

JUS 5710/JUR 1710

Institutions and Procedures

1

UN CHARTER AND HUMAN RIGHTS
MECHANISMS

Today

2

- **UN Charter based procedures**
 - General UN Charter
 - Example of SC action
 - Human Rights Mechanisms
 - The Human Rights Council
- **The right of self-determination**
 - See next power point presentation

The United Nations (UN)

3

- Today - 193 member states
 - South Sudan admitted on 9 July 2011
- In 1945 - 51 member states
- Promotion of human rights is one of its purposes
- Member states undertake to act separately or jointly in co-operation with the UN to achieve the purposes
- UN charter-based human rights mechanisms have developed over the years

UN human rights organization (see Smith, 5th ed., p.53)

4

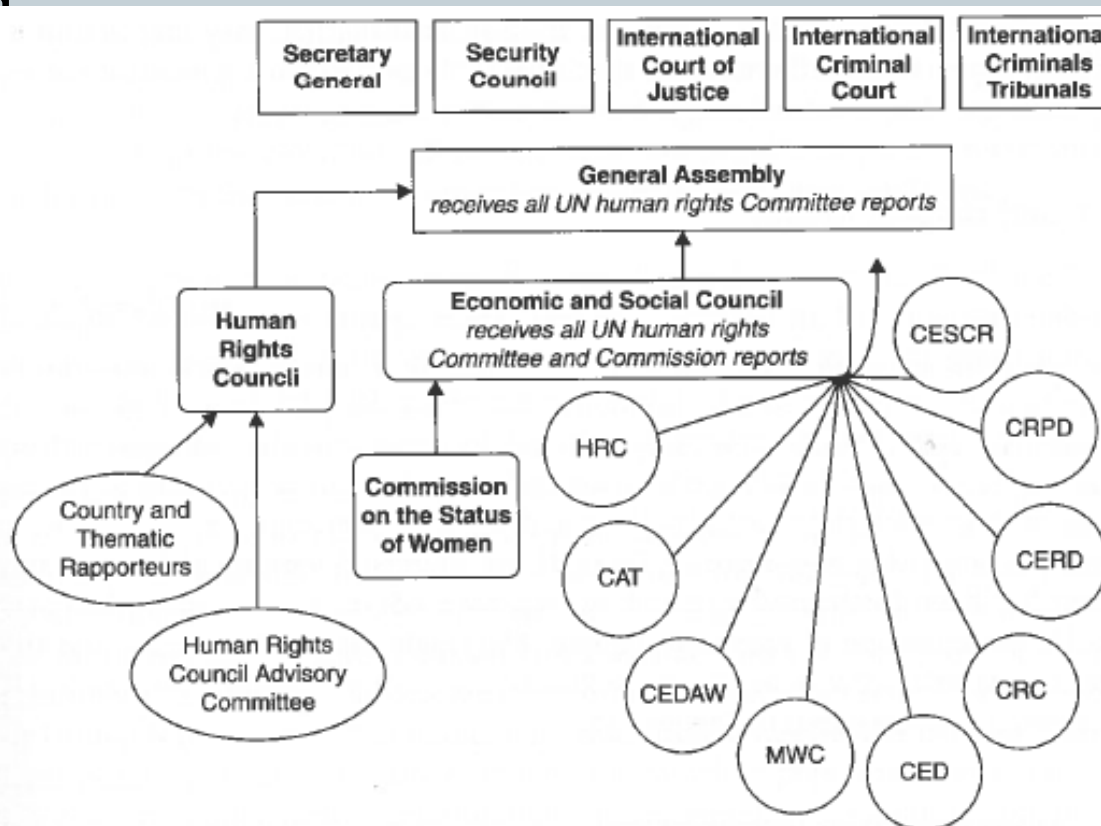


Figure 5.1 United Nations human rights organizational structure.

UN Charter - Purposes

5

- **Human rights and self-determination as part of the purposes of the UN**
- **Article 1 of the Charter of the United Nations (1945): “**
The **Purposes of the United Nations** are:
 - **1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, ...**
 - **2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;**
 -
 - **3. To 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; and**
 - **4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.**

UN Charter – human rights obligations

6

- **CHAPTER IX: INTERNATIONAL ECONOMIC AND SOCIAL CO-OPERATION**
- **Article 55**
 - With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations **based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:**
 - **c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.**
- **Article 56**
 - **All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55**

Human Rights Obligations (2)

7

- *Namibia case*, ICJ, Advisory Opinion, I.C.J. Reports 1971, p.57,para.131 (<http://www.icj-cij.org/docket/files/53/5595.pdf>)
 - The UN security Council requested an Advisory Opinion by the International Court of Justice on *what are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council Resolution 276(1970)*
 - League of Nations' mandate terminated by GA Res 2145 (XXI) of 27 October 1966
- *To establish ... and enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitutes a denial of fundamental human rights is a **flagrant violation of the purpose and principles of the Charter.***

Which human rights?

