

Mechanisms of United Nations Human Rights Institutions in the Protection of Human Rights

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Abstract

This article aims to study the scope of the United Nations' work in the protection of human rights by analyzing the measures taken by the United Nations to contribute to the protection of human rights from violations and the impact of these measures on human rights conditions. The method is an analytical legal study. The results indicated that the United Nations has adopted several mechanisms and procedures to monitor human rights violations and reveal the perpetrators. To implement these mechanisms, the United Nations established the Human Rights Council, the Office of the High Commissioner for Human Rights and the core human rights treaty bodies. These institutions work permanently in the field of human rights all over the world. It also establishes commissions of inquiry or fact-finding missions, as needed, to operate temporarily and in specific areas. Human rights protection mechanisms include several procedures, including making recommendations to enhance the implementation of human rights, issuing periodic reports on the human rights situation around the world, as well as activating complaints procedures, special procedures, universal periodic review. In addition to provide the necessary technical and financial advice and assistance to support programs to promote the practice of human rights. However, the recommendations issued by the United Nations bodies in relation to human rights remain non-legally binding documents, as states have a moral obligation to implement them. But the recommendations and reports issued in the field of human rights by the United Nations human rights institutions determine the position of each state in its contribution to protection of human rights and put pressure on it by public opinion. In the event of gross violations of human rights that threaten international peace and security, the Security Council has the authority, in accordance with the Charter, to intervene in punitive and repressive measures against states that seriously violate human rights.

Keywords: United Nations, human rights, mechanisms, protection.

Introduction

The horrific violations of human rights during World War II led nations to come together to create treaties that restrict their practices, and guarantee and protect human rights in order to achieve international peace and security. Thus, one of the main objectives of the United Nations, in accordance with its charter, is the protection of human rights, and for the purpose of implementing this goal the United Nations established human rights institutions. Whereas the problem addressed in this research revolves around the extent and scope of the United Nations' work in the field of human rights, which will be answered through the analysis and discussion of the mechanisms and measures taken by the United Nations in this regard.

International organizations are considered one of the pillars of human rights protection in the world due to the multiple possibilities and mechanisms that they possess in promoting and defending human rights and trying to stop the violations by seeking to implement international laws and treaties related to human rights, which have become a great guarantee in the protection of human rights. Among the most important international organizations that have a major role in protecting and promoting human rights is the United Nations. The United Nations contributes through its human rights institutions to the enhancement and respect of law and the protection of human rights, as the role of the United Nations has increased in influencing the decisions of the international community, government policies and public opinion, which enhances and protects human rights.

International protection, whether within the framework of the United Nations or within the framework of a regional organization, is based on a set of procedures regulated by the human rights treaties themselves or through independent instruments. These measures can take the form of reporting, advice, assistance, investigation teams, individual complaints system, interstate complaints, monitoring teams, independent experts, comprehensive review, etc. Thus, we can define international protection within the United Nations system as the controls and oversight procedures exercised by the United Nations organs and bodies towards its members to enforce respect for human rights.

In this regard, The United Nations established the Human Rights Council and the United Nations High Commissioner for Human Rights to contribute to promote and protect human rights, as well as UN Human Rights Treaty Bodies. Nine of these bodies are tasked with monitoring the implementation and enforcement of certain core international human rights treaties. The Tenth Treaty Body has a special scope of activities, mainly aimed at prevention: the Subcommittee on Prevention of Torture (established under the Optional Protocol to the Convention against Torture) is responsible for monitoring places of detention in states party to the Protocol (Lattmann, Tamás, 2014, p. 33). These treaty bodies

are: 1. Human Rights Committee (CCPR); 2. Committee on Economic, Social and Cultural Rights (CESCR); 3. Committee on the Elimination of Racial Discrimination (CERD); 4. Committee on the Elimination of Discrimination against Women (CEDAW); 5. Committee against Torture (CAT); 6. Subcommittee on Prevention of Torture (SPT); 7. Committee on the Rights of the Child (CRC); 8. Committee on Migrant Workers (CMW); 9. Committee on the Rights of Persons with Disabilities (CRPD); 10. Committee on Enforced Disappearances (CED). Every one of them is established and has to work in accordance with the provisions and limits of the treaty that they monitor (Lattmann, Tamás, 2014, p. 34).

