

THEME 3: THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS IN THE UNIVERSAL LEVEL: THE WORK OF THE UNITED NATIONS

1. General ideas. 2. The Universal Declaration of Human Rights of 1948. 3. The International Covenant on Economic, Social and Cultural Rights of 1966. 4. The International Covenant on Civil and Political Rights of 1966. 5. Other conventions for the protection of human rights.



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1. GENERAL IDEAS

- UN work: universalization of human rights through codification, GA resolutions, institutions and extra-conventional mechanisms.
 - ❖ Obligation of organization to promote respect.
 - ❖ Acceptance of States' obligation to cooperate.

2. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS OF 1948

- First step to remedy deficiencies UN Charter - ECOSOC Creation of the HR Commission (1946) through [Resolution 5 \(I\)](#).
 - ❖ Order: Elaboration of...
 - ❑ An international declaration of human rights;
 - ❑ International declarations or conventions on civic freedoms, the status of women, freedom of information and other similar issues;
 - ❑ Protection of minorities;
 - ❑ The prevention of discrimination on grounds of race, sex, language or religion.
 - ❖ 9 members (since [Resolución 9 \(II\) de 21 junio 1946](#): 18).
- Clear lack of willingness of States to make legal commitments: single text (Declaration) 10 December 1948 [GA Resolution 217 A\(III\)](#) Universal Declaration of Human Rights.

- Content of the declaration:
 - ❖ Civil and political rights-Economic, social and cultural rights (indivisibility and interdependence of human rights).
 - ❑ Civil rights: to every person, every individual, every human being, without distinction.
 - ❑ Social and cultural rights: to every person.
 - ❖ Always limited by:
 - ❑ law,
 - ❑ respect for the rights of others,
 - ❑ moral requirements,
 - ❑ public order and welfare in a democratic society.
 - ❖ And in accordance with the purposes and principles UN.
- Legal value: Common conception of the fundamental rights and freedoms of man and ideal common to all peoples and nations.
 - ❖ Formal point of view: GA Resolution is not legally binding.
 - ❖ Currently: change in legal nature and is considered part of the General or customary ID, **ius cogens**.

3. THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS OF 1966.

- 1948: Single text of Declaration compliance and so ordered by GA. Difficulties:
 - ❖ Accuracy of rights
 - ❖ Single system of control of the fulfillment of the obligations of the States.
- 1951: ECOSOC redrafted GA guidance and elaborated two treaty texts of 16 December 1966, GA Resolution 2200 A(XXI):
 - ❖ International Covenant on Economic, Social and Cultural Rights.
 - ❖ International Covenant on Civil and Political Rights + Optional Protocol.
- Subsequently:
 - ❖ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights of 10/12/2008.
 - ❖ Second Optional Protocol to the International Covenant on Civil and Political Rights of 15/12/1989 (abolition of the death penalty).

3.1. The International Covenant on Economic, Social and Cultural Rights (ICESCR)

- It does not appear to confer rights directly, but is made dependent on the fulfillment of certain positive obligations on the part of States.
- It does not establish an article on territorial scope of application, but extends to any territory under the sovereignty of the State party.
- Undertakings State parties:
 - ❖ Part II- Art. 2 and 3: General obligations which, according to the Committee on ESC rights (monitoring body), include both obligations of conduct and of result.
 - ❑ Obligation to take measures: all appropriate means and in the shortest possible time.
 - ❑ Guarantee rights without discrimination.
 - ❖ Enunciated rights: Part III of the Covenant:
 - ❑ Right to work
 - ❑ Right of everyone to the enjoyment of just and favourable conditions of work (remuneration; Safe and healthy working conditions; equal opportunity; rest).
 - ❑ Trade union rights

- ❑ right to strike.
- ❑ Social security.
- ❑ Protection and assistance to the family.
- ❑ Right to an adequate standard of living.
- ❑ Right to the enjoyment of the highest attainable standard of health.
- ❑ Right to education.
- ❑ Right to participate in cultural life and to enjoy the benefits of scientific progress.
- ❖ Limitations of rights: specific limits and limits art. 4 and 5.
- ❖ Mechanism for monitoring compliance with obligations by States Parties: Part IV of the Covenant.
 - ❑ Reports on measures and progress: every 5 years, to the SG who will transmit them to ECOSOC (review) and interested specialized agencies. ECOSOC---to the HR Commission (study and recommendation). ECOSOC---reports with general recommendations and summary of the States to the GA.
 - ❑ Committee on ESC rights ([Resolution ECOSOC 1985/17](#)) composed of independent experts elected by ECOSOC from among State candidates. It specifies monitoring obligations and issues observations and recommendations.
 - ❑ Since 1993: written and oral reports NGO consultative status.

- Optional Protocol: Modalities of action before the Committee for violations of the Covenant:
 - ❖ Communications individuals or groups: Good offices and Views and recommendations (6m for written State response).
 - ❖ Communications States: Recognition of the competence of the Committee. Good offices and report.
 - ❖ Information on grave or systematic violations: Inquiry procedure.

3.2. The International Covenant on Civil and Political Rights (ICCPR).

- Scope of application: all individuals under jurisdiction or in its territory (application to situations of effective control by the Armed Forces –war occupation- and obligation to protect against irreparable damage).
- Commitments States parties: Part II art. 2 and 3
 - ❖ General obligations towards the individual holder, which according to the HR Committee (supervisory body) are actually *erga omnes* obligations.
 - Obligation to adopt measures: immediate
 - Binding on all branches of government.
 - Positive and negative obligations.
 - ❖ Mechanism for access to jurisdiction and redress for damages.
 - ❖ Possibility of suspension of rights in exceptional cases:
 - Danger life of the nation.
 - Officially proclaimed by the State.
 - Limited by situation.
 - Rules of procedure: information States (SG) and communication about process.

❖ Rights enunciated: Part III of the Covenant.

- Right to life and abolition of the death penalty (Op. Prot. II).
- Prohibition of torture or other inhuman and degrading treatment.
- Prohibition of slavery and servitude.
- Right to liberty and security of person.
- Humane treatment of persons deprived of liberty.
- Prohibition of imprisonment for debt.
- Freedom of movement.
- Expulsion of aliens.
- Administration of justice.
- Legality in criminal matters.
- Recognition of legal personality.
- Right to privacy.
- Freedom of thought, conscience and religion.
- Freedom of opinion.
- Right to peaceful assembly.
- Freedom of association.
- Protection of the family.

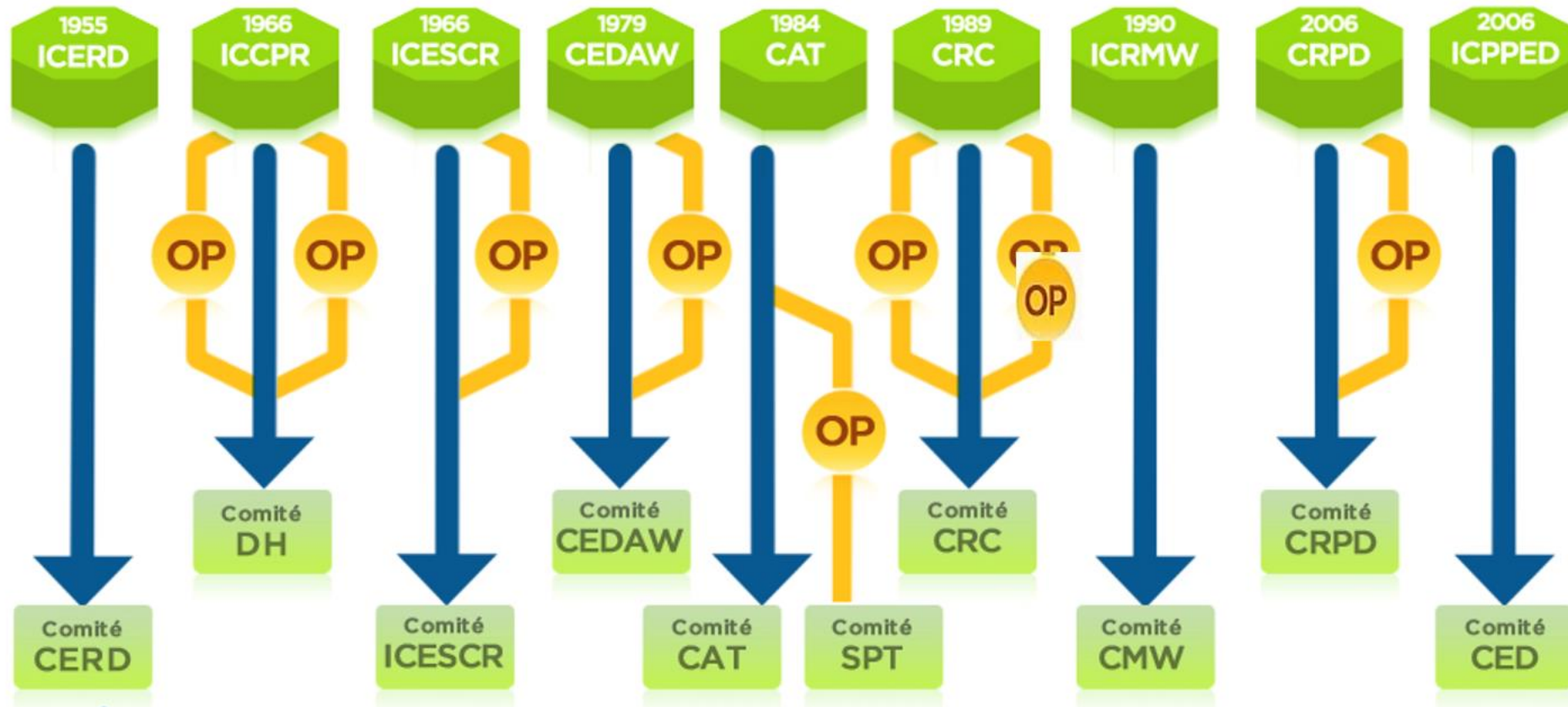
- Children's rights.
 - Participation in public affairs and the right to vote.
 - Equality before the law.
 - Rights of minorities.
- Mechanism for monitoring compliance with obligations by States Parties: Part IV of the Covenant
 - ❖ HR Committee (18 members).
 - ❖ Mandatory mechanism: reports.
 - ❖ Submission of communications by States.
 - ❖ Submission of communications by individuals.

5. THE CORE HR INSTRUMENTS AND THEIR MONITORING BODIES

- There are 9 core international human rights instruments. Each of these instruments has established a committee of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns:
 - ❖ International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly resolution 2106 A (XX) of 21 December 1965.
 - ❖ Convention on the Elimination of All Forms of Discrimination against Women, adopted and opened for signature and ratification or accession by General Assembly resolution 34/180 of 18 December 1979.

- ❖ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984.
- ❖ Convention on the Rights of the Child, adopted and opened for signature and ratification by General Assembly resolution 44/25 of 20 November 1989.
- ❖ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of 18 December 1990.
- ❖ International Convention for the Protection of All Persons from Enforced Disappearance, done at New York on December 20, 2006.
- ❖ Convention on the Rights of Persons with Disabilities, 13 December 2006.
- ❖ Slavery Convention, September 25, 1926.
- ❖ Other International instruments: Geneva Conventions, Genocide Convention...

- Some of the Conventions-monitoring body: Treaty system



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