8

- I. The Bill of Rights
- II. The UN human rights treaties
 - Categories of persons
 - Types of rights
 - Other human rights instruments
- III. International criminal law
 - Genocide
 - Crimes against humanity
 - War crimes
- IV. Any differences among I,II,III?
- V. Where do you find the right to self-determination

Principal organs of the UN

9

- Principal organs, Art. 7:
 - a General Assembly (GA)
 - a Security Council (SC)
 - an Economic and Social Council (ECOSOC)
 - a Trusteeship Council (suspended its operations 1 November 1994)
 - an International Court of Justice (ICJ)
 - a Secretariat, and
 - ✦ Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Powers of the General Assembly

10

1. Discuss any questions or matter within the scope of the UN Charter, and
2. Make recommendation to the member states or to the Security Council or to both on any such questions or matters, Article 11
 - except while the Security Council is exercising in respect of any dispute or situation the functions assigned to it, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests, Article 12,.1
3. The GA shall initiate studies and make recommendations for the purpose of (Art. 13 UN Charter):
 - a. promoting international co-operation in the political field and **encouraging the progressive development of international law and its codification;**
 - b. **promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.**
 - The further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

The GA established the Human Rights Council

11

- General Assembly Resolution (15 March 2006), 60/251
Human Rights Council:
 - 1. *Decides* to establish the Human Rights Council, based in Geneva, **in replacement of the Commission on Human Rights**, as a **subsidiary organ of the General Assembly**; the Assembly shall review the status of the Council within five years;(emphasis added)
 - i. The Human Rights Council reports directly to the GA
 - ii. The ***status*** of the Human Rights Council shall be reviewed by the GA (GA Res 60/251) para.1
 - iii. The Council shall review its ***work*** and ***functioning*** and report to the of the GA Council (GA Res 60/251) para.16

Human Rights Council

12

- Which status after 2011? A permanent body along with the other?
 - The Security Council
 - The Economic and Social Council
 - A Human Rights Council?

- The 65th Session of the GA
 - ✦ A «Zero Draft» - A proposal to keep its status as a subsidiary organ to the GA
 - ✦ <http://www.un.org/en/ga/president/65/issues/hrcouncil.shtml>
 - ✦ See also Non-paper of the Co-facilitators of the New York Chapter of the Review of the Human Rights Council: Scope of the Review of the New York Chapter

Security Council

13

- 15 Members, 5 Permanent members (2 years term)
- In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council **primary responsibility for the maintenance of international peace and security**, and agree that in carrying out its duties under this responsibility the Security Council **acts on their behalf**, Article 24 UN Charter
- The UN member states agree to accept and carry out the decisions of the SC in accordance with the present Charter, Article 25 UN Charter
 - Chapter VI - to take up any dispute or matter which could lead to a threat to or breach of the peace and
 - Chapter VII – to take measures when it determines the existence of such threat or breach, or act of aggression

Libya- SC Res 1970(2011) 26 February 2011

14

- The Security Council Acting under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41,
- Urges the Libyan authorities to:
 - Para 2(a) Act with the utmost restraint, respect human rights and international humanitarian law, and allow immediate access for international human rights monitors;
- Para. 4 Decides to refer
 - the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court (ICC);
 - ✦ 20 August 2012 – the Government of Libya decides to hold the trials of Saif Al Islam Gaddafi and 4 others in Libya
 - ✦ ICC is **complementary** to national jurisdiction (Preamble, Arts. 1, 17 Rome Statutes of the ICC)
 - The resolution also addresses:
 - ✦ Arms embargo
 - ✦ Travel ban
 - ✦ Asset freeze
 - ✦ Humanitarian assistance

SC Res 1973(2011) 17 March 2011(1)

