

UNIT 3. THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS AT THE UNIVERSAL LEVEL: THE NORMATIVE WORK OF THE UNITED NATIONS

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

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.
- Charter of the UN: does not establish any list or system for the protection of HR.
 - Development of activity (strongly marked by ideological confrontation of the Cold War).
 - two World Conferences on Human Rights:
 - ❖ Teheran 1968
 - ❖ Vienna 1993
 - Inclusion of human rights issues in all the major world conferences.
 - BUT: not designed and planned in advance. Evolution dominated by pragmatism (inconsistencies and gaps). And it is an open-ended process.
 - Not only UN, but also other organizations from the system. (UNESCO, ILO, etc.)

- In any case: GLOBAL PUBLIC INTEREST
- Configuration of an international legal regime with its own characteristics (legal regime of a general nature, peremptory norms, obligations erga omnes, and collective guarantees).
 - International Bill of Human Rights:
 - Universal Declaration of Human Rights (UDHR) 1948
 - International Covenant on Civil and Political Rights (ICCPR) 1966
 - International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1966
 - In addition to the UDHR and the two Covenants: series of international human rights treaties and protocols+customary international law

2. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS OF 1948

- First step to remedy deficiencies UN Charter (both institutional and normative):
 - ECOSOC Creation of the HR Commission (1946) through [Resolution 5 \(I\)](#).
 - Mandate: 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.
 - Organization: 9 members (Changed by Resolution 9 (II) 21 June 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:
 - Mainly, civil and political rights-but also 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 men and ideal common to all peoples and nations.
 - At the adoption and from a formal point of view: GA Resolution----not legally binding.
 - Currently: change in legal nature and is considered part of the General or customary international law, **ius cogens**.

3. THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS OF 1966.

- 1948: Single text of Declaration compliance and so ordered by GA in Resolution.
- Difficulties:
 - Accuracy of rights
 - Single system of control of the fulfillment of the obligations of the States.
- 1951: ECOSOC redrafted GA Resolution 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:
 - Second Optional Protocol to the International Covenant on Civil and Political Rights of 15/12/1989 (abolition of the death penalty).
 - Optional Protocol to the International Covenant on Economic, Social and Cultural Rights of 10/12/2008.

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

- It does not appear to confer rights directly to individuals but their enjoyment 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.
- Obligations of 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.
 - ❖ Limitations of rights: specific limits and limits art. 4 and 5.
- Enunciated rights: Part III of the Covenant:
 - Right to work
 - Right of everyone to the enjoyment of just and favorable 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.
- 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 committee (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 2008: 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).
- **Obligations of States parties:** Part II art. 2 and 3
 - General obligations towards the individual holder, which according to the HR Council (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 of States to the SG and communication about process.

