

Chapter 1

The United Nations, Democracy and Human Rights

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“The will of the people shall be the basis of the authority of government”
Universal Declaration of Human Rights, Art. 21.

1. Introduction

The word ‘democracy’ does not appear in the United Nations Charter. However, with the opening words of that document, “We the Peoples of the United Nations”, the founders of the UN directly linked the legitimacy of this new organisation and its member states to the will of the people. This commitment finds further expression in the purposes of the United Nations that include promotion of universal respect for human rights and fundamental freedoms for all, without distinction.

This chapter sets out to present a broad overview of how human rights operate within and influence the work of the United Nations – and thereby to provide a context and foundation for the more detailed analysis of human rights standards and processes contained in subsequent chapters. Section 2 explores the important (and shifting) relationship between human rights and democracy. Section 3 looks briefly at the human rights system in practice – focusing particularly on those parts of the system that are of particular relevance to human rights workers in the field. The evolution of human rights field operations over the past decade is examined in Section 4. It is now widely accepted that human rights touch upon almost every aspect of the UN’s work: from education to health; from the provision of humanitarian assistance to the negotiation of peace settlements. The growing relevance of human rights to those parts of the UN that lie outside the formal human rights system is examined in Section 5. The final part of this chapter contains a number of concluding observations directed towards the nature of rights, the future of human rights and the role of the UN in that future.

2. The link between human rights and democracy

In 1993, at the World Conference on Human Rights, the member states of the UN affirmed that:

Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.¹

The relationship between democracy and human rights may today seem to be an obvious one. However, this was not always the case. As noted above, the Charter of the UN, despite its clear commitment to ideals that we would readily associate with democracy, contains no direct reference to this concept. None of the major human rights instruments,

including the Universal Declaration and the two international covenants, make an explicit link between democracy and human rights.

The end of the cold war brought with it a national and international environment more conducive to the articulation, pursuit and achievement of democratic aspirations than at any time in the past. From the late 1980s to the present, there has been a growing trend towards what has been termed the universalisation of democracy as a system of government, a social and political process and a value related to human rights. In 1999, the UN formally recognised the existence of a right to democracy – confirming “the right to full participation and the other fundamental democratic rights and freedoms inherent in any democratic society”.²

What exactly are these rights and freedoms? According to the UN’s main human rights body, the right of democratic governance is actually a composite of a wide range of rights that are already enshrined in the principal international human rights treaties. These include:

- The right of citizens to choose their governmental system through constitutional or other democratic means;
- The right of political participation, including equal opportunity for all citizens to become candidates;
- The right of universal and equal suffrage, as well as free voting procedures and periodic and free elections;
- Transparent and accountable government institutions;
- The right to freedom of opinion and expression, of thought, conscience and religion, and of peaceful association and assembly;
- The right to freedom to seek, receive and impart information and ideas through any media;
- The rule of law, including legal protection of citizens’ rights, interests and personal security, and fairness in administration and independence of the judiciary; and
- The right of equal access to public service in one’s own country.³

Human rights and democracy are inextricably linked. A truly democratic society is one in which all human rights are respected and protected. It is core democratic concepts such as the rule of law, non-discrimination and universal suffrage that promote human rights. It is through democratic institutions such as an independent judiciary, a military that is accountable to the (democratically elected) civilian government, and a free and responsible press that these fundamental principles are realised. History has taught us that the formal ‘trappings’ of democracy are never enough. The fact that a country holds free and periodic elections, for example, is insufficient. Human rights operate to limit the laws, policies and practices that can be pursued by governments, irrespective of the way in which those governments achieved and continue to maintain power. True democracy goes much deeper than the electoral process and requires much more work. It would be a serious mistake to imagine that freely elected governments are a guarantee of individual rights or that majority rule can be equated with democratic rule. The struggle for democracy is not a one-off war but an ongoing battle that is never completely won.

