protocol has been ratified by 95 states.
[18] As of November 1999 the competence of the Committee Against Torture to receive individual complaints has been recognised by 40 states.

similar competence for Committee on the Elimination of Discrimination Against Women in the case of grave and systematic violations of women's rights. Both procedures are confidential and the co-operation of the state concerned shall be sought. Subject to the consent of the state concerned, both committees are empowered to visit that state. Both procedures are mandatory, unless a state indicates at the moment of joining the Convention or Protocol that it does not recognise the competence of the respective committees in this respect.

Much more can be said about treaty-based procedures, especially as far as the regional systems for the protection of human rights are concerned. Individual complaint procedures have equally been established at the regional level, in Europe and the Americas in particular. At the African level, the African Commission on Human and Peoples' Rights may also receive communications from sources other than States parties, including individuals. This procedure does not, however, lead to the adoption of an opinion in individual cases. Rather, the aim of the procedure is to analyse individual cases in order to detect "the existence of a series of serious or massive violations of human and peoples' rights." In this respect, the envisaged establishment of an African Court of Human Rights should be welcomed as an significant step forward following the examples of the Inter-American Court of Human Rights and the European Court of Human Rights both of which may give binding decisions in individual cases. In Europe, on the other hand, the success of the individual complaint procedure before the European Court of Human Rights poses new challenges to the system. As more and more people find their way to Strasbourg, ways and means have to be found to alleviate the workload of the Court.

Much work is being done at the moment. For example, within the context of the Convention Against Torture an open-ended working group has been established by the Commission on Human Rights charged to elaborate a draft optional protocol on a preventive system of regular visits to places of detention within the jurisdiction of States parties. This draft optional protocol is largely inspired by the system of supervision existing under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment (ECPT). Under this system the supervisory committee may visit any place where persons are held by a public authority both on a periodical basis and on an ad hoc basis on very short notice. In principle, the report that will be drawn up following such a visit remains confidential, unless the state concerned requests to make it public. The Committee is, however, allowed to make a public statement on the visit, if a state fails to co-operate.

Much work is still to be done in the near future. In the first place, it is of the utmost importance to achieve universal acceptance of the existing (optional) supervisory mechanisms. At present, there still is an important discrepancy between the acceptance of a human rights treaty itself and the acceptance of supervisory mechanisms. A clear example is the International Covenant on Civil and Political Rights which itself has been ratified by some 140 states. The First Optional Protocol, providing for the individual complaint procedure has so far been ratified by 95 states. Secondly, there is a need to strengthen the existing procedures, to make them more effective. One way this could be

done is by improving and strengthening the position of NGOs - as watchdogs of national practices - in the reporting procedure. Improving the position of NGOs, further encouraging "shadow reports" to circulate, could make the dialogue between states and the committees more effective. And why should not NGOs themselves, on the basis of their mandates, be given the possibility to file a complaint against a State party? Thirdly, there is a need to strengthen the role and mandates of the existing supervisory bodies themselves. A case in point is the situation under the International Covenant on Economic, Social and Cultural Rights where no other procedure than the reporting procedure has been established so far. In a world where the division between the rich and the poor is so unbearable that the time has come to make it possible for individuals and NGOs to complain about violations of their economic, social and cultural rights. Fourthly, treaty-bodies face the same fundamental problem as the above mentioned Charter-based procedures: they suffer from a structural lack of financial resources to carry out their tasks. However beautiful the design of supervisory mechanisms may be, they will remain ineffective, if, for financial reasons, they cannot be put into practice.

4. Recent developments

As a transition between the achievements of the past and the needs and demands of the future, three more recent developments in the field of human rights deserve to be mentioned in some detail. These are the creation of the post of United Nations High Commissioner for Human Rights, the infiltration of human rights in all policy areas at all levels and, finally, developments relating to the concept of individual criminal responsibility. These three developments provide an important indication of the new directions international human rights law is presently taking and probably will be taking in the (near) future.

