



UNIT 2. INTERNATIONAL HUMAN RIGHTS LAW: FROM CLASSICAL IL TO CURRENT IL

1. Historical background
2. Human Rights in the Charter of the United Nations
3. The institutionalized framework for the protection of Human Rights

1. HISTORICAL BACKGROUND

- The protection of the individual: 2nd half XX century onwards development of a set of norms dedicated to the international protection of the individual (generic category of "international human rights law")
- This new international system for the promotion and protection of human rights does not come out of nowhere: from the end of the 19th century, it begins to be projected at the international level. Diverse steps in *ius Gentium*:
 - Humanitarian intervention.
 - Protection of certain rights in international treaties.
 - The LoN:
 - Mandate system.
 - International labour standards.
 - Minorities protection rules.
 - Foreign protection rules.
 - International Humanitarian law.
 - Studies: *Declaration of International Human Rights (1929)*, Institute of International Law.

1.1. Humanitarian intervention.

- Recourse to force by States to prevent cruel and degrading treatment contrary to elementary principles of humanity, infringed upon by foreigners and nationals (tried to include it as part of the LoN).
- Pretext for invasions and occupations still today: justification for intervention. Kosovo and NATO.

1.2. The first treaty provisions in the field of human rights

- XVII: Peace Treaty of Westphalia (1648 Holy Roman Empire-Germany and Allies): religious freedom.
- XIX: Treaty of Paris (1856): Freedom of worship and Treaty of Berlin (1878): freedom of worship and religion
- 1910 Convention the 'White Slave Traffic': women and children.
- XX: Versailles Peace Treaty (1919): religious freedom

1.3. The League of Nations

- LoN Pact: Constitutive Treaty IO.
- Human rights development:
 - system of mandates art. 22
 - international labour standards art. 23.
 - Protection of minorities in Europe.
 - Slavery prohibition: 1926 Slavery Convention, and conventions on the traffic in women and children.

- The system of mandates (art. 22):
 - *"The following principles apply to colonies and territories which, as a result of war, have ceased to be under the sovereignty of the States that previously governed them and which are inhabited by peoples who are still unable to govern themselves under the particularly difficult conditions of the modern world. The well-being and development of these peoples constitutes a sacred mission of civilization, and it is appropriate to include in the present covenant guarantees for the fulfillment of this mission.*
 - Obligation of the representative to inform the LoN on an annual basis.
- International Labour Standards (Art. 23):
 - Equal working conditions for men, women and children.
 - Need for an IO: Creation of the ILO
- Protection of minorities: Remodeling 1GM: ethnic, linguistic, religious minorities - special treaties for protection among the Allies.
 - Protection regime and preservation Rights: minority treaties and declarations for the protection of certain minority rights in Albania, Austria, Bulgaria, Czechoslovakia, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Poland, Romania, Turkey, and Yugoslavia. Limitation to the right of State to treat own nationals.
 - Guarantee clause: international obligation submitted to LoN.
 - PCIJ 1928 Judgment Rights of Minorities in Upper Silesia.

1.4. Rules concerning the protection of foreigners.

- Standards of treatment of foreigners (rights of the State).

1.5. International Humanitarian Law.

- Set of DI rules of armed conflict for human rights protection:
 - XIX: First treaties "humanization" laws and customs of war
 - Geneva Convention of 1864 military wounded in battle.
 - The Hague Convention of 189 laws and customs of land warfare.
 - XX: Geneva Conventions of 1949 and Additional Protocols I and II of 1977
 - XXI: Additional Protocol III of 2005.

1.6. The Declaration of International Human Rights (1929), Institute of International Law.

- *Albert de Lapradelle*: draft 'Declaration of the International Rights of Man'.
- *André Mandelstam*: text basis of the Declaration.
 - did not refer to the rights of citizens (which were a matter of domestic law and policy) but rather proclaimed rights to life, liberty, and property belonging to individual human beings.
 - are to be respected without any discrimination on grounds of nationality, sex, race, language, or religion.

