

INTRODUCTION TO INTERNATIONAL HUMAN RIGHTS LAW: HISTORY AND PERSPECTIVES

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INTRODUCTION

This article describes the main historical background of modern international human rights law.¹ International human rights law is the branch of international law that deals with the establishment and promotion of human rights and the protection of individuals and groups of individuals in the case of governmental violations of human rights. This article will first reference the processes that occurred before the Second World War, focusing on the developments that took place as a result of the Charter of the United Nations' adoption, including the adoption of the Universal Declaration of Human Rights and the role of universal treaties in helping to structure current human rights norms. Second, this article will reference issues that are presented for the development of the international protection of human rights.

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1 Some comments are taken from Thomas Buergenthal, Claudio Grossman, Pedro Nikken, *Manual Internacional de Derechos Humanos*, Instituto Americano de Derechos Humanos y Editorial Jurídica Venezolana 20 (1990).

1. International Law Prior to the Second World War

Various international doctrines and institutions contributed to the modern formation of international human rights protection, including the doctrine of humanitarian intervention, the treaties relating to the protection of minorities, the League of Nations' Mandate and Minority System, and the doctrine of State responsibility for harm to foreigners.

1.1 Humanitarian intervention

The doctrine of humanitarian intervention, as proposed by Hugo Grotius in the seventeenth century and subsequently supported by other international jurists, recognizes the right of one or more States to adopt measures, including the use of military force, to stop gross violations of the fundamental rights of individuals by States of their nationality.²

This doctrine has been severely criticized because it denies the principle of the sovereign equality of States and it has not been applied consistently. Powerful States, who have the resources and possibilities to apply this doctrine, only resort to it when humanitarian considerations coincide with interests of another type, such as economic, political, or military interests, which are much more decisive in the action of States. This gives rise to accusations of discrimination and double standards, thereby affecting the legitimacy of invoking human rights.

2 See generally Evan J. Criddle, *Three Grotian Theories of Humanitarian Intervention*, 16, *Theoretical Inquiries in Law* 473 (2015).

1.2 First human rights treaties

The human rights agreements concluded by States have been essential in the evolution of international human rights, specifically by providing precedents that would later be used for the development of international protection after the Second World War. The origin of the adoption of international obligations relating to human rights dates back to the nineteenth century, when treaties were concluded aimed at eradicating slave trafficking and protecting Christian minorities in the Ottoman Empire. An example in this regard is the Treaty of Paris of March 30, 1856. The States that made up the European Concert invoked such minority treaties to intervene diplomatically and militarily in favor of the Christian populations in the Turkish empire. Due to their contractual nature, the obligations assumed by States in these human rights treaties cannot be considered a form of intervention in violation of State sovereignty.

1.3 The League of Nations

The Covenant of the League of Nations, adopted in 1920, did not contain any human rights standards.³ Notwithstanding the foregoing, various norms of the Covenant and activities of the League are of interest in the development of the international protection of human rights, as well as the doctrine of the minimum standard of protection for foreigners.

1.3.a The Mandate System

Under article 22 of the Covenant, the mandate regime of the League applied only to the colonies of States defeated in the

3 League of Nations, *Covenant of the League of Nations*, 28 April 1919, <https://www.refworld.org/docid/3dd8b9854.html>.

First World War.⁴ These colonies came to be administered by the victorious powers according to the principle that the development and well-being of the native populations needed to be protected. The administering State was required to submit annual reports detailing the fulfilment of its responsibilities. These reports were reviewed by the League's Mandate Committee.

The Committee's activities ended when the League was dissolved. The United Nations subsequently established the International Trusteeship System for the supervision of Trust Territories, through which the Universal Organization received powers to oversee mandates. Since the adoption of Resolution 1514 (XV) of 1960, a process began at the United Nations that culminated in the full illegitimacy of colonialism, recognizing the right of peoples under colonial domination to self-determination.⁵

1.3.b Protection of minorities

As a result of the First World War, the political map of Europe and the Middle East was altered, new States were created, and others regained their independence. In this way some countries began to include in their territory groups of ethnic, linguistic, or religious minorities who had historically good reasons to fear that the new political order would threaten their survival. Consequently, the governments of the major allied powers insisted that the new States conclude special treaties for the protection of minorities they considered exposed.

4 *Id.* at art. 22.

5 United Nations General Assembly, *Declaration on the Granting of Independence to Colonial Countries*, Res. 1514 (XV) (adopted Dec. 14, 1960).

