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Human rights from the Charter of the United Nations onwards

1. REFERENCES TO HUMAN RIGHTS IN THE UNITED NATIONS CHARTER

There are eight references to human rights in the text of the UN Charter. Its preamble begins by stating that the peoples of the United Nations determined "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".

Secondly, Article 1(3) informs us that the purposes of the UN include "to achieve international cooperation in (...) promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".

Thirdly, Article 13(1)(2) provides that: "the General Assembly shall initiate studies and make recommendations for the purpose of (...) assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex,



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language or religion”.

Fourthly, Article 55(3) states that: "the United Nations shall promote: universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

Fifth, Article 56 states that: "all Members pledge themselves to take joint and separate action in cooperation with the Organisation for the achievement of the purposes set forth in Article 55".

Sixth, article 62(2) states that the Economic and Social Council “may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all".

Seventh, article 68 tells us that: "the Economic and Social Council shall set up commissions in economic and social affairs and for the promotion of human rights...".

Finally, Article 76(3) states that the basic objectives of the trusteeship system include "to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world".

2. FIRST GAP: A LIST OF HUMAN RIGHTS WAS MISSING

It is often pointed out that the UN Charter suffered from two major gaps in human rights. The

first of these gaps was the lack of a list enumerating what human rights are. In this respect, the following three comments should now be made.

Firstly, the United Nations itself recognises the existence of an "International Bill of Human Rights", made up by: (1) the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948. The Declaration, for the first time in human history, clearly sets out the basic civil, political, economic, social and cultural rights that all human beings should enjoy; (2) the International Covenant on Civil and Political Rights and its two optional protocols; and (3) the International Covenant on Economic, Social and Cultural Rights and its optional protocol.

Secondly, there are other international human rights treaties adopted by the United Nations. Many of them have optional protocols. Among these core international treaties are: (1) the International Convention on the Elimination of All Forms of Racial Discrimination; (2) the Convention on the Elimination of All Forms of Discrimination against Women; (3) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (4) the Convention on the Rights of the Child; (5) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; (6) the Convention on the Rights of Persons with Disabilities; and (7) the

International Convention for the Protection of All Persons from Enforced Disappearance.

Thirdly and finally, it is worth mentioning that regional systems for the protection of human rights have also been created. These include those created by the Council of Europe, the Organisation of American States, and the African Union. In these three regional systems, international tribunals have been set up to hear both inter-state claims and individual claims against States Parties.

3. SECOND LOOPHOLE: LACK OF ENFORCEMENT MECHANISMS

The second shortcoming of the UN Charter in the field of human rights is the lack of mechanisms for monitoring compliance with the obligation to respect human rights. In this regard, the following three ideas can be formulated.

The first idea is to affirm that, over time, mechanisms have been created to control and monitor the obligation to respect human rights, based on the United Nations Charter. In this regard, the creation of the Human Rights Council by the General Assembly on 15 March 2006, with the main objective of considering situations of human rights violations and making recommendations in this regard, is noteworthy. The Human Rights Council is an intergovernmental body within the United Nations system, made up of 47 States, and is responsible for the promotion and protection of

human rights worldwide. It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year.

The Human Rights Council carries out three monitoring mechanisms: (1) the Universal Periodic Review is a unique process which involves a review of the human rights records of all UN Member States. The Human Rights Council gives each State the opportunity to declare what measures it has taken to improve the human rights situation in its territory and to fulfil its human rights obligations. I must underline that the ultimate aim of the Universal Periodic Review is to improve the human rights situation in all countries and to address human rights violations wherever they occur; (2) on 18 June 2007, the Human Rights Council created a new complaint procedure to address consistent patterns of gross and reliably attested violations of human rights occurring in any part of the world. The complaints procedure addresses communications submitted by individuals, groups or non-governmental organisations claiming to be victims of human rights violations or having direct and reliable knowledge of such violations; and (3) Special procedures are independent human rights experts with mandates to report and advise on human rights from a thematic or Member State-specific perspective.

The second idea to highlight is the existence of monitoring and follow-up mechanisms created on

the basis of the core international human rights treaties adopted by the United Nations. The human rights treaty bodies are committees of independent experts that monitor the implementation of the core international human rights treaties. I must emphasise that each State party to a treaty has an obligation to take measures to ensure that all persons in that State are able to enjoy the rights set out in the treaty. This is why there are currently ten human rights treaty bodies composed of independent experts, who are nominated and elected by States parties to serve fixed-term terms, renewable every four years. These monitoring bodies are competent to give opinions on inter-State and individual complaints. On a regular basis, they discuss with each State Party to the relevant international treaty, publishing a report with their concluding observations. They may also make General Comments on the interpretation of individual articles of each treaty.

However, these "monitoring bodies" suffer from major weaknesses in that: (1) these expert monitoring bodies are not international courts of law. Therefore, the "independent experts" appointed by states are not "international judges"; (2) these committees do not issue "judgments" - only "opinions"; and (3) their opinions cannot modify or overturn final judgments of national courts. However, these rulings may be of limited effectiveness and may be grounds for seeking

compensation for mismanagement of justice at the national level.

The third and final idea to highlight is that there is currently still a lack of an international court of justice at the global level, in which individuals can denounce human rights violations committed by states. It is worth recalling that such courts do exist in regional human rights systems.