Recent history has also confirmed that democracy – as an idea and as a system of government – cannot be successfully imposed from outside. For democracy to take root and

flourish, there must be common understanding, common agreement and an internal will to change and succeed. This does not mean that the international community has no role to play in helping to build the foundations for a democratic society. States can and should be supported in moving towards laws and systems that support democratic ideals. They can and should be held responsible for protecting and respecting human rights including those associated with the right of democratic governance. The international community also has an important role to play in reducing the violence, poverty and insecurity that threaten the free and complete exercise of democracy and human rights.

Democracy is usually analysed, measured and fought for within and between countries. However, states and their citizens are not the only players in the struggle for democracy. Many international (or supranational) institutions that exercise control over our lives are not subject to the same standards of democracy against which the state is judged. Efforts to increase the accountability of multinational corporations and international governmental organisations and to integrate human rights into trade policies and development cooperation reflect a growing recognition that the key partners in true democracy go well beyond the state and its citizens.

The first decade of this new century has forced us to think carefully about what democracy actually means; how (and why) we should be promoting democracy outside our own countries; and how we can best respond to situations that threaten the democratic foundations of states or the international community. International human rights law provides important guidance on each of these points. It has been especially useful as a framework and reference point against which state responses to threats against democracy can be measured and, if necessary, challenged. Dealing with threats to democracy without compromising human rights or democratic processes will continue to be a major challenge for all democracies.

3. The human rights system in practice: An overview

The adoption of the Universal Declaration of Human Rights in 1948 as the “common standard of achievement for all peoples and all nations” marked the starting point for a long process of legal development within the UN. During the next few decades, states working under UN auspices developed a complex system of treaties that now form the body of law known as ‘international human rights law’. While many other agreements could rightly fall within this category, it is the following six that are generally considered the major instruments of international human rights law:

- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Convention on the Elimination of All Forms of Racial Discrimination,
- Convention on the Elimination of All forms of Discrimination against Women;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child

While many obstacles were encountered in the development of these instruments, the real challenge for the UN has been to bridge the gap between what states say they will do and

what they are actually prepared to do in practice. ‘Closing the implementation gap’ is a major concern of the UN human rights system and a number of mechanisms and procedures have been developed to this end. As these are dealt with in detail in Chapter 2, the present section will limit itself to providing an overview of the principal UN implementation mechanisms that are of particular relevance to those working on human rights in the field. These include the human rights treaty bodies, the investigatory procedures, and the Office of the High Commissioner for Human Rights (OHCHR).

The treaty bodies

Each of the major human rights treaties listed above (together with the more recent Convention on the Protection of the Rights of all Migrant Workers and Members of their Families) has established a committee of independent experts that is responsible for monitoring the implementation, by States Parties, of its provisions. The treaty bodies are a crucial part of the international human rights system and a potentially powerful weapon in the struggle to ensure that states work to respect and protect the basic rights of their citizens. As part of their obligations under these treaties, States Parties are required to lodge regular reports with the respective committees on the situation with regard to protected rights and the steps which that state has taken to fulfill its treaty obligations. These individual ‘country reports’ are examined by the committees and a dialogue is initiated with the reporting state. In examining these reports, and in formulating their observations, the committees will usually make use of information received from other sources including non-governmental organisations and the United Nations itself. In addition to providing guidance to the reporting state, the observations of a treaty body on a State Party’s performance can be a useful advocacy tool for those working within or outside that country to promote human rights.

Four of the treaty bodies, the Human Rights Committee, the Committee Against Torture, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women, are able to receive and act upon allegations of violations, made by individuals against States Parties and/or by States Parties against other States Parties – provided the relevant party has agreed to subject itself to such a procedure. This ‘complaints mechanism’ does not really provide a practical avenue for redress of individual violations because of the very small number of complaints that can ever be addressed by the committees. It does, however, permit these committees to apply the relevant law to real situations involving real people, in this way helping to clarify the substantive content of norms. Most treaty bodies also engage in active interpretation of the provisions of their founding instrument through ‘general comments’, thereby contributing to the development of an international jurisprudence of human rights. The Committee on Economic, Social and Cultural Rights, for example, has issued detailed commentaries on the right to work and the right to adequate housing. The Human Rights Committee (responsible for the Covenant on Civil and Political Rights) has issued comments on a range of issues, such as derogations from rights during states of emergency; the humane treatment of persons deprived of their liberty; and freedom of thought, conscience and religion. The UN Secretariat (Office of the High Commissioner for Human Rights and Division for the Advancement of Women) services the treaty bodies.