States, under the protection regime, undertook to not discriminate against members of protected minorities and to grant them all the rights necessary to preserve their ethnic, linguistic, or religious integrity, including the right to official use of their language, the right to school, and the right to practice their religion. The rules of protection relating to persons belonging to racial, religious, or linguistic minorities constituted obligations of international character and were placed under the protection of the League of Nations.

The League of Nations agreed to guarantee the commitments made in the treaties concerning the protection of minorities. Minorities could allege violations of their rights. These petitions were reviewed by a Committee of the Council of the League. States subject to international supervision, in turn, could present their views. The Committee could request the Permanent Court of International Justice to rule on disputes on questions of law.

Without prejudice to the theoretical value of the norms adopted by the League in developing the existence of human rights in the international arena, the activities of this institution failed to implement the rules of protection that was committed to guarantee.

1.3.c State responsibility for damage to aliens

Traditional international law recognized the obligation of States to treat foreigners according to a minimum standard of civilization and justice. This obligation was due to the State of the alien's nationality and not directly to the individuals. Therefore, when a State violated the obligation to treat aliens in accordance with international standards, the State of nationality of those affected could resort to international law to obtain satisfaction and reparation from the offending State. Normally, disputes

over damages suffered by foreigners were resolved through diplomatic negotiations, arbitration, or recourse to international jurisdiction. However, the non-satisfaction of demands for compensation of damages to foreigners additionally led to the use of force as a measure of coercion.

The Latin American States, which before the process of decolonization made up the majority of the States in the third world, did not accept the minimum standard as it was formulated in traditional law. As capital-importing countries, they feared that disputes with foreign investors would turn into disputes with States of nationality that were often more powerful.

As a counterpart to the minimum standard, Latin American doctrine formulated the principle of non-discrimination. According to this principle, foreigners should be treated in the same way as nationals. Consequently, States could exercise diplomatic protection in favor of their nationals only when the principle of non-discrimination between nationals and foreigners was violated by another State, and access to that State's domestic courts had been denied. According to the Calvo clause, named after its author Carlos Calvo, Minister of Foreign Affairs of Argentina in 1875, foreigners could expressly or tacitly renounce to request diplomatic protection from the State of their nationality.⁶

The doctrine of the prohibition of discrimination was positive in recognizing that foreigners should not be discriminated. It recognized also that failure to comply with the prohibition of discrimination violated an obligation towards other States. However, if there was no discrimination between foreigners

6 See application of this doctrine in Corte Suprema del Perú, *Cantero Herrera c. Canevaro & Co.*, 1927 Ann. Digg 219 (no. 149). See generally Manuel R. García-Mora, *The Calvo Clause in Latin American Constitutions and International Law*, 33 Marq. L. Rev. 205 (1950).

and nationals, there was no right of action by the affected State. Additionally, as the theory of minimum standard, this doctrine did not give any right to the nationals of a State. Moreover, because the violation of the prohibition of discrimination was a violation to an obligation due to another State in the treatment of its nationals, the Calvo clause was not accepted.

Modern international human rights law represents a synthesis of the various theories put forward. On the one hand, it recognizes the existence of a minimum standard, but it does so without discriminating so that it is valid for all.

2. The United Nations Human Rights System

Modern international human rights law developed dramatically within the framework of the United Nations after the Second World War. Contributing to this were the crimes against humanity committed by Nazism, which included the extermination of racial minorities, political opponents, and the search for the creation of a society and an international order based on discriminatory concepts and racial superiority.

The human rights standards embodied in the Charter of the United Nations are then analyzed and the normative developments and human rights institutions adopted within the framework of the universal organization are subsequently reviewed.

2.1 The Charter of the United Nations

The human rights norms that were included in the Charter of the United Nations did not incorporate the rhetoric used by the Allies during the War, in which they indicated that they sought the creation of an international order with universal validity of

human rights obligations.⁷ This is because the victorious forces did not have the political will to adopt a normative instrument that would create obligations of a juridical nature in function of their human rights problems. Suffice it to mention as examples that in the Soviet Union, Stalin was in power; that in some states in the United States, there was de jure racial discrimination; and that France and England remained colonial empires. Despite this, general norms were incorporated into the Charter of the United Nations that would constitute the legal and conceptual basis for the further development of contemporary human rights. Article 1(3) of the Charter proclaims that the United Nations is intended “[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁸

Articles 55 and 56 of the Charter set out the basic obligations of the Organization and Member States to achieve these goals. Article 55 states that the United Nations will “promote (1) higher standards of living, full employment, and conditions of economic and social progress and developments, (2) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and (3) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁹ Article 56, for its part, establishes that members of the United Nations “pledge themselves to take joint

7 See Thomas Buergenthal, Claudio Grossman, Pedro Nikken, *Manual Internacional de Derechos Humanos*, Instituto Americano de Derechos Humanos & Editorial Jurídica Venezolana 20 (1990).