This study will attempt to describe how the system of human rights institutions already owned by the United Nations operates. The importance of this study is to provide a space in which everyone can understand how the global system protects and upholds human rights.

Methodology

The method of this research is a legal analytical study method, through the definition of the United Nations human rights institutions and the analysis of international rules that define their mechanisms for the protection of human rights, as well as extrapolation of the work of the United Nations. And by discussing that, the problem of this study can be answered. In addition, the data sources used in this study are secondary data and primary data.

Results and discussion

The Human Rights Council and the United Nations High Commissioner for Human Rights are the institutional center for the protection of human rights of the United Nations, which documents human rights violations and identify their perpetrators around the world, and play an important role in supervising and monitoring the implementation of international treaties related to human rights as well as contributing to the improvement of humanitarian conditions In the most affected areas.

Functions and powers of the Human Rights Council are: promoting universal respect for the protection of all fundamental freedoms and human rights for everyone, without distinction of any form, on an equal footing and addressing instances of human rights breaches, including egregious and persistent violations and making recommendations in response. In addition, making recommendations for the advancement and defense of human rights, as well as presenting the General Assembly with a yearly report (A/RES/60/251, Paras. 2-3). In carrying out its tasks, the UN Human Rights Council uses the following mechanisms:

A. Universal Periodic Review (UPR)

The Universal Periodic Review: it is a new mechanism established by General Assembly Resolution 60/251 in 2006, under which the Council is mandated to review the fulfillment by all UN Member States of their human rights obligations and commitments. The situation of all member states of the Council is reviewed during their term of membership in the Council (HRC Res. 5/1, Para 8). 48 countries are reviewed annually, and all UN member states are reviewed every four and a half years.

The UPR Working Group meets three times a year for two weeks. The working group meetings are held at the Palais des Nations, the headquarters of the United Nations Office in Geneva (OHCHR, 2008). Each review is facilitated by the 'troika', whereby the GA Resolution 5/1 provides for the formation of a group of three UPR rapporteurs by drawing lots among Council members and from different regional groups. This "troika" will facilitate each review, including the preparation of the working group's report, and will be supported by OHCHR in its work (Abraham, Meghna, 2007, p. 40). The results of the review are presented in a report containing a summary of the facts of the review process, and the conclusions and/or recommendations, and the voluntary commitments of the State party (HRC Res. 5/1, Para 26) In addition, periodically, States that have undergone the UPR give an update on how they are doing with respect to implementing the promises they have made and the recommendations they have backed (OHCHR, 2014, p. 2).

The international community assists in implementing recommendations and conclusions related to capacity building and technical assistance, in consultation with and with the consent of the State concerned. In the case of persistent non-cooperation of the State concerned with the Universal Periodic Review Mechanism, the Council shall consider, as appropriate, cases of continued non-cooperation with the Mechanism and the possibility of taking appropriate measures to address the reasons (HRC Res. 5/1, Para 36).

B. Special Procedures

Special Procedures are the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to examine, monitor, advise and publicly report on human rights situations in specific countries or territories (country mandates), or on major phenomena of human rights violations worldwide (thematic mandates) (OHCHR, 2008, p. 107). The term "Special Procedures" also comprises Individuals with various titles such as "Special Rapporteur" or "Independent

Expert", Working Groups typically made up of five independent experts, "Special Representative of the Secretary-General," and "Representative of the Secretary-General." (Holders, Mandate, 2008, pp. 5-6).