The human rights treaty bodies are perhaps the best known of the UN’s various human rights ‘enforcement systems’. Many countries take their reporting obligations seriously and

the monitoring role played by the committees has undoubtedly contributed to a narrowing of the ‘implementation gap’ referred to above. The treaty body system, however, is not without its serious weaknesses. Major problems include onerous reporting requirements; delays in submission and consideration of reports; and significant differences in quality between treaty bodies in terms of their capacities and output. The issue of treaty body reform has been on the UN agenda for many years. However, states do not yet appear ready to endorse the radical changes that would be required to substantially strengthen the capacities of the UN human rights treaty bodies.

The investigatory mechanisms or ‘special procedures’

The UN’s investigatory mechanisms or ‘special procedures’ are charged with monitoring, advising and publicly reporting on a human rights situation in a specific country (country mandates) or on a particular issue (thematic mandates). The special procedures have become a central part of the international human rights system – serving, in theory at least, to increase governmental accountability by documenting and exposing violations. In 2007 there were a total of 41 special procedures in operation: 13 country mandates and 28 thematic mandates including special rapporteurs, special representatives, independent experts and working groups. The special procedures were all established by the Commission on Human Rights and have been assumed by its successor, the Human Rights Council. The UN Secretariat (Office of the High Commissioner for Human Rights) services the special procedures.

The mandate holders of all special procedures serve in their independent capacity. They report annually to the UN’s main political body concerned with human rights (previously the Commission on Human Rights and now the Human Rights Council) and, less frequently, to the General Assembly. All thematic and country specific mechanisms are authorised to receive information relevant to their mandate from a variety of sources (including intergovernmental and non-governmental organisations), and to make recommendations regarding the prevention or redressing of violations. Some mechanisms are empowered to respond to allegations of violations by, for example, establishing a dialogue with complainants and governments, or even engaging in actual investigation of allegations. Methods of work almost always include the conducting of on-site visits for purposes of information gathering as well as the issuing of appeals to governments in individual urgent cases that are brought to the respective mechanism’s attention. On-site visits always require the consent of the country concerned. Many states cooperate with the special procedures and almost sixty countries have issued standing invitations to the thematic special procedures – indicating that they will always accept requests for visits. However, other countries, particularly those affected by country procedures, sometimes reject such requests. This lack of cooperation makes it difficult, if not impossible, for the investigators to fulfill their mandates.

Often, the UN’s investigatory mechanisms (both country and thematic) will work in countries that have a human rights field presence. In such cases, the field presence and the mechanism will often be able to draw on support and guidance from the other – thereby increasing their respective effectiveness. This issue is discussed further below.

Over the past few years, the special procedures have started to work more effectively together and there are signs that this diverse collection of mandates and individuals is

evolving into an organised and unified system. The special procedures now meet once a year to discuss issues of common concern including ways of improving their working methods. Joint missions, statements and investigations involving two or more special procedures are becoming increasingly common. A quarterly bulletin (available from www.ohchr.org) provides updates on the work of the special procedures including statistics and information on recent reports, visits and communications.

The Office of the High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights (OHCHR, formerly known as the Centre for Human Rights) is the UN Secretariat's focal point for human rights and plays the leading role on human rights issues within the UN. OHCHR's functions include the following:

- Promoting international cooperation for human rights;
- Stimulating and coordinating action for human rights throughout the United Nations system;
- Promoting universal ratification and implementation of international standards and assisting in the development of new norms;
- Supporting the human rights organs including the Human Rights Council, the treaty monitoring bodies and special procedures;
- Responding to serious violations of human rights;
- Undertaking preventive human rights action;
- Promoting the establishment of national human rights infrastructures;
- Undertaking human rights field activities and operations; and
- Providing education, information advisory services and technical assistance in the field of human rights.