8 United Nations General Assembly, *Charter of the United Nations*, art. 1(3) (adopted Oct. 24, 1945).

9 *Id.* at art. 55.

and separate action in co-operation with the [United Nations] for the achievement of the purposes set forth in article 55.”¹⁰

Although the mandate of article 55 is very broad, the powers it grants to the Organization to carry out its purposes were very limited.¹¹ The promotion function is assigned to the UN General Assembly and the Economic and Social Council, whose resolutions, in general, have no binding effect. The obligation of the Member States, according to article 56, is limited to achieving the purpose established by article 55, that is, to promote universal respect for human rights and fundamental freedoms for all. The UN Charter does not define what is meant by “human rights and fundamental freedoms.” However, article 55 contains the prohibition of discrimination, which read in conjunction with article 56, allows us to conclude that the Member States of the Organization have the obligation to promote human rights and fundamental freedoms “without distinctions on the grounds of race, sex, language or religion.”¹²

Despite their lack of precision, the human rights standards of the UN Charter have been of great importance. First, the United Nations incorporated even symbolically human rights as a topic that required international cooperation and by doing that, it placed them in the international agenda. This incorporation resulted in a development that led to a situation where a State cannot currently postulate that the violation of the rights of its nationals falls within its exclusive domestic jurisdiction.

Secondly, since the beginning the Charter of the United Nations gave normative value to the prohibition of discrimination, a crucial normative value in the development of a common

10 *Id.* at art. 56.

11 *Id.*

12 *Id.* at art. 55.

narrative of human dignity. That value allowed later on, by resorting to interpretation, through a process of expansion that was essential to prohibit discrimination on grounds such as gender or sexual orientation, among others.

Thirdly, the obligation of UN Member States to cooperate in the promotion of human rights and fundamental freedoms created the necessary legal basis for the UN to begin the work of defining and codifying those rights. The efforts of the UN materialized in the adoption of the Universal Declaration of Human Rights as well as in other documents formulated in the Organization. The activities of the UN have generated a broad body of legal norms, a true international code of human rights, giving meaning to the phrase “human rights and fundamental freedoms” and clarifying the obligations imposed by articles 55 and 56 of the Charter.

Finally, the Organization has succeeded over time in clarifying the scope of the Obligation of Member States to “promote” human rights. This has happened through a process of defining human rights and creating institutions to monitor their fulfillment.

In this sense, the United Nations, within the framework of individual and collective struggles aimed at claiming individual and collective rights, has created an International Bill of Human Rights. This Bill is comprised of the human rights standards of the UN Charter, the Universal Declaration of Human Rights, the two International Covenants on Human Rights and the Optional Protocol to the Covenant on Civil and Political Rights. To the adoption of the Universal Declaration and the Covenants and Protocol, the UN added human rights treaties protecting particular rights or categories of people.

2.2 Normative developments within the framework of the United Nations

2.2.a The Universal Declaration of Human Rights

The Universal Declaration, adopted by the UN General Assembly on December 10, 1948, is the first human rights document promulgated by the universal international organization and became the basis for the formulation of later norms. Article 1 of the Declaration proclaims that “[a]ll human beings are born free and equal in dignity and rights.”¹³ The Universal Declaration establishes two categories of rights. On the one hand, civil and political rights, and, on the other, economic, social, and cultural rights.

The Declaration recognizes that the thirty rights it stipulates are not absolute. States may adopt laws that limit the exercise of the rights established in the Declaration, as stated in article 29, “[i]n the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”¹⁴ The power of governments to impose restrictions is also limited by article 30, which establishes that “[n]othing in the [Universal] Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”¹⁵

13 United Nations General Assembly, *Universal Declaration of Human Rights*, A/RES/217(III), at art. 1 (adopted on Dec. 10, 1948).

14 *Id.* at art. 29(2).

15 *Id.* at art. 30.

The Universal Declaration is not a treaty. It was adopted by the UN General Assembly as a resolution and as a standard of achievement, but without legal value. The Declaration has undergone a major transformation of its juridical nature since its adoption in 1948. Currently, the international community almost unanimously holds that the Declaration is a normative instrument that creates legal obligations for UN Member States. Remaining disagreements about the Declaration's effect boils down to whether all the rights proclaimed within it have binding force and under what circumstances. The legal value attributed to the Declaration finds two foundations in the legal theory. For some, the continued use by the UN of the Universal Declaration allows us to conclude that it has been accepted as a legitimate interpretation of the relevant norms of the Charter of the Organization. Another school of thought holds that the constant use of the Universal Declaration by Governments and intergovernmental organizations constitutes a practice that, carried out with the conviction of responding to a legal obligation, meets the requirements to be considered as a customary norm of international law.