Mandate-holders perform the tasks assigned to them by the resolution of the Human Rights Council establishing the mandate, which are as follows: 1. Communications (Holders, Mandate, 2008, p. 12): They are one the most crucial Special Procedures. These communications follow up on information the Special Procedures received from relevant and credible sources about alleged violations of the rights protected by their mandates, and send communications (urgent appeals, allegation and other letters) to States (OHCHR, 2008, p. 115), and occasionally to non-State actors, asking for clarification and action. They aim to stop such violations as well as provide victims with redress. When violations are now occurring or are about to occur, they can take the form of urgent appeals, or allegation letters when violations have already occurred (Nolan, Helen, 2019, p. 5).

Mandate holders can also send letters to states to obtain information on legal, policy, or structural developments, provide feedback or follow up on recommendations (OHCHR, sa); 2. Country visits: On-site visits are a key approach for the Special Procedures to be informed about the situations in nations. By meeting with victims, members of civil society, and representatives of the government, as well as by visiting sites relevant to their mandates, the experts try to gain an understanding of the realization of the rights covered by their mandates as well as the more general human rights situation during such visits (Nolan, Helen, 2019, p. 7).

Country visits' purposes also includes examining the relevant institutional, legal, judicial and administrative aspects and making recommendations thereon. Country visits generally last between one and two weeks but can be shorter or longer if circumstances so require. The visit is at the invitation of one of the countries (Holders, Mandate, 2008, p. 16); 3. Reporting: All Special Procedures submit an annual written report to the HRC outlining their accomplishments from the preceding year. The Council may occasionally ask a mandate holder to submit a report on a particular issue or subject of interest to it. Reports are available to the public and serve as a reliable instrument for advocacy or follow-up in the area covered by the mandate (Nolan, Helen, 2019, p. 7). Annual reports may include broad recommendations in addition to information on working procedures, theoretical analysis, general trends, and developments related to the mandate (OHCHR, 2008, p. 117).

Reports may also include summaries of communications sent to governments and their responses. Reports on country visits are typically

included in the yearly reports as addenda (International, Amnesty, 2005, p. 5); 4. Thematic studies: Special procedures mandate-holders can also prepare a separate report on a specific topic relevant to the mandate (Holders, Mandate, 2008, p. 20), as these thematic studies which are useful instruments to advise Governments and civil society on the normative substance and implementation of human rights norms and standards (OHCHR, 2008, p. 117). 5. Other activities: Develop human rights standards and guidelines, organize panels during Human Rights Council meetings, coordinate consultations with a wide range of stakeholders at all levels and raise public awareness on human rights situations through public statements and interaction with a wide range of partners (OHCHR, sa). In addition to take part in human rights seminars and conferences and release press statements (Dissemination) highlighting particular circumstances or the international standards that States are expected to abide by (Holders, Mandate, 2008, p. 21).

In the course of their work, Mandate-holders observe the principles of transparency and impartiality, and rely on objective facts. Thus, consider all sources of information that they believe to be reliable and pertinent, and they make every effort to verify any information they receive (HRC Res. 5/2, Art. 8). This information comprises data coming from governments, international and national non-governmental organizations, national human rights organizations, the academic community, victims of claimed violations of human rights and witnesses and victims' family (Holders, Mandate, 2008, p. 11).

C. Complaint Procedure

The objective of the complaint procedure is to address consistent patterns of gross and credible violations of all human rights that occur in any part of the world and under any circumstances. the objective of establishing a complaints procedure is “to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.” This new complaints procedure has the same scope and provisions as the 1503 procedure and has been improved, where necessary, in order to ensure that it is effective, objective, impartial, victim-oriented, and held in a timely manner (HRC Res. 5/1, Para 85). In this context, two distinct working groups were established with the mandate to examine communications and to draw the Council's attention to persistent patterns of grave violations supported by reliable evidence of human rights and fundamental freedoms (HRC Res. 5/1, Para 89).