OHCHR is headed by the High Commissioner for Human Rights – a post created by the General Assembly in 1993 (Resolution 48/141). The High Commissioner reports directly to the Secretary-General. She or he is responsible for all OHCHR activities as well as the UN's overall human rights programme.

OHCHR itself is divided into four branches. **The Research and Right to Development Branch (RRDB)** is responsible for carrying out substantive research and policy work on a whole range of human rights issues – from the right to development to bioethics and trafficking in persons. RRDB also looks after OHCHR's information-related needs and maintains its website (www.ohchr.org), which contains extensive information and documentation on the entire human rights programme. It also services three of the thematic special procedures mandates. The remaining 25 thematic procedures are serviced by the **Special Procedures Branch**. The **Treaties and Council Branch** is charged with planning, preparing and servicing all major meetings in which OHCHR is involved or for which it is responsible, including the annual sessions of the Human Rights Council as well as the meetings of the treaty bodies.

The Capacity Building and Field Offices Branch (CBFOB) provides substantive and administrative support to all of the country special procedures mandates as well as all OHCHR Field Offices. Responsibilities in CBFOB are largely organised on a regional basis with separate teams for the Africa Region, the Asia-Pacific Region, the Arab Region, the Latin America Region, and the Europe and Central Asia Region. In theory, each country, is

assigned to a desk officer of the relevant regional team who should be the main point of contact for information on human rights related UN activity in that country. In practice, desk officers are generally only formally assigned to those countries that have a dedicated special procedure, field office or technical cooperation programme (see below).

CBFOB also administers OHCHR's technical assistance programme. Under this programme, governments are able to request and receive a range of services aimed at integrating international human rights standards into laws, policies and institutions as well as strengthening the culture of human rights at the national level. These services range from the provision of advice on legislation to the training of public officials. A number of technical cooperation projects administered by OHCHR (usually comprehensive multi-year country projects) result in the establishment of small field presences. This type of field presence is strictly project-related and, unlike those described below, is usually of a fixed duration. Another important characteristic of project-based field presences relates to the fact that they are engaged solely in providing support and assistance and do not undertake human rights fact-finding or monitoring.

OHCHR is based in Geneva, Switzerland with a small office at UN headquarters in New York. It also has a substantial field presence. Regional OHCHR offices are located in Cameroon, Chile, Ethiopia, Kazakhstan, Lebanon, South Africa and Thailand. OHCHR has country offices or staff attached to United Nations Country Teams in Afghanistan, Angola, Bosnia and Herzegovina, Burundi, Cambodia, Colombia, Democratic Republic of the Congo, Guatemala, Macedonia, Mexico, Nepal, Palestine, Serbia and Montenegro, and Sudan. The mandate and function of the various field presences is discussed further in the following section.

4. Human rights in UN field operations⁴

The establishment of longer-term human rights field presences by the UN is a relatively recent phenomenon and, in its initial stages, built upon the structure and methodology of the investigatory mechanisms described above. In 1993, the Special Rapporteur for the Former Yugoslavia was provided with field staff to support him in his work on the ground. The following year, the first human rights field operation to be run under the authority of the UN High Commissioner for Human Rights (OHCHR) was launched in Rwanda – again linked to a Special Rapporteur. By 2007, human rights field presences (regional offices, regional centres, country offices, peace missions, human rights advisers) had been established by the UN in 28 countries.

All UN human rights field presences perform one or both of two key functions. The first is to *monitor human rights* in the country or region concerned. The second function is to provide *technical assistance* in building a human rights culture and strengthening the necessary supporting structures at the national level. This type of assistance is also referred to as 'institution building' or even 'democratisation'. While a distinction is usually maintained between these two functions, in practice they almost always overlap.

Parallel to this development has been a change in the UN's approach to mediating conflict and overseeing peace agreements. Human rights considerations have traditionally played a marginal role in the UN's peace and security work. This situation is, however, changing.