2.2.b The International Covenants

The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights were adopted by the UN General Assembly in December 1966. At present they have been ratified by more than 170 countries. As treaties, the Covenants create binding obligations for States that have ratified them.

The Covenants include certain common rules. Two of these deal with what can be described as the rights of peoples or collectives, giving a conventional basis to self-determination. Article 1(1) of both Covenants proclaims that “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine

their political status and freely pursue their economic, social and cultural development.”¹⁶ Both instruments recognize in article 1(2) that “all peoples” have the right to freely dispose of their wealth and natural resources and that “[i]n no case may a people be deprived of its own means of subsistence.”¹⁷ They also prohibit discrimination.

Each Covenant establishes a different system to ensure that States Parties comply with their obligations. In addition, the Optional Protocol to the International Covenant on Civil and Political Rights adopted in December 1966 and entering into force on March 23, 1976, expands the possibilities of monitoring compliance with the Covenant: the Protocol authorizes the filing of individual petitions alleging violations of covenant rights.¹⁸

(i) International Covenant on Civil and Political Rights

The Covenant contains a more complete enumeration of rights than the Universal Declaration. An important addition is the obligation of States to respect members of ethnic, religious, or linguistic minorities.¹⁹ Other rights guaranteed in the Covenant relate to the prohibition of imprisonment for debts, the right for

16 United Nations General Assembly, *International Covenant on Civil and Political Rights*, RES/2200A(XXI), art. 1(1) (adopted on Dec. 16, 1966); United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, RES/2200A(XXI), art. 1(1) (adopted on Dec. 16, 1966).

17 *International Covenant on Civil and Political Rights*, art. 1(2); *International Covenant on Economic, Social and Cultural Rights*, art. 1(2).

18 United Nations General Assembly, *Optional Protocol to the International Convention on Civil and Political Rights*, RES/2200A(XXI) (adopted on Dec. 16, 1966).

19 *International Covenant on Civil and Political Rights*, at art. 27 (“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”).

persons deprived of their liberty to be treated humanely and with respect for the inherent dignity of every human being, and the right of every child to “acquire a nationality.”²⁰ They also include the right to receive “measures of protection as are required by his status as a minor.”²¹

On the other hand, the Universal Declaration establishes some rights that are not contained in the Covenant, including the right to property, to obtain and enjoy asylum and the right to nationality. The right to property was not included in the Pact, because the different ideological and political blocs represented in the UN could not reach agreement on its contention and definition.

Article 4 of the Covenant contains a provision on emergency situations providing that “[i]n times of public emergency which threatens the life of the nation” States may derogate from the established rights, except for seven fundamental ones: the right to life; the right to not be tortured or subject to cruel, inhuman, or degrading treatment; the right to not be enslaved or in servitude; the prohibition of imprisonment for failure to fulfill a contract; the prohibition on punishment for crimes not codified in law;²² the right to recognition as a person; and the right to freedom of thought, conscience, and religion.²³ The Covenant also authorizes States to restrict or limit the exercise of other rights provided that strict requirements of necessity, legality, notification, proportionality, and temporality are met.

The general obligations assumed by States Parties upon ratification of the Covenant are contained in article 2

20 *Id.* at art. 24.

21 *Id.*

22 ICCPR article 15 codifies two standards: *nullum crimen sine lege* and *nulla poena sine lege*.

23 *Id.* at art. 4.

thereof. Article 2(2) requires States Parties to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant, where such rules are not guaranteed by domestic law.²⁴ The Covenant on Economic, Social and Cultural Rights, on the other hand, establishes a regime of progressive realization considering the availability of existing resources to achieve this result. In contrast, the Covenant on Civil and Political Rights prescribes the immediate obligation to “respect and guarantee” the rights it proclaims and to take the necessary measures to that end.

The Covenant establishes an eighteen-member Human Rights Committee. The members are elected by States Parties; however, they act as independent experts and do not represent the Governments of their nationality or nomination. The Committee’s main function is to examine the reports that each State party is obliged to submit concerning the provisions which it has adopted, and which give effect to the rights recognized in the Covenant and on the progress it has made in the enjoyment of those rights.²⁵ The Committee gradually developed a set of procedures applicable to reports to ensure that States Parties comply with their obligations under the treaty.