United Nations High Commissioner for Human Rights

On 20 December 1993 the General Assembly adopted, without a vote, resolution 48/141, creating the post of United Nations High Commissioner for Human Rights with the rank of Under-Secretary-General. In so-doing, the General Assembly has taken the promotion and protection of human rights out of the purely bureaucratic context of the United Nations. It has given the human rights activities of the Organisation a face. The High Commissioner for Human Rights is the personification of one of the main purposes of the United Nations. As such, he or she is a "living" reminder for the Member States of the United Nations that they have committed themselves to the promotion and protection of human rights when joining the Organisation. Most of all, he or she is a sign of hope for all those thousands of victims of violations of human rights all around the world, who have no one else to turn to than the United Nations for their protection.

For some, the establishment of a High Commissioner for Human Rights may have come as a surprise since earlier attempts to do so had always failed. Already in 1947, the French representative

of the Commission on Human Rights and one of the drafters of the Universal Declaration, René Cassin, proposed to create the post of Attorney General for human rights in connection with the implementation of the future covenant of human rights. Given the revolutionary nature of this proposal, especially in light of the status of development of international law at that time, it stood little chance of being adopted. A proposal submitted by Uruguay in 1950 first mentioned the name of High Commissioner for Human Rights. This proposal also linked the creation of a High Commissioner for Human Rights with the implementation of the future covenant. In the same way as the proposal made by Cassin, it failed to get the necessary support. It was only in 1965 that Costa Rica put the issue of creating a High Commissioner for Human Rights on the political agenda again. This time, the idea was to establish a High Commissioner for Human Rights within the framework of the Charter of the United Nations. The proposal came a long way, it was accepted by the Commission on Human Rights and the Economic an Social Council in 1967, but was left stranded in 1977 when the Third Committee of the General Assembly decided not to vote on a draft resolution establishing a High Commissioner for Human Rights. The proposal was referred back to the Commission on Human Rights. This has led a commentator to remark that "it seems safe to assume that the High Commissioner proposal is now dead."[19] Finally, in 1993, in a changed international political context, the High Commissioner came to life again and was put on the agenda of the Second World Conference on Human Rights (June 1993). Again, no agreement could be reached and the issue was referred to the General Assembly[20]; and again, commentators were pessimistic about the fate of the proposal to establish a High Commissioner for Human Rights. They wrote: "taking into account the considerable opposition to it during the Conference, it must be doubted whether more than a study can be expected."[21] No surprise that when the High Commissioner for Human Rights had at last been established, the United Nations itself described it as "putting an end to almost fifty years of hope and disappointment."[22]

The responsibilities of High Commissioner for Human Rights are numerous and *inter alia* relate to the following aspects: the promotion and protection of *all* human rights, which includes providing, through the Office of the High Commissioner for Human Rights, advisory services and technical assistance at the request of states; enhancing international co-operation in the field of human rights; engaging in a dialogue with all governments with a view to securing respect for all human rights and adapting, rationalising and strengthening the existing United Nations human rights machinery.

The post of High Commissioner for Human Rights has existed for almost six years now. Over those years, the office of High Commissioner for Human Rights has been put into shape. Gradually, it

[19] T.J.M. Zuijdwijk, Petitioning the United Nations, A study in Human Rights, New York: St Martin's Press, 1982, p. 129.
[20] Supra note 1, Part II, par. 18.
[21] I. Boerefijn and K. Davidse, Every Cloud ...? The World Conference on Human Rights and Supervision of the Implementation of Human Rights, Netherlands Quarterly of Human Rights, Vol. 4, 1993, p. 466.

is evolving into an essential and indispensable part of the United Nations system and is playing a leading role in the process of promoting respect for and observance of human rights and fundamental freedoms. This is not the place to enter into detail in all aspects of the High Commissioner's responsibilities and the way they are implemented in practice. However, by way of illustration of the important work that is being done by the (Office of the) High Commissioner for Human Rights one particular aspect of this work should be mentioned here. This aspect relates to the establishment and practice of so-called field presences or field offices. Field presences have been established since 1992. At that time the post of High Commissioner for Human Rights still had to be created, but it is the High Commissioner for Human Rights which has given substance to this feature of United Nations human rights policy in the years that followed. It is the High Commissioner for Human Rights which has elevated field presences from being an exceptional policy measure, to becoming a "daily" feature of the work of the United Nations in the field of human rights. The setting, competence and size of field presences vary from state to state. Field presences have been established in states that have gone through a period of war, but also in states which are in a process of democratic transition; field presences may give technical assistance only, but, in some cases, have also been assigned a monitoring function; some field presences consist of a few officers only, others consist of fully staffed offices. In the future field presences should become even more important, for they provide a unique opportunity for United Nations policy makers to communicate with a specific society about their needs and wishes. Such an approach has the potential to enhance significantly the effectiveness of United Nations human rights policy and to create sustainable human relations within a particular society.