Peace settlements are now routinely constructed (albeit to varying degrees and with varying levels of success) within a human rights framework and human rights provisions are regularly included in the mandate of peacekeeping operations established to monitor the implementation of such agreements. As a result, UN peacekeepers and civilian observers have themselves, on occasion, become human rights monitors. The UN's Department of Political Affairs (DPA) and its Department of Peacekeeping Operations (DPKO) are now active in establishing and supporting human rights components and offices within both peacekeeping and peacebuilding operations – often in collaboration with the OHCHR. There are presently (2007) human rights components to peace missions in Afghanistan, Burundi, Côte d'Ivoire, Democratic Republic of Korea, Ethiopia/Eritrea, Haiti, Iraq, Liberia, Sierra Leone, Sudan and Timor-Leste. The function of the human rights components has been described by the UN as ensuring that peace processes emphasize justice and equity; preventing and redressing human rights violations; building capacities and institutions; and mainstreaming human rights into all United Nations activities.

It would be unwise to ignore the serious challenges that are facing the UN as it attempts to take a more proactive, public and field-based approach to its human rights functions. Some of these relate to the Organisation's own structure and its capacities and limitations when it comes to issues such as recruitment, coordination and funding. Other challenges, such as those discussed in Chapter 3, are essentially political and consequently more difficult to resolve. While the erosion of absolute state sovereignty is well underway, a significant number of the UN's member states continue to maintain the position that human rights are internal matters and not the business of other states or the international community. The UN's attempts to set up field operations – particularly of the kind that are seen as aggressively 'monitoring' – in countries experiencing large-scale human rights violations are rarely welcomed and sometimes openly resisted, even by apparently unaffected outsiders. As a result, field operations, like all other UN human rights interventions, do not always end up where they are most needed. The tendency to impose human rights field presences only on 'soft targets' (those countries without the political or economic might to resist what others can successfully claim to be unacceptable interference) needs to give way to a more consistent and transparent approach.

5. Human rights in other parts of the UN⁵

There has always been a great difference in how the various members of the UN family have perceived their roles and responsibilities *vis à vis* human rights. It would not be unfair to say that for many parts of the UN, human rights have proved too troublesome and too politically costly to be pursued with any great vigour. In its development work, for example, the UN has traditionally found it far easier to talk in terms of *sustainable development and good governance* than to directly tackle difficult issues such as denial of the right to food, discrimination in access to education and lack of independence within the judiciary. In the area of peace and security, the fundamental connection between human rights violations and conflict has often been played down or ignored in the interests of a quick political settlement. Even some of the specialised agencies whose area of focus seem to direct them towards a 'rights-based approach' have often marginalised human rights in favour of less controversial approaches to their work.

Despite the rhetoric of the 1993 Vienna Declaration and Platform for Action (which called for all UN agencies, bodies and institutions to engage themselves in the formulation, promotion and implementation of human rights), few concrete steps were taken to this end until late 1997 when the then UN Secretary-General Kofi Annan launched his *Programme for Reform*.⁶ One of the most innovative and potentially far-reaching aspects of these proposals was the Secretary-General's stated intention to 'mainstream' human rights throughout the UN system. In his view, human rights are integral to the promotion of peace and security, economic prosperity and social equity (para. 78). Accordingly, a major task for the United Nations "is to enhance its human rights programme and fully integrate it into the broad range of the Organisation's activities" (para. 79). The Secretary-General decided to designate the issue of human rights as cutting across each of the four other substantive fields of the Secretariat's work programme (peace and security; economic and social affairs; development cooperation; and humanitarian affairs).

The *Programme for Reform* indicated that 'mainstreaming' of human rights would take a number of different forms. Firstly, it would involve the adoption of a 'rights-based approach' to the activities of the various components of the UN. Secondly, it would involve the development of programmes or projects addressing specific human rights issues. Thirdly, it would require a reorienting of existing programmes with a view to focusing adequate attention on human rights issues. Finally, the mainstreaming of human rights would require the presence and input of the Human Rights Programme into the UN's broader policy development and coordination tasks. Ten years after the launch of this ambitious reform proposal it is timely to examine the changes that have (and have not) taken place. While such an examination is beyond the scope of the present chapter, the following sub-sections provide a brief overview of efforts to integrate human rights into the UN's development activities, its peace and security work and its humanitarian action.