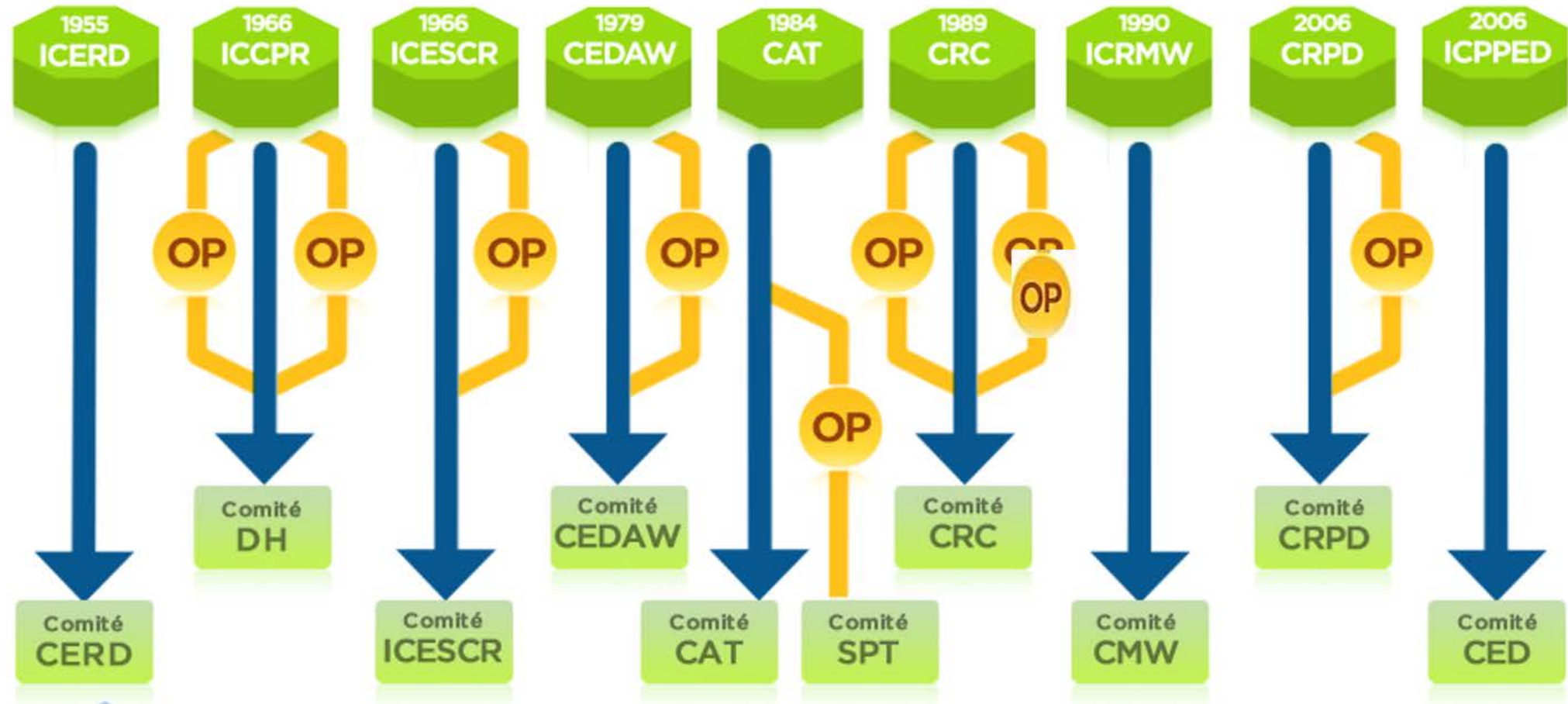
- Rights enunciated: Part III of the Covenant.
 - Right to life and abolition of the death penalty (Op. Prot. II).
 - Prohibition of torture or other inhuman and degrading treatment.
 - Prohibition of slavery and servitude.
 - Right to liberty and security of person.
 - Humane treatment of persons deprived 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](#)
 - Organization: 18 members.
 - System of monitoring:
 - Mandatory mechanism: reports.
 - Submission of communications by States.
 - Submission of communications by individuals.

5. THE CORE HR INSTRUMENTS AND THEIR MONITORING BODIES

- Basic treaties specifying Bill of Human Rights. Distinction between:
 - Treaties specifying the human rights of groups in situations of vulnerability (children, women, elderly, persons with disabilities). In this case, we could distinguish (i) treaties that specify the Bill of HR to the situation of the protected group; and (ii) treaties that focus on eradicating the structural discrimination.
 - Justification: all these groups find themselves in a situation in which they encounter various obstacles to the exercise of their rights under conditions of equality and, consequently, IL imposes various obligations on the State to adopt special measures to eliminate these barriers, to eliminate discrimination, to protect them in situations of special vulnerability, etc..
 - Human rights treaties that deal with specific phenomena: address specific phenomena of particularly serious violations (enforced disappearances, torture, racial discrimination).
 - Other international human rights instruments within the United Nations framework: Slavery Convention, Genocide convention, Trafficking in human beings for prostitution and pornographic purposes, protection of indigenous people.

- These 7 (+2 IC1966) are the **core** international human rights instruments:
 - four treaties with respect to groups in situations of discrimination or vulnerability (the Convention on the Elimination of All Forms of Discrimination against Women, of 18 December 1979; the Convention on the Rights of the Child, of 20 November 1989; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, of 18 December 1990; and the Convention on the Rights of Persons with Disabilities, of 13 December 2006)
 - three treaties referring to specific phenomena involving particularly serious human rights violations (the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984; and the International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006).
- Some of the treaties are supplemented by optional protocols dealing with specific concerns.
- Each of these instruments has established a committee of experts to monitor the implementation of the treaty provisions by its States parties (infographic)



5.1. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

➤ **Structure of the CEDAW:**

- Preamble: why CEDAW is necessary.
- VI Parts (30 articles):
 - list of acts that constitute discrimination against women;
 - obligation to adopt laws, public policies and programs that the State must develop to eliminate discrimination;
 - specification of the different areas in which governments are obliged to eliminate discrimination: equality agenda (civil rights; the status of women; and aspects related to human reproduction and the impact of cultural factors on gender relations).
 - the description of the establishment and functions of the CEDAW Committee;
 - rules on the administration and other procedural aspects for the signature, ratification, accession and operation of the Convention.
- The Convention has been supplemented by the Optional Protocol of 6 October of establishing a system of communications in case of violation of the rights recognized in the Convention, which entered into force on 22 December of 2000.