Infiltration of human rights in all policy areas

This brings us to a second important development of the last decade, the increasing awareness and recognition of the importance of adopting a human rights perspective in all policy areas at all levels. In his address to the General Assembly at the occasion of presenting his 1999 annual report, Secretary-General Kofi Annan spoke about the need "to find greater unity in such basic Charter values as democracy, pluralism, human rights and the rule of law."[23] To these values could be added the concept of sustainable development, which aims at meeting the needs of the present, especially the needs of the world's poor, without compromising the needs of future generations. These values are considered essential, they constitute the core of the philosophy of the United Nations, Lauterpacht would say. Given their importance, overriding priority should be given to their implementation at all levels. This means that human rights should not only be taken into account by those directly involved in the field, but also by those active in other policy areas such as the area of international peace and security, the financial area and the area of development co-operation.

---

[22] The High Commissioner for Human Rights: An Introduction, in: Notes of the United Nations High Commissioner for Human Rights No. 1, New York and Geneva: United Nations, 1996, p. 5.
[23] Press Release SG/SM/7136, GA/9596 of 20 September 1999.

It seems precisely that such a process, *a process of infiltration of human rights in all policy areas*, is taking place. Not only does this process seem to infiltrate different policy areas, i.e. different (organs of) specialised organisations and institutions adopting a human rights perspective in their activities, but also, it seems to infiltrate all levels of such organisations and institutions. The human rights perspective is just as relevant for top-layer officials making policies as it is for the field workers implementing the policies on the ground. Some examples may illustrate these points.

Firstly, human rights have become an important aspect of the work of the Security Council, which has been accorded the primary responsibility for the maintenance of international peace and security and which, to that end, may take (enforcement) action if it finds there has been a threat or a breach of the peace or an act of aggression. Traditionally, a threat or breach to the peace or an act of aggression has been associated primarily with a threat to the security of a particular state. In the course of the 1990s the Security Council has broken with this view. On various occasions it has had to deal with situations which did not directly threaten the security of a particular state, but which involved large-scale violations of human rights. In these cases it has decided that such violations constitute a threat to the peace (in the region) and, in accordance with the Charter of the United Nations, it has authorised various forms of enforcement action, including the use of force, to restore peace. The willingness of the Security Council to give a broader interpretation to the meaning of the phrase "threat to the peace, breach of the peace or act of aggression" (article 39 of the Charter of the United Nations) shows that, more and more, the United Nations is closing ranks when it comes to dealing with grave violations of human rights.

Secondly, still within the field of international peace and security, the military personnel, the peace-keepers and others involved in the implementation of decisions of the Security Council are increasingly confronted with human rights and humanitarian issues. This means that it is not enough for those people to know about combat, engineering or communication skills, skills directly related to their primary task. In the exercise of their functions they need to be aware of the fact that international human rights law and international humanitarian law poses limitations on their activities. In practice this has been recognised and human rights training courses are provided for.

Another case that could illustrate the process of infiltration of human rights relates to the recent practice of the international financial institutions such as the World Bank and the International Monetary Fund (IMF). The World Bank, for example, has developed an operational directive on indigenous peoples. This directive is to provide guidance to the staff of the World Bank to ensure that indigenous peoples benefit from development projects and to avoid or mitigate potentially adverse effects of World Bank activities on indigenous peoples. Similarly, the IMF has recognised that in order to fulfil its objective of promoting international monetary co-operation, balanced growth of international trade and a stable system of exchange rates, it has to address social concerns as well. It has recognised that reform programs may not be viable in the long run if they do not deal with such issues as unemployment, malnutrition and social marginalisation. To this end, the IMF increasingly

co-operates with and involves elements of civil society, such as NGOs, trade unions and academics in its policy-making.