Meanwhile for the Office of the High Commissioner for Human Rights, the position of the High Commissioner was established by a decision of the General Assembly at its forty-eighth session on 7 January 1994 (A/RES/48/141). The headquarters of the Office of the High Commissioner for Human Rights is located in Geneva (A/RES/48/141, Para 6). The High Commissioner is appointed by the Secretary-General of the United Nations, approved by the General Assembly, for a term of four years, renewable once, subject to regional rotation. Also, the High Commissioner must be impartial, of high moral principles, aware of human rights, and have a general awareness of different cultures (A/RES/48/141, Para 2).

Under the direction and authority of the Secretary-General and in accordance with the general competence, authority, and resolutions and decisions of the General Assembly, the Economic and Social Council, and the Human Rights Council (formerly the Commission on Human Rights), the High Commissioner for Human Rights is the UN official with principal responsibility for UN human rights activities (A/RES/48/141, Para 4).

Furthermore, the Office of the UN High Commissioner for Human Rights serves as the secretariat of the Council. In this regard, it receives, translates, prints and disseminates documents, reports, and decisions of the Council, its committees and bodies in all the official languages of the United Nations; it also interprets speeches made during sessions, prepares, prints, and circulates the session minutes and it distributes all Council documents to members and observers, and also performs all other support work that the Council request (HRC Res. 5/2, Art. 14)

In fact, the Universal Periodic Review is an effective procedure for examining every UN member state's human rights record. Under the supervision of the Human Rights Council, the Universal Periodic Review is conducted and through it gives all states the opportunity to announce the steps they have taken to advance the human rights situation and fulfill their human rights obligations. The Universal Periodic Review mechanism seeks to ensure that all countries are treated equally when assessing their human rights records. The ultimate objective of this mechanism is to address human rights violations wherever they occur, and to enhance the human rights situation in all countries. The results of the Universal Periodic Review are an indicator for each country in determining its human rights situation, so this indicator is very important in assessing the country's relations with other countries, the World Bank, many international organizations and investment companies or investors in relation to loans, aid and investments, which often puts pressure on the state and its economy, forcing it to respect human rights to improve its international image, thus improve its international relations.

Thus, it seems that the Human Rights Council, with its tools and methods, is appropriate for carrying out fundamental work on prevention, setting an example

for early warning, and attempting to mediate disputes on the basis of a normative structure and on political dialogue (Theodor Rathgeber, 2013, p. 18).

As for the United Nations High Commissioner for Human Rights, in addition to the reports it issues on the human rights situation in the areas under its jurisdiction and making recommendations thereon, it also provides, at the request of the concerned State and, where appropriate, the regional human rights organizations, advisory services as well as technical and financial assistance through the Secretariat's Centre for Human Rights and other appropriate institutions with a view to supporting actions and programs in the field of human rights.

In addition, the United Nations established ten bodies under the core international human rights treaties, they consisting of committees that include independent experts and are charged with monitoring the implementation and enforcement of the core international human rights treaties (Index, Universal Human Rights, sa). But these ten bodies are responsible for the non-judicial, "expert" or "professional" protection of human rights, which is the second level of protection (Lattmann, Tamás, 2014, p. 33).

Moreover, in order to strengthen the work of the Human Rights Council and the High Commissioner in some regions of the world facing grave violations of human rights, whether ongoing or as a result of sudden events, the United Nations could appoint commissions of inquiry and fact-finding missions with a mandate to look into grave violations, with the aim of strengthening accountability for these violations and prevent impunity. The Office of the United Nations High Commissioner for Human Rights provides expertise and support to these commissions and missions.

But in many cases, fact-finding missions, commissions of inquiry and independent experts or special rapporteur sent by the United Nations face many difficulties due to the failure of the concerned governments to respond to them or not allowing them to enter their territory to investigate incidents of human rights violations, which hinders their work, such as the report of the United Nations Fact-Finding Mission on the conflict in Gaza issued in 2009, in which the mission indicated that the Israeli government did not cooperate with it and prevented it from entering the occupied Palestinian territories, and report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel issued in 2022, in which the committee also indicated that Israel did not cooperate with it and prevented it from entering the occupied Palestinian territories to investigate Israeli violations therein.