Human rights in the UN's development work

A great part of the UN's work (and a significant portion of its budget) is concerned with promoting and supporting economic and social development. Over the past decade (and spurred on by the previous Secretary-General's reform process described above), there has been growing acceptance of the need for a rights-based approach to development assistance. A rights-based approach calls for situations to be analysed and responded to not just in terms of political imperatives, needs or development objectives, but in terms of a state's legal obligations to protect and realise the human rights of individuals.

A rights-based approach to development will, it is argued, empower individuals to demand justice as an entitlement, rather than beg for charity. A rights-based approach requires the active involvement of people in their own development. It gives a community the legal and moral basis on which to claim international assistance and to demand a world economic and political order that is respectful and supportive of human rights.⁷ The UN's major development arm, UNDP, as well as other agencies and programmes involved in development (including UNICEF, UNIFEM and UNFPA), have, to various degrees, committed themselves to strengthening support for all human rights and to mainstreaming human rights into their work.

In September 2000, member states of the UN adopted the Millennium Declaration through which they pledged to meet specific development goals (the Millennium Devel-

opment Goals).⁸ The goals themselves as well as the plan for their implementation both reflect and reinforce the link between development and human rights.

Human rights in the UN's peace and security work

Over the past decade, human rights have become increasingly important in the UN's peace and security work and are now widely recognised as a critical element in the dispute settlement process. One reason for this growing acceptance of the link between human rights and peace and security is the dramatic change in the nature of conflict itself. Wars between states are now relatively rare. At the same time, the breakdown of old states, poverty, ethnic tension and other aggravating factors have led to a sharp increase in internal armed conflicts. This has forced the UN to examine its own perceptions and responses. One result of this reflection is a growing understanding that human rights violations are both a cause and an inevitable effect of conflict. The UN is also beginning to appreciate that threats to the security of the state include not just armed opposition groups but also poverty, discrimination and inequality in access to resources. Addressing conflict, therefore, requires much more than disarming warring parties and inserting a peacekeeping force between them. Those who are working at dispute settlement from a human rights perspective argue that the international human rights standards, developed under UN auspices, provide an appropriate framework within which a lasting peace can be constructed. UN-brokered peace accords such as those for Burundi, El Salvador, Guatemala, Sierra Leone and Timor-Leste provide instructive examples of the possibilities and limitations of weaving human rights into the fabric of peace settlements.

Despite some important progress, integration of human rights into the UN's peace and security work is not without serious and ongoing difficulties. An examination of the recent work of the Security Council from a human rights perspective provides important indications of the political resistance to elevating human rights in this way. In general, the Security Council has demonstrated an increased willingness to use the ideas and language of rights – not just in its broader discussion function but also when considering authorisations for sanctions or the use of force. However, the Council has been careful to avoid the creation of any kind of normative expectation in this regard, by adopting a case-by-case approach that operates to prevent its rights-based work from crystallising into more generally applicable legal rules.

The UN has come to appreciate the importance of *preventing* conflict. Prevention in this context has traditionally focused on external threats to a state's security. It is becoming apparent, however, that threats to *human security* – such as poverty, disasters, ethnic tension and large-scale human rights violations – are very real sources of conflict and must be addressed in the context of any credible preventive strategy. The UN and its member states could lead the way in embracing what the previous Secretary-General has called “a new, holistic concept of security”. However, this would require a large measure of political will on the part of member states – as well as substantive resources. Until now, the UN's most powerful members (and many of its less powerful ones) have not shown a great interest in expanding its preventive capacities. Nevertheless, small steps are being taken, including the creation of early warning systems (that use human rights as a measure) and the establishment of stand-by forces that can be deployed at short notice to defuse potentially explosive situations. (See further below on ‘humanitarian intervention’.)