The Committee transmits its reports and such general comments as it deems appropriate to States Parties. The Committee is also authorized to transmit these comments to the Economic and Social Council, together with a copy of the reports it has received from the States Parties to the Covenant.

The Covenant also prescribes a procedure for filing inter-state complaints. However, the mere ratification of the Covenant does not imply that a State accepts the competence of the Committee

24 *Id.* at art. 2(2).

25 *Id.* at art. 40.

to receive such communications. This procedure is optional and is therefore only applicable by and against those States that have made a special declaration about it.

The procedure established in the Covenant for inter-State communications is weak because it is nothing more than a simple formal conciliation procedure and does not provide for possibilities of any other nature—judicial or quasi-judicial.

(ii) Optional Protocol to the International Covenant on Civil and Political Rights

The Optional Protocol was adopted as a separate instrument to complement the measures to make the International Covenant on Civil and Political Rights more effective, specifically by developing the procedure for individual petitions. Under this procedure, individuals who consider that their rights recognized under the Covenant have been violated may, after complying with certain requirements, including the exhaustion of domestic remedies, submit a complaint to the Human Rights Committee.

Since the entry into force of the Protocol in 1976, the Human Rights Committee has received a significant number of individual petitions whose processing by the Committee has given rise to extensive jurisprudence concerning the interpretation and application of the Protocol and the Covenant.²⁶ Individual complaints have served as a model for other human rights treaties. Similarly, the adoption of General Comments, which refer to the content of the rights established by the Covenant and constitute valuable instruments for the knowledge of the content of the rights and fulfillment of the

26 United Nations Human Rights Office of the High Commissioner, *Human Rights Committee*, <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx> (last visited Jan. 27, 2022).

obligations adopted by States, have influenced other human rights treaties.²⁷

(iii) International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social, and Cultural Rights contains a more extensive and exhaustive enumeration of economic, social, and cultural rights than the Universal Declaration. The Covenant does not limit itself only to enumerating these rights. It also describes and defines them in detail, indicating the steps that must be taken to achieve their realization. An example of this regulation is reflected in article 7 that provides:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

27 See *Human Rights Treaty Bodies - General Comments*, <https://www.ohchr.org/en/hrbodies/pages/tbgeneralcomments.aspx> (last visited January 21, 2022).

- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.²⁸

The distinction between the implementation mechanisms adopted by the two Covenants is due to different reasons. States did not consider it feasible to require immediate and full compliance with the rights of the Covenant on Economic, Social and Cultural Rights, due to the nature of those rights and the complex problems involved in ensuring their full enjoyment. This does not imply that States do not assume obligations in relation to the rights established in this convention. In effect, States, by ratifying the Covenant, assume the international obligation to progressively develop the rights listed, which must be conducted in good faith.

This Covenant does not establish any inter-State or individual complaints system. As a means of monitoring, the Covenant requires States Parties to report on the measures they have taken, and the progress made, to ensure respect for the rights recognized therein. In 1985, ECOSOC adopted a series of resolutions that ended with the establishment of an eighteen-member “Committee on Economic, Social and Cultural Rights.”

The Committee, due to its permanent nature, is an organ of value in interpreting the content of rights, making suggestions for their progressive development, and evaluating the fulfillment that has been given to the obligations acquired by States.

2.3 United Nations Human Rights System

The United Nations Human Rights System includes additional treaties as well as organs of the universal organization. In the limited framework of this contribution, reference will be made

28 *ICCPR*, at art 7.

first to relevant treaties and then to different protection bodies, such as the Human Rights Council, the Working Groups, and the Special Rapporteurships.

In addition to the general human rights norms and treaties of the International Bill of Human Rights that are enshrined in the two Covenants mentioned above, the UN has adopted treaties on specific types of human rights violations or that refer to groups that require additional normative regulation.

2.3.a Supervisory mechanisms

These treaties create Committees composed of independent experts, which use various monitoring mechanisms to monitor and promote compliance with the treaty obligations assumed by States that have ratified these treaties. Oversight mechanisms include periodic reports, individual communications or complaints, inter-State complaints, ex officio investigations. Additionally, the Committees may adopt General Comments.

The periodic reports followed by Concluding Observations adopted by the respective Committee are the monitoring mechanism contained by all the treaties. This mechanism is exercised with the periodicity that the treaties determine and includes questions formulated in writing and in an interactive dialogue of a public nature. The Committees receive information from the State and civil society. The Concluding Observations concluding the procedure normally refer to the status of compliance with obligations, identify progress, areas where violations exist, and make recommendations.