5.2. The Convention on the Rights of the Child (CRC)

- The most ratified Convention (almost universal recognition): Change of paradigm on the consideration of the child by law (from object of protection to subject entitled to rights who must be empowered in them).
- Aim of the CRC: specific obligations of States to ensure that rights can be exercised by children and respected both by the State and by others. Two principles:
 - The "best interests of the child" and
 - The principle that imposes the obligation to "hear the child in all decisions affecting him or her".
- **Structure of the Convention:** VIII parts
 - the scope of application
 - the general principles;
 - general measures to be taken by States in relation to the Convention;
 - the specification of various rights to the particular situation of children;
 - obligations relating to the protection of children from violations of rights to which they are particularly vulnerable; obligations with respect to children who are doubly vulnerable in order to reduce the greatest barriers to the exercise of their rights;
 - the provisions relating to the mechanism for monitoring the implementation of the Convention: Committee on the Rights of the Child.
 - the final provisions on signature, entry into force, reservations, etc.

- The Convention has been supplemented by three Optional Protocols:
 - OP I 2000: *involvement of children in armed conflict* (OPAC)
 - OP II 2000: *sale of children, child prostitution and child pornography* (OPSC).
 - OP III 2011: *relating to a communications procedure* (OPIC).

5.3. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW)

- Antecedents of ICPMW: the ILO Migration for Employment Convention, 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). These two treaties, together with the Convention, constitute what has been called the "**International Migration Charter**"
- Aim of the ICPMW: Ensure dignity and equality in an era of globalization. It establishes minimum standards for migrant workers and members of their families, with the aim of eliminating the exploitation of workers in the migration process. It defines different groups of migrant workers in specific categories: border, seasonal, autonomous, maritime and itinerant.
- **Structure of the Convention:** IX parts: scope and definitions; non discrimination with respect to rights; human rights of all migrants; other rights of documented or regular migrants; provisions applicable to certain categories of migrants; promotion of equitable, humane and lawful conditions in connection with international migration; implementation of the convention; general provisions; and final provisions.
- Organ of monitoring implementation: Committee on Migrant Workers

5.4. Convention on the rights of persons with disabilities

- First convention open to regional organizations.
- The Convention does not create new and different rights for persons with disabilities, but rather establishes State obligations and basic principles to (i) combat discrimination against persons with disabilities in the exercise of their rights and (ii) clarify concepts and specify the rights of the International Bill of Human Rights in their application to persons with disabilities.
- The Convention has been supplemented by an Optional Protocol (adopted by the GA together with the Convention): competence of the Committee on the Rights of Persons with Disabilities to consider complaints from individuals, as well as to conduct inquiries on cases of possible grave or systematic violations of the rights recognized in the Convention.

5.5. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

- Definition of “racial discrimination”: broad criterion that reaches different modalities of discrimination, distinction, restrictions or preferences, whether based on "race, color, descent, or national or ethnic origin". BUT does not affect the internal norms of States in matters of citizenship and immigration, as long as it does not discriminate against certain nationalities, and it does not prohibit positive discrimination measures.
- **Structure of the Convention:** III parts:
 - the obligations of States and the human right not to suffer discrimination
 - Mechanisms for compliance with the Convention
 - General provisions on ratifications, entry into force, amendments and authenticity of texts (Articles to 1725).
- Organ to monitor implementation and compliance: Committee on the elimination of Racial Discrimination

5.6. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

- Aim of the Convention: prohibit torture and cruel, inhuman or degrading treatment or punishment, to prevent such practices and to ensure that those who commit them do not go unpunished.
- It has been supplemented by an Optional Protocol (OPCAT): Creation of National Preventive Mechanism for the Prevention of Torture (NPM), whose function is to carry out regular visits to places of detention.
- Organ to monitor implementation and compliance: [Committee Against Torture](#)

5.7. International Convention for the Protection of All Persons from Enforced Disappearance (CED)

- Aim of the Convention: prevent enforced disappearances, to uncover the truth when they occur and to ensure that survivors and families of victims obtain justice and reparations.
- Organ to monitor implementation and compliance: Committee on Enforced Disappearances



Esta obra está protegida con una Licencia Creative Commons
Atribución-NoComercial-SinDerivar 4.0 Internacional