Human rights in the UN's humanitarian action

With human rights violations being increasingly identified as a major root cause of conflict, the connection between humanitarian efforts and human rights protection becomes readily apparent. While there is still not agreement on the extent to which human rights should guide the UN's humanitarian efforts, a general consensus is emerging that the provision of assistance and protection by the UN cannot be undertaken in a legal or moral vacuum. Efforts are underway to ensure that international human rights and humanitarian law principles provide the standard and reference point for this difficult but essential work. The refugee issue provides an important example of the operational link between human rights and humanitarian action. The number of refugees, displaced and other war-affected persons is currently estimated to be more than 22 million. The UN High Commissioner for Refugees (UNHCR) has a mandate to provide international protection to refugees and to seek durable solutions. UNHCR has long recognised human rights to be a key part of its mission. Human rights are the prime source of refugee protection principles and structures. In addition, human rights violations are a major cause of refugee flows (and at the root of the phenomenon of internal displacement with which UNHCR is also closely involved). There is a natural complementarity, therefore, between UNHCR's protection work and the international system for the protection of human rights.

The UN's humanitarian agencies (including UNHCR, the Office for the Coordination of Humanitarian Affairs, UNICEF, and the World Food Programme, among others) have a critical role to play in protecting fundamental human rights in situations where such rights are most vulnerable to abuse and neglect. Sometimes the protection role does not need to be an open or proactive one. Humanitarian agencies often have the best information on what is actually happening in a particular conflict or situation. The sharing of that information can enable the UN's political bodies (most importantly, the Security Council) and its human rights mechanisms (such as the Human Rights Council) to exert pressure where and when it is needed. Information sharing also allows the UN to develop and refine its early warning capabilities referred to above. However, exposing actual or potential human rights abuse is likely to land a humanitarian agency in trouble with the authorities. A common result will be the imposition of restrictions on humanitarian access. Such restrictions may have devastating consequences for the refugees, displaced persons and other victims of conflict who rely on humanitarian assistance for basic necessities such as food and medicine. There is no uniform solution to this difficult dilemma. The decision taken by an agency or a group of agencies must often be based on a pragmatic assessment of how the population concerned can best be served – in terms of both immediate needs and long-term security. In all cases, however, the decision-making process should be based upon (and defensible with reference to) fundamental principles of human rights.

What about 'humanitarian intervention'? Is the international community obliged to intervene to prevent widespread human rights abuses and humanitarian emergencies? In 2005, the UN member states agreed that they have a collective responsibility to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. However, the parameters of this 'responsibility to protect' are still subject to fierce argument. For some human rights activists, this new humanitarianism is dangerous because it helps maintain an inherently unjust international economic order and obscure its inevitable consequences. Many states are understandably wary of humanitarian intervention and the quest for human rights and democracy being used to justify military

interventions that are motivated by narrow national interests including the quest for territory, influence and precious resources. Others, despite their ostensible commitment to humanitarian intervention, have no interest in supporting the development of such a doctrine or an implementation capacity within the UN because of a fear that it could be used against them.

6. Towards the future

The United Nations will always have a critical role to play in promoting and protecting human rights. This is one of the principal purposes of the UN and, in many senses, the very rationale for its continuing existence. At the same time, however, it is important to acknowledge that individual rights and freedoms will be protected or violated because of what exists or what is lacking within a given state or society – not because of what is said or done within the walls of the United Nations. In other words, the ability of a state to effectively discharge its responsibilities in the area of human rights will depend predominantly on the strength of its domestic institutions. It is for this very simple reason that the worth of the United Nations human rights system should be measured with reference to its ability to encourage and cultivate national implementation of (and compliance with) international human rights standards. This is the only valid test of that system's relevance and effectiveness. Human rights workers in the field should therefore look to the UN generally, and to the international human rights system in particular, to support their efforts to promote human rights at the national level. The mechanisms and processes described above have no value in and of themselves. They are tools for the use of governments, NGOs and individuals in their efforts to build democratic societies within which human rights can be respected and protected.