The Committees empowered to do so may also receive complaints from individuals alleging that their rights have been violated, which requires an acceptance of such competence by the States. This procedure usually takes place only in

writing, culminating in a decision— sometimes preceded by precautionary or provisional measures, when it is necessary to avoid irreparable damage. In general, decisions are considered as recommendations. However, the value of such decisions cannot be captured simply by characterizing them as mere recommendations. These are authoritative interpretations of validly ratified treaties. They have also given rise to an important jurisprudence that is included in the doctrine and in decisions of national and international judicial bodies.

(i) Inter-State Complaints

Under the inter-State complaints procedure, a State may lodge a complaint against another based on violations by the State of obligations under the retrospective convention. As is the case with individual complaint procedures, this procedure requires the express acceptance of States. It has never been used because of the consequences that may arise for international relations the presentation of such a complaint. Perhaps that is why only some treaties include it and it has never been used.

(ii) Ex officio investigations

Under this monitoring mechanism, certain Committees are empowered to initiate ex officio investigations when they become aware of substantiated information of massive and systematic violations of human rights in the treaties for which they are responsible for monitoring. Only a few treaties allow the existence of this type of monitoring mechanism, namely those relating to economic, social, and cultural rights, the prohibition of discrimination against women, torture, persons with disabilities, children's rights, and enforced disappearance

of persons.²⁹ For the respective committee to exercise its competence, States must have declared their acceptance of this mechanism. There is one exception: for the Committee on Enforced Disappearance of Persons, ratification of the treaty on enforced disappearance is sufficient without the need for an additional declaration.³⁰

(iii) General Comments

These General Comments are interpretations of the scope of the rights established in the Conventions. Any Committee may make a general comment, except the Subcommittee for the Prevention of Torture.³¹ Further, the Comments are especially useful both for States and for all those who resort to the human rights bodies in that they contribute to clarifying specifically the content of the treaty norms. Their value is reflected also in the fact that some interpretations are incorporated in national or international jurisprudence and in doctrine (e.g., the scope of the prohibition of discrimination, the rights under emergency situations, the absolute character of the prohibition of torture, and so forth).

2.3.b Treaties

In addition to the two Covenants and Optional Protocol mentioned above, the treaties adopted are the following:

29 See *infra* “(b) Treaties.”

30 See *Introduction to the Committee on Enforced Disappearances*, <https://www.ohchr.org/en/hrbodies/ced/pages/cedintro.aspx> (last visited January 21, 2022).

31 See generally United Nations Human Rights Office of the High Commissioner, *Subcommittee on Prevention of Torture*, <https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIntro.aspx> (last visited Jan. 27, 2022).

(i) International Convention on the Elimination of All Forms of Racial Discrimination

This Convention was adopted by the General Assembly of the United Nations in 1965 and entered into force in 1969.³² Ratified by 182 countries, it codifies, in the form of a treaty, the idea of equality of all races.³³ The supervisory body, the Committee on the Elimination of Racial Discrimination, consists of eighteen members.³⁴

(ii) Convention on the Elimination of All Forms of Discrimination against Women

The UN General Assembly adopted this treaty on December 18, 1979.³⁵ It entered into force on September 3, 1981, and to date has been ratified by 189 States.³⁶ Its supervisory body, the Committee on the Elimination of Discrimination against Women, consists of twenty-three members.³⁷

(iii) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

This treaty was adopted by the UN General Assembly on 10 December 1984 and entered into force on 28 June 1987, after

32 *International Convention on the Elimination of All Forms of Racial Discrimination*, <https://legal.un.org/avl/ha/cerd/cerd.html> (last visited January 21, 2022).

33 *Id.*

34 *Id.*

35 *Convention on the Elimination of All Forms of Discrimination against Women*, <https://legal.un.org/avl/ha/cedaw/cedaw.html> (last visited January 21, 2022).

36 *Id.*

37 *Id.*

the twenty-first ratification was deposited.³⁸ It has been ratified by 173 States.³⁹ The supervisory body is the Committee against Torture, composed of ten members.⁴⁰

- (iv) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

In 2002, the UN General Assembly adopted the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) which entered into force on 22 June 2006.⁴¹ As of 2021, ninety-two States have ratified the Optional Protocol.⁴² The Supervisory body of the Protocol is the Subcommittee for the Prevention of Torture, which consists of twenty-five members.⁴³

- (v) Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) was adopted on November 20, 1989.⁴⁴ To date, the Convention has been ratified by 196 States.⁴⁵ The Committee on the Rights of the Child is the supervisory body, consisting of eighteen members.⁴⁶

38 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, <https://legal.un.org/avl/ha/catcidtp/catcidtp.html> (last visited January 21, 2022).