15

- The failure of the Libyan authorities to comply with SC res 1970 (2011)
 - The SC condemned “the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions,”
 - the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity,
- Acting under Chapter VII of the Charter of the United Nations, the SC
 - 1. Demands
 - Para 1: ...the immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians;
 - Para. 3. ...the Libyan authorities comply with their obligations under international law, including international humanitarian law, human rights and refugee law and take all measures to protect civilians and meet their basic needs, and to ensure the rapid and unimpeded passage of humanitarian assistance;

SC Res 1973(2011) 17 March 2011(2)

16

- (continued) Acting under Chapter VII of the Charter of the United Nations, the SC
- Para 4. Authorizes Member States ...
 - ***to take all necessary measures***, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi,
 - while excluding a foreign occupation force of any form on any part of Libyan territory, and
 - requests the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council;

Economic Social Council (ECOSOC):

17

- 54 members elected by the GA for 3-years, Article 61
 - One functional Commission: the Commission on the Status of Women
- Powers:
 - **make or initiate studies and reports** with respect to international economic, social, cultural, educational, health, and related matters and
 - **make recommendations** with respect to any such matters to the General Assembly to the Members of the United Nations, and to the specialized agencies concerned.
 - make **recommendations for the purpose of** promoting respect for, and observance of, human rights and fundamental freedoms for all.
 - prepare **draft conventions** for submission to the General Assembly, with respect to matters falling within its competence.
 - call, in accordance with the rules prescribed by the United Nations, **international conferences** on matters falling within its competence. (Article 62)
- The treaty bodies report to the ECOSOC
- Specialized agencies report to the ECOSOC
- Coordinates UN Development Programme (UNDP)

The International Court of Justice (ICJ)

18

- Article 92
 - The International Court of Justice shall be the **principal judicial organ of the United Nations**. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.
 - All states shall comply with the decisions of the ICJ
 - ✦ If not, the Security Council may make recommendations or decide upon measures to be taken to give effect to the judgment (Art. 94)
 - Advisory Opinions may be requested by
 - ✦ The GA and the SC
 - ✦ Other organs of the UN and specialized agencies (Art. 96)

International Court of Justice (ICJ)

19

- The Statute of the ICJ
- Article 34.1
 - Only **states** may be parties in cases before the Court.
- Article 38.1:
- The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
 - a. **international conventions**, whether general or particular, establishing rules expressly recognized by the contesting states;
 - b. **international custom**, as evidence of a general practice accepted as law;
 - c. **the general principles of law** recognized by civilized nations;
 - d. subject to the provisions of Article 59, **judicial decisions** and **the teachings** of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

High Commissioner for Human Rights (1)

20

- Article 18 of the VIENNA DECLARATION AND PROGRAMME OF ACTION (1993):
- The World Conference on Human Rights recommends to the General Assembly that when examining the report of the Conference at its forty-eighth session, it begin, as a matter of priority, **consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.**
([http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En))
- Created by GA Res. 48/141 of 20 December 1993
 - The Office of the HCHR and the Centre for Human Rights was merged in 1997 into the Office of the United Nations High Commissioner for Human Rights (OHCHR)
- The HCHR has the principal responsibility for UN human rights activities, see para. 4
 - Shall protect and promote all human rights - civil, cultural, economic, political and social
 - Shall protect and promote the right to development

High Commissioner for Human Rights (2)

21

GA Res. 48/141 of 20 December 1993, para.3(a), the HCHR shall ,

- Promote the universal respect for and observance of all human rights,
- **Function within the framework of the [UN Charter], the [UDHR], other international instruments of human rights and international law,**
- **within the framework of the purposes and principles of the [UN]Charter, the promotion and protection of all human rights is a legitimate concern of the international community;**
- **shall respect the sovereignty, territorial integrity and domestic jurisdiction of States**
- (Compare Article 2 of the UN Charter)

Article 2 UN Charter

22

- The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with ***the following Principles***
- 1.The Organization is based on the principle of the sovereign equality of all its Members.
- 2.All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
- ...
- 7.Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

High Commissioner for Human Rights (3)

23

GA Res. 48/141 of 20 December 1993, para.3, the HCHR shall ,

(b) Be guided... **all human rights - are universal, indivisible, interdependent and interrelated** and that, ..., it is **the duty of States, regardless of their political, economic and cultural systems, to promote and protect** all human rights and fundamental freedoms;

(c) Recognize the importance of promoting **a balanced and sustainable development** for all people and of ensuring realization of the right to development, as established in **the Declaration on the Right to Development**;