Finally, the specialized agencies of the United Nations work to promote human rights by improving the fields of economy, development, education, culture, health and other related fields.

However, the United Nations is an organization of sovereign states. Therefore, the United Nations takes all its actions based on the decisions of the member states. Also, the United Nations does not have an army (Center, United Nations – Visitor, sa, pp. 6-7), thus, it does not impose on member states the obligation to implement its decisions. It is the responsibility of states to implement decisions in accordance with the Charter (Demelash Shiferaw and Yonas Tesfa,, 2012).

Thus, despite the great efforts made by the United Nations in the field of human rights, its decisions regarding addressing human rights violations remain in the circle of recommendations that do not have a mandatory status, except in one case, which is the grave violation of human rights that may endanger international peace and security. In this case, the Security Council has the right to intervene to prevent violations, and its decisions have the status of binding and coercion in accordance with the Charter, it has also the right to use punitive measures against countries that commit grave violations.

As for the relationship between the UN human rights institutions and the Security Council, the UN human rights institutions are highly regarded for their expertise and ability to obtain trustworthy information from their independent specialist experts. As a result, reports submitted by the Human Rights Council, hearings with special procedures mandate holders and briefings by the Office of the High Commissioner for Human Rights can provide space for the Security Council to identify the most appropriate options for dealing with serious human rights violations (Theodor Rathgeber, 2013, pp. 18-19). Thus, the main task of the Security Council is to maintain international peace and security. If there are international disputes and gross human rights violations that may constitute a threat to international peace, the Council calls on the parties to the dispute to settle their disputes by peaceful means. It may recommend ways or conditions for settlement to prevent the situation from becoming more dangerous. In some cases, if the situation constitutes a serious threat to international peace and security, the Security Council can - under Chapter VII of the Charter - decide to impose sanctions or, at worst, authorize the use of force.

According to Articles 25, 43 and 49 of the Charter, all Member States are obligated to comply with the decisions of the Council in accordance with Chapter VII of the Charter, make available to the Security Council armed forces, assistance and facilities, including right of passage, and participation in providing mutual assistance in the implementation of actions decided by the Security Council. This may have a strong impact on human rights issues, since gross violations of human rights may constitute a threat to international peace and security, this could have a significant impact on the critical role of the Security Council in protecting human rights in serious situations.

However, the Security Council is not always performing its role due to the different political interests of the permanent members of the Council, which hinders taking appropriate decisions, which constitutes a gap in the United Nations system of work. Even if the UN addressed this gap by allowing the General Assembly, under Resolution 377A, also called “United for Peace,” to make recommendations it deems appropriate to UN members to take collective action, including the use of armed force when necessary to restore international peace and security and to preserve human rights from grave violations, this measure remains in the category of recommendations that are not binding on member states.

Despite this, the United Nations continues to play a great role in enhancing the status of human rights through the projects and assistance it undertakes, as well as in exposing human rights violations and the perpetrators of these violations through its human rights institutions, in addition to the reports and recommendations it issues periodically, which contributes to place governments and groups which violate human rights in the black box in the human rights record. This puts them under the pressure of international public opinion, which exposes them to international isolation.

Conclusion

To strengthen its human rights functions, the United Nations established the Human Rights Council and the position of High Commissioner for Human Rights with the task of strengthening the protection of all human rights around the world, in addition to establishing the core human rights treaty bodies that monitor the implementation of specific human rights treaties. As well as committees or missions working in areas of human rights violations, with the allocation of several mechanisms for each institution or body to facilitate its work. Among these mechanisms is the issuance of recommendations on dealing with violations.

However, these recommendations remain not legally binding; therefore, there is the possibility of not addressing the violations in a radical way, which constitutes a loophole in the United Nations system of work. The Security Council can intervene, by binding decisions, in grave violations of human rights that pose a threat to international peace and security. However, the Security Council may fail to issue its decisions due to the possibility of incompatibility between its members due to their different interests, which constitutes another gap in the work of the United Nations system.***

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