More examples could be mentioned. What to think of UNICEF, the United Nations Children's Fund, which is basing its policies more and more on the 1989 Convention on the Rights of the Child? UNDP itself, the United Nations Development Programme, should certainly not be left out of this overview. In a recent policy document entitled "Integrating Human Rights with Sustainable Human Development" this organisation has pointed at the important links and overlap between human rights and development. It has equally pronounced itself on the need "to mainstream" human rights in all of its work which it will do by focussing specifically on three areas: providing support for institutions of governance, developing a human rights approach to sustainable development and contributing to the human rights policy dialogue and United Nations conference follow-up.

Individual criminal responsibility

A third major development of the 1990s has been the acceptance of individual criminal responsibility for gross violations of human rights. Mention has already been made of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide which already envisaged in its provisions the establishment of an international criminal court. It took more than forty years and a large number of national and international tragedies before this idea started to be materialised. The most important stumbling block in this respect was the ideological conflict between East and West.

The end of the Cold War, starting in 1989 with the fall of the Berlin Wall, paved the way for a much more active United Nations in the field of *inter alia* the maintenance of peace and the related field of the implementation of human rights. The break-up of Yugoslavia in the early 1990s and the large-scale grave violations of human rights which took place in the framework of the process not only led to a direct involvement of the Commission on Human Rights, but also induced the Security Council to establish in 1993 the International Criminal Tribunal for the Former Yugoslavia (ICTY).[24] This tribunal has jurisdiction over *inter alia* war crimes and crimes against humanity (including torture, rape and massive violations of human rights) committed in the territory of the Former Yugoslavia. After a slow start ICTY is now dealing with a large number of cases; even a Head of State is indicted.

The example of the ICTY was some time later followed by the establishment by the Security Council of a similar International Criminal Tribunal for Rwanda after the genocide tragedy in that country in 1994.[25] This tribunal shares its Appeals Chamber with ICTY. It is interesting to note that also in the case of Rwanda both the Commission on Human Rights and the Security Council took relevant steps, each within their mandates, towards the restoration of the rule of law and the respect for human rights.

[24] S.C. Res. 827 of 25 May 1993.
[25] S.C. Res. 955 of 8 November 1994.

The establishment of both international criminal tribunals by the Security Council facilitated the realisation of the idea of a permanent international criminal court which had been on the agenda of the world community ever since the late 1940s. In 1998 the Statute of the International Criminal Court was adopted at a United Nations Diplomatic Conference in Rome[26]; this statute will enter into force after the instruments of ratification of 60 states have been received by the Secretary-General of the United Nations. The basic thrust of this Statute is that war criminals and perpetrators of gross violations of human rights will find no safe haven; states by ratifying the Statute commit themselves to either try such suspects themselves or to deliver them to the jurisdiction of the International Criminal Court. The entry into force of the Statute will thus constitute another important step in the realisation of the ideals of the Founding Mothers and Fathers of the Universal Declaration.

5. Concluding observations

At the end of this overview the conclusion cannot be anything else than that revolutionary progress has been made in the field of human rights since the establishment of the United Nations 1945. Of the many achievements of the past 55 years some stand out in particular. In the first place, the objective of the founders of the United Nations to add a human dimension to international law and international relations has become a reality. Activism has substituted indifference. International law has become an important tool in promoting respect for and observance of human rights and fundamental freedoms. Secondly, as a result of the expansion of international law into the field of human rights, the accountability of all states for their respect - or lack of respect - for human rights has become firmly established. Thirdly, the importance of the acceptance of the principle of criminal responsibility of individuals should be re-emphasised. It recognises that violations of human rights are ultimately committed by men and that men, therefore, should be held responsible for their actions. Fourthly, the gradual acceptance of human rights as yardsticks for all areas of government and international organisations policies should be underlined again. This development is so important since it shows that there is a preventive side to the promotion and protection of human rights. It also recognises that, in the long run, policies will only viable if human rights are taken into account.

This being said, there is still a lot to be achieved; important lacunae need to be filled and ways and means must be found to respond to new challenges and concerns. One important present-day concern is the accountability of actors other than states for violations of human rights. It is widely felt that non-state actors, including transnational corporations, should be made accountable towards the world community for the consequences of their actions and activities for the human rights of (groups of) individuals. While striving to make non-state actors accountable for their acts, the primary

[26] Rome Statute of the International Criminal Court, adopted on 17 July 1998, A/CONF.183/9.

responsibility of states in respect of the situation of human rights on their territory should be preserved, however.