1.7. International system for the protection of HR

- Beginning of 2nd WW: H. G. Wells "World Declaration of the Rights of Man" treating:

- discrimination;
 - natural resources;
 - health;
 - education;
 - paid employment;
 - the right to buy and sell personal property;
 - the right to move around the world freely;
 - no imprisonment longer than six days without charge, and then no more than three months before a public trial;
 - access to public records concerning individuals;
 - and a prohibition on mutilation, sterilization, torture, and any bodily punishment.
- 2nd half XX Century-onwards: development of a set of norms dedicated to the international protection of the individual (“international human rights law”). Nowadays: Set of interrelated subsystems (units 2-8): universal sphere/regional sphere/states systems.
- Development of two different frameworks:
- Normative framework: codification and definition of human rights
 - Institutionalized framework: establishment of mechanisms for guaranteeing these rights.
- Unity and identity of the system: basic elements and characteristics
- Systems of protection against the State.
 - Human dignity as a collective interest.
 - Predominance of multilateral instruments.

- Erga omnes obligations.
- Development of different techniques of control with basic characteristics:
 - Generally, non judicial models. Control through commissions or committees.
 - Subsidiarity of the international or regional systems to the domestic systems of protection: exhaustion of local remedies rule.
- All systems are interrelated and interact between each other: dynamic interpretation.

2. HUMAN RIGHTS IN THE CHARTER OF THE UNITED NATIONS

- Modern HR: reaction to the 2nd World War II disaster.
 - United Nations Declaration (21/1/1942).
 - United Nations Charter of 1945 drawn up in San Francisco. Conceptual and legal basis for the future development of human Rights:
 - Preamble: Important for interpretative purposes.
 - Article 1 and Article 13: Purpose IO and responsibility AG.
 - Article 55: Obligation of IO.
 - Article 56: Obligation of members.
 - Articles 62 and 68: Economic and Social Council and Commission on Human Rights
 - Article 76: International Trusteeship System.
- But the Charter: Does not establish any "system of protection" of HR nor does the protection of human rights appear as an end of the Organization, but as an instrument to achieve an end.
- International system for the protection of HR: set of interrelated subsystems (units 3-8)
 - Normative development (unit 3).
 - Institutionalized framework (next chapter).

3. THE INSTITUTIONALIZED FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS IN THE UNITED NATIONS SYSTEM

- The universal mechanisms can be classified according to various criteria such as: their composition (intergovernmental and non-governmental); their powers (with decision-making or recommendatory powers); their origin (conventional and non-conventional); their sphere of competence (general or specific competences); etc.
- The enormous task required the existence of bodies dedicated exclusively to the field of human rights (main mechanisms of this institutional framework). Division between:
 - United Nations bodies created at the initiative of world conferences: They are not main bodies, but have great autonomy and, above all, political relevance: The Human Rights Council and the United Nations High Commissioner for Human Rights (OHCHR).
 - Bodies created by the previous bodies: These are mainly bodies created by and reporting to the Human Rights Council, which constitute a plethora of bodies such as the Advisory Committee, the Special Procedures (thematic and country-specific), the Fora (Social, on Minority Issues, on Private Business and Human Rights, etc.), the Working Groups, etc. All these bodies together constitute a subsystem within the United Nations system.

- International treaty bodies linked to the above bodies: Bodies that have been created by the human rights treaties considered "core", constituting what has come to be called the "treaty body system". These bodies are usually referred to as treaty bodies precisely because they have been created by a Convention and constitute, in turn, another subsystem within the United Nations system (unit 3)

3.1. Human Rights Council (HRC).

- 2005 World Summit: Mandate to the GA to create the HRC. Idea to established a new organizational model for the United Nations based on three major Councils devoted, respectively, to international peace and security (Security Council), development (Economic and Social Council) and human rights (Human Rights Council).
- GA [Resolution 60/251](#): Creation of HRC as a replacement of former Commission on Human Rights (Commission established by ECOSOC in application of art. 68 of the Charter, as one of its subsidiary body), but with a substantive change, since it will no longer be a subsidiary body of ECOSOC but of the General Assembly.
- It is an intergovernmental membership body, based on the principle of geographical distribution.
 - Guidelines for the election in GA Res. 60/251: take into account the
 - "contribution of candidates to the promotion and protection of human rights and the voluntary pledges and commitments they have made in this regard";
 - The States elected to the Council "shall apply the highest standards in the promotion and protection of human rights".