In concluding this introductory chapter, it is important to draw attention to two important human rights 'paradoxes'. The first concerns the legal/political nature of rights. It is true that human rights are legal entitlements. However, law, in this case, is being used as a means of distributing power from those who have too much to those who have too little. In most situations, and in accordance with basic democratic principles, this will translate into a devolution of power from a government to its people. In other cases, the change in power relations will be much more personal – for example, the transfer of power from men to women in the name of non-discrimination and equality. No one gives up power easily and the fight for human rights is therefore more about hearts and minds, politics and power, than it is about law.

The second paradox arises out of the fact that while (in most cases) it is governments who violate rights, it is only governments that have the capacity, within the current international system, to protect such rights. Elsewhere, the effects of this paradox have been likened to a fox building a hen house. The fox may have given up its habit of chasing chickens but will nevertheless leave a few gaps in the fence in case it gets hungry one day. While this view may be overly pessimistic, it does help to illustrate and explain the general reluctance, on the part of almost all governments, to close the gap between rhetoric and practice when it comes to human rights.

The first years of the twenty-first century have clearly and painfully demonstrated the fragility of the international consensus upon which the human rights system is built. Many

countries are openly opposed to any changes that will strengthen the effectiveness of that system. Even those states that have traditionally been most supportive of international human rights law have experienced trouble endorsing, in practice, the principle of all human rights for all persons. The UN's main human rights mechanisms, most particularly the new Human Rights Council, remain hostage to narrow national and regional interests that have little to do with protecting human rights. The recognition that entities other than states (such as transnational corporations and intergovernmental organisations) have a strong impact on individual rights and freedoms has not yet been accompanied by the legislative and policy changes that are required to manage this influence for the benefit of human rights.

Despite these challenges, it is important to acknowledge that the international human rights system is stronger today than many would have ever believed possible, even a few short decades ago. Human rights advocates should understand that the numerous shortcomings and weaknesses in that system are not fatal to its overall coherence and that they can sometimes be minimised through effective advocacy and field work. However, the future is another matter altogether. Ultimately it will be up to the member states to decide how far – and in which direction – they will take the UN in terms of its human rights work.

Notes

¹ World Conference on Human Rights, Vienna Declaration and Programme of Action, para. 8, reprinted in 32 I.L.M. 1667 (1993).

² Commission on Human Rights Resolution 1999/57 of 27 April 1999.

³ *Ibid.*

⁴ This section draws on information contained in Gallagher, “United Nations Human Rights Field Operations” in Hanski and Suksi (eds.), *An Introduction to the International Protection of Human Rights* (2nd ed., 1999).

⁵ This section draws on information contained in Gallagher, “Human Rights in the Wider United Nations System” in Hanski and Suksi (eds.), *An Introduction to the International Protection of Human Rights* (2nd ed., 1999).

⁶ *Renewing the United Nations: A Programme for Reform*, Report of the Secretary-General, U.N. Doc. A/511950 (2007).

⁷ For a comprehensive, practical and still current overview of the rights-based approach to development, see the United Nations Development Programme, Human Development Report 2000, *Human Rights and Human Development*, available at <http://hdr.undp.org/en/reports/global/hdr/2000/>.

⁸ General Assembly Resolution 55/2, *United Nations Millennium Declaration*.

The Norwegian Centre for Human Rights aims to contribute to the realisation of internationally recognised human rights, through research and reporting, teaching, advisory services, information and documentation. The Centre was founded in 1987 and is organised as an interdisciplinary centre under the Faculty of Law at the University of Oslo. Since 2001 the Centre has been designated as the National Institution for Human Rights in Norway.

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The first edition of the Manual on Human Rights Monitoring was developed at the request of the United Nations High Commissioner for Human Rights and published in 1997. The Manual is integral to the generic training provided to members of the NORDEM Stand-by Force in order to prepare them for human rights field operations. This is the third, revised edition (2008). The new edition includes one new chapter (Chapter 10) and three rewritten chapters (Chapters 2, 5 and 11). The remaining chapters are updated according to events and new developments in the field of human rights since the second edition in 2001.

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This booklet is one of eleven chapters of the Manual on Human Rights Monitoring.
ISBN 978-82-8158-059-6