Indeed, the position of the state in relation to the promotion and protection of human rights is and remains crucial. Primary responsibility in the field of human rights has not only been accorded to states, because they are a potential threat to human rights, but also because they are the most important guarantors of human rights. In order for states to (continue to) play this role, in order for them to make a positive contribution to the realisation of human rights, they should be provided with the means to do so. They should be assisted in various ways: through technical assistance programs and through multilateral and bilateral aid programs.

States themselves should be continuously urged to ratify all relevant international and regional human rights treaties and to accept and implement the supervisory procedures. In particular, they should be urged to ratify the relevant individual complaint procedures. Furthermore, states should continue their efforts to draft and adopt as soon as possible individual complaint procedures for those human rights treaties which do not yet have one. The creation of such a procedure within the context of the International Covenant on Economic, Social and Cultural Rights should be a top priority.

States also have a responsibility towards the effective functioning of the United Nations and regional organisations. They should provide the United Nations and the regional organisations with sufficient financial means for them to play their supervisory role in an adequate way. In this respect, it should be realised that international and regional systems for the promotion and protection of human rights can only complement, not substitute national systems of human rights. Human rights begin "at home", at the national level. In their complementary task, however, these systems should be taken seriously.

The process of universalisation of human rights should be further strengthened by allowing cultural diversity in the interpretation and application of human rights norms. Universality is not synonymous to uniformity. Historical, cultural and political differences are relevant on the condition of accountability and openness for genuine dialogue with the world community and on the condition that some human rights norms do not allow for cultural diversity. A case in point is the prohibition of torture.

The inclusive character of human rights should also be further strengthened. Now and in the future, the struggle against discrimination on whatever ground remains at the core of the human rights system.

In the years to come, full attention should be devoted to tackling structural causes impeding the full realisation of all human rights. Such causes are numerous. They relate to the wide gap between rich and poor states, but also to the wide gap between the rich and the poor within states; they relate to over-armament by states and, increasingly, they relate to the degradation of the environment. In order to respond to these causes, action should be taken at all levels. At the international level continuous efforts should be made to give substance to the concept of sustainable development; in this respect the

further elaboration of the right to development as a right of individuals and collectivities is of prime importance. Similarly, the status of economic, social and cultural rights should be improved. In the coming years it should be a top-priority to recognise the legal character of these rights. One way this could be done is by devising supervisory procedures both at the national and the international level. The establishment of individual complaint procedures for violations of economic, social and cultural rights has already been mentioned. Collective complaint procedures, as existing within the context of the European Social Charter for example, should also be considered. On the other hand, it should not be forgotten that important standard-setting work remains to be done in this field.

In future years it is equally important that the policies of national governments and international organisations will be more and more human rights driven or oriented. In this respect the important, if not crucial role of non-governmental organisations should be recognised. Non-governmental organisations have contributed in a most significant way to the development and enforcement of the international and regional human rights systems which is due to a large extent to the consultative status they possess. Such organisations should also be given a consultative status with other organisations, including the international financial institutions and the World Trade Organisation.

The future will not be without armed conflicts. There is an imperative need to increase the protection of human rights in internal and international armed conflict. One way to travel in this respect is to interlink international humanitarian law and international human rights law, especially in the area of devising adequate supervisory mechanisms.

The list of challenges could be made much longer. What to think for example of the need to increased attention to the protection of human rights of displaced persons, refugees and migrant workers. All the above issues are determinants of life and well-being of all people, everywhere in the world. In the final analysis "people matter." That is the main achievement of 50 years of international protection of human rights and should remain the main challenge for the coming millennium.

6. Selected Bibliography

Burns H. Weston, Stephen P. Marks (eds.), The Future of International Human Rights, Ardsley, New York: Transnational Publishers Inc., 1999;

Peter Baehr, Cees Flinterman, Mignon Senders (eds.), Innovation and Inspiration: Fifty Years of the Universal Declaration of Human Rights, Amsterdam: Royal Netherlands Academy of Arts and Sciences, 1999;