39 *Id.*

40 *Id.*

41 *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, <https://www.ohchr.org/en/hrbodies/opcat/pages/opcatindex.aspx> (last visited January 21, 2022).

42 *Id.*

43 *Id.*

44 *Convention on the Rights of the Child*, <https://legal.un.org/avl/ha/crc/crc.html> (last visited January 21, 2022).

45 *Id.*

46 *Id.*

- (vi) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Only 56 States are States Parties to this treaty, which was adopted on December 18, 1990.⁴⁷ The supervisory body for this treaty is the Committee on Migrant Workers, which consists of fourteen independent experts.⁴⁸

- (vii) International Convention for the Protection of All Persons from Enforced Disappearance

The International Convention for the Protection of All Persons from Enforced Disappearance was adopted in December 2006 and entered into force on December 23, 2010.⁴⁹ To date, sixty-five States have ratified the Convention. The Committee on Enforced Disappearances is the supervisory body, of which there are ten members.⁵⁰

- (viii) Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities was adopted on December 13, 2006.⁵¹ To date, 184 States have ratified the Convention.⁵² The Committee on the

47 See *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx> (last visited January 21, 2022).

48 *Id.*

49 *International Convention for the Protection of All Persons from Enforced Disappearance*, <https://legal.un.org/avl/ha/icpped/icpped.html> (last visited January 21, 2022).

50 *Id.*

51 *Convention on the Rights of Persons with Disabilities*, <https://legal.un.org/avl/ha/crpd/crpd.html> (last visited January 21, 2022).

52 *Id.*

Rights of Persons with Disabilities serves as the supervisory body, consisting of eighteen members.⁵³

2.3.c Other relevant agreements

Finally, it is essential to mention two conventions, adopted in the framework for the United Nations, that do not share the structure of supervision established in the conventions above.

(i) Convention on the Prevention and Punishment of the Crime of Genocide

This Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the UN General Assembly on 9 December 1948.⁵⁴ It has been ratified by 152 countries and entered into force on January 12, 1951.⁵⁵

(ii) International Convention on the Punishment of the Crime of Apartheid

This Convention was adopted by the UN General Assembly on 30 November 1973.⁵⁶ It has been ratified by 110 States and entered into force on July 18, 1976.⁵⁷ As the name suggests, the purpose of this treaty is the abolition and punishment of the crime of Apartheid.⁵⁸

53 *Id.*

54 *Convention on the Prevention and Punishment of the Crime of Genocide*, <https://legal.un.org/avl/ha/cppcg/cppcg.html> (last visited January 21, 2022).

55 *Id.*

56 *International Convention on the Punishment of the Crime of Apartheid*, <https://legal.un.org/avl/ha/cspca/cspca.html> (last visited January 21, 2022).

57 *Id.*

58 *Id.*

2.4 The Human Rights Council

In addition to the institutions created to monitor compliance with human rights treaties—the Committees—within the framework of the United Nations, one must also consider, in particular, the Human Rights Council. This Council is the successor, but with a higher status and greater functions, that assumed the role of the Commission on Human Rights that was created in 1946 by ECOSOC.⁵⁹ Until it was replaced by the Human Rights Council, the Human Rights Commission was the most important human rights body of the organization and contributed, among other initiatives, to the processes leading to the adoption of substantive and procedural norms in human rights including the Universal Declaration, the Covenants, and Resolutions 1235 and 1503. Resolution 1235 authorized the Commission on Human Rights to “examine information relevant to gross violations of human rights and fundamental freedoms.”⁶⁰ The 1235 procedure allowed for a public discussion. Further, the procedure established in resolution 1503 authorizes the receipt and examination of individual complaints for the purpose of determining the existence of massive and systematic violations of human rights.⁶¹ This procedure was confidential.

The Commission was criticized for various reasons in the exercise of its functions, in particular for what was perceived as selectivity in the exercise of its functions which affected the legitimacy of human rights. As a result of an extensive debate

59 In compliance with the provisions of article 68 of the Charter of the United Nations, which instructed it to form economic and social commissions for the promotion of human rights.