High Commissioner for Human Rights (4)

24

- **GA Res. 48/141 para 2,**
- Decides that the High Commissioner for Human Rights shall :
 - Qualifications:
 - Be a person of **high moral standing and personal integrity** and
 - shall possess **expertise, including in the field of human rights**, and the
 - general knowledge and understanding of **diverse cultures** necessary for
 - **impartial, objective, non-selective and effective performance** of the duties of the High Commissioner (para 2(a))
 - Term :
 - **a fixed term of four years** with a possibility of one renewal for another fixed term of four years;
 - Appointed by **the Secretary-General** of the United Nations and approved by **the General Assembly** (para.2(b))

High Commissioner for Human Rights (5)

25

- New HCHR appointed on 28 July 2008 (mandate renewed for two years beginning on 1 September 2012):
- Ms. Navanethem (Navi) Pillay, of South Africa.
- Judge on two of the international criminal courts: the International Criminal Tribunal for Rwanda and the International Criminal Court in the Hague
- 5th HCHR in 15 years (Bertrand Ramcharan served as acting HCHR 2003-2004)

Human Rights Council (1)

26

- **GA Res 60/251(2006) Human Rights Council:**
 - First meeting 19 June 2006 (para.15)
 - The Council shall review its work and functioning five years after its establishment and report to the General Assembly (para. 16)
 - Revision of old procedures: Human Rights Council Res 5/1(2007). Institution-building of the United Nations Human Rights Council, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1
- **47 member States should be contributing to the protection and promotion of human rights – 5 regional groups (paras. 7-9)**
- **Universal periodic review (UPR), (para.5(e))**
- **Other procedures (para 6):**
 - System of special procedures – country and thematic
 - Complaint procedure (earlier 1503 procedure)
 - Expert advice –Human Rights Council Advisory Committee -18 experts (studies and research based advise to the HRC)

Human Rights Council (2)

27

- Membership open to all states
- Elected by a majority of the members of the GA
 - Taking into account:
 - Contributions to the promotion and protection of human rights
 - Voluntary pledges and commitments
- Suspension of membership by the GA (2/3 majority of the members present and voting) if a member commits gross and systemic violations of human rights
 - GA Res 65/265 (1 March 2011) Suspension of the rights of membership of the Libyan Arab Jamahiriya in the Human Rights Council

Subsidiary bodies to the HRC

28

- Universal Periodic Review Working Group
- Advisory Committee
- Complaint Procedure
- Expert Mechanism on the Rights of Indigenous People
- Forum on Minority Issues
- Social Forum
- Forum on Business and Human Rights

Subsidiary bodies cont.

29

- **Forum on Minority Issues**
 - HRC Res 6/15 (2007) a platform for dialogue; contributions to independent expert; implementation of the UN Minority Declaration (renewed by res 19/23 of 23 March 2012)
- **The Expert Mechanism on the Rights of Indigenous Peoples**
 - HRC Res 6/36 (2007) – a subsidiary body to the HRC; thematic expertise through studies and research-based advise
- **See also:**
 - UN Permanent Forum on Indigenous Issues (UNPFII) – advisory body to the ECOSOC- ECOSOC Res. E/2000/22

Advisory Committee (HRC)

30

- 18 experts
- A «think tank» for the HR Council providing expertise in the manner and form requested by the Council, focusing mainly on studies and research-based advice.
- Replaces the former Sub-Commission on the Promotion and Protection of Human Rights BUT
- Such expertise shall be rendered only upon the request of the HRC, in compliance with its resolutions and under its guidance.
- HRC res 5/1(2007)

Universal Periodic Review (1)

31

- **Universal periodic review:**
 - Human Rights Council Res 5/1(2007). Institution-building of the United Nations Human Rights Council
- Started in 2008
- All states reviewed over a period of 4 years
- Intergovernmental process
 - Other stakeholders can make comments before the adoption of the outcome of the UPR
- Based on:
 - ✦ UN Charter
 - ✦ UDHR
 - ✦ Human rights instruments to which the State is a party
 - ✦ Voluntary pledges
 - ✦ Applicable international humanitarian law
- Objective: to improve the human rights situation on the ground and the fulfillment of human rights obligations ...
- Complement but not duplicate the work of treaty bodies
- Based on a state report, prepared with consultations of stakeholders (NHRIs and NGOs) at national level Guidelines for reporting