- And “cooperate fully with the Council and shall be subject to the universal periodic review mechanism for the period of their membership“.
- Possibility of the suspension of membership of the Council as a sort of sanction: example, the General Assembly suspended Libya as a member of the Human Rights Council on March 1, 2011 and reinstated it on November 18 of the same year, following the change of political regime in the country.
- Mandate: It is defined in very broad terms
 - promote human rights education, technical assistance and capacity building, in consultation and with the consent of the affected State;
 - serve as a forum for dialogue on thematic issues relating to all human rights;
 - make recommendations to the General Assembly for the further development of international law in the field of human rights;
 - promote full compliance by States with their human rights obligations and to follow up on the objectives and commitments related to the promotion and protection of human rights that have been defined at United Nations Conferences and Summits;
 - conduct a universal periodic review of each State's compliance with its human rights obligations and commitments;
 - contribute to preventing human rights violations through cooperation and dialogue and respond promptly to human rights emergencies;
 - prepare an annual report on human rights to be submitted to the General Assembly;
 - control and supervision function.

➤ Organization:

- Sessions: The Council holds three regular sessions per year. In addition, the HRC may hold special sessions "when necessary, at the request of a member of the Council with the support of one third of the membership of the Council".
- Only members of the Council can vote at its sessions, but all UN member states can participate, as well as non-member states, specialized agencies, other intergovernmental organizations, national human rights institutions and non-governmental organizations.
- HRC Resolution 5/1--"Institution-building package" structures that form the basis of its work.
 - Subsidiary bodies that directly report to the Human Rights Council: Universal Periodic Review Working Group; Advisory Committee; Complaint Procedure.
 - Subsidiary expert mechanisms: Provide the Council with thematic expertise and forums providing a platform for dialogue and cooperation. They meet and report annually to the Council (Expert Mechanism on the Rights of Indigenous People; Expert Mechanism on the Right to Development; Forum on Minority Issues; Social Forum; Forum on Business and Human Rights; Forum on Human Rights, Democracy and the Rule of Law).
 - Open-ended intergovernmental working groups to elaborate and/or negotiate and finalize new draft legal instruments or to make recommendations on the effective implementation of existing instruments.
 - Special Procedures mandates: thematic or country-specific perspective.

- Functions (exercised by the Board directly) are:
 - The Universal Periodic Review (UPR): this is the periodic review (every 5 years) of all United Nations member states on their compliance with all their obligations in the field of human rights and international humanitarian law. It is a peer review. At the end of the review, a number of recommendations are made to each State, with the State being free to accept or reject those it deems appropriate.
 - The "complaint procedure" (regulated in Resolution 5/1 HRC): based on communications that may be submitted by any person or group that considers itself to be a victim of a human rights violation, or by any person or group, including NGOs, who, although not being victims, claim to have direct knowledge of the violation or, even having had it at second hand, have sufficient evidence.

3.2. The HRC Advisory Committee

- Created by HRC Resolution 5/1, is composed of 18 experts, and functions as a "think tank" of the Council working under its direction.
- Essential function: to provide expertise to the Board as requested by the Board, focusing primarily on advice based on studies and research.
 - Scope of its advice: thematic issues relevant to the Council's mandate, namely the promotion and protection of all human rights.
- The Advisory Committee does not adopt resolutions or decisions, but may formulate suggestions for improving its procedural efficiency, as well as proposals for further studies within the scope of work established by the Council.

- It is urged to interact with States, national human rights institutions, NGOs and other civil society entities.



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