60 Economic and Social Council Resolution 1235 (XLII), 42 U.N. ESCOR Supp. (No. 1) at 17, U.N. Doc. E/4393 (1967).

61 Economic and Social Council Resolution 1503 (XLVIII), 48 U.N. ESCOR (No. 1A) at 8, U.N. Doc. E/4832/Add.1 (1970).

with broad participation of States and civil society, it was replaced by the Council in 2006.

The Council is made up of forty-seven States elected by secret ballot by the General Assembly of the United Nations for a period of three years. Its members may not be re-elected for the two terms following the end of their term. The Council, as successor to the Commission, continues to perform its functions concerning the procedures set out in resolutions 1235 and 1503. This last procedure is currently called the Complaint Procedure.

A new system of supervision, and perhaps the one that has the greatest relevance, has been developed by the Council: The Universal Periodic Review. In accordance with standards of general application, the human rights situation in all States of the universal organization is evaluated. To this end, all the human rights standards applicable to the State under revision are used, also using information from multiple sources—including non-governmental organizations. This peer review procedure culminates in a public report that includes the recommendations accepted by the State.

The Council has also developed procedures to address urgent situations of various kinds that impact the exercise of human rights. This includes country situations (e.g., Syria, occupation in Palestine, and Myanmar) or humanitarian crises generated by health issues, and food access. Depending on its character and the existing agreement among the members of the Council, as follow up procedure special missions have also been created to monitor such situations. At this point, more than a third of the members of the UN have been reviewed, showing the commitment acquired by States as well as those that have not been accepted by them, strengthening the possibilities of public discussion and mobilization involving human rights issues.

Finally, in the context of this contribution, it should be noted that the Council uses the Special Procedures to inform and present recommendations on human rights issues. To this end, the Council may create Working Groups (e.g., South Africa, and Chile after the military coup of 1973) or Special Rapporteurships. As of 2021, there were fifty-eight special procedures with specific mandates, forty-five were thematic mandates, and thirteen were to address the situation of selected States.⁶²

CONCLUSION

As shown in the above descriptions of the developments of international human rights norms, the international community has developed distinct treaties and institutions for the purposes of human rights protection. Underlining these developments is a common narrative of human dignity that recognizes rights to every human being without discrimination of any kind.

All articles in human rights treaties are applied without discrimination to all human beings and, in the case of treaties that regulate the rights of a category of persons, to everyone covered by such treaty. This is a tremendous step forward in the legal recognition of our common humanity. It is a revolutionary change in human history, which arose from the ashes of genocide, systematic and widespread violations of human rights, summary executions, and torture.

62 United Nations Human Rights Office of the High Commissioner, *Thematic Mandates*, <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=TM&lang=en> (last visited Jan. 27, 2022); United Nations Human Rights Office of the High Commissioner, *Country Mandates*, <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?lang=en> (last visited Jan. 27, 2022).

An important development to support this common narrative of human dignity has been the creation of different international organs and types of supervision, which have been mentioned in this article. Semi-judicial or judicial organs, integrated by independent experts, have been given competence, if accepted by a State to receive complaints by individuals who claim that one or more of an internationally protected rights have been violated. Other forms of supervision promote through authoritative recommendations the status of compliance with human rights norms and indicate areas of specific violation that fail to comply with freely acquired obligations. In the framework of the UN, a domain also has been created where different actors, by providing information, participate in enriching the decision-making procedures established by the international organization.

Yet, the ideal of human rights set in 1945 has not been achieved. After more than seventy years, genocide, atrocities, and the lack of full realization of international rights, unfortunately, continue to occur. The international community is witness to worrisome violations of the prohibition of discrimination, including persistence racism, compliance with human rights obligations is poor, and impunity for crimes against humanity is not an exception. Additionally, what reaches the human rights systems is only a small part of the existing human rights violations. While the international community has accepted the principle that compliance with human rights requires both honoring obligations that are civil and political as well as economic, social, and cultural, we continue to witness a limited development on the enforceability of all these rights.

COVID-19 has shown that we need to add another dimension in the development and compliance of rights to promote and elevate the normative hierarchy of the principle of solidarity and the creation of opportunities for every human being. It

seems that these are not only humanitarian goals inspired only by values, but interconnectedness and globalization require on utilitarian grounds the expansion of the need to deal positively with countries and people placed in situations of vulnerability, by new events like infectious diseases, climate change, widespread discrimination, and poverty.

While not every challenge faced by humankind can be addressed and solved exclusively with a human rights perspective, it seems increasingly clear that human rights are part of a necessary approach in the issues facing humankind.

What humanity has achieved in the development of the international human rights framework is a valuable contribution that creates an important basis for further development in an evolving situation that requires reaffirmation and commitment with the principles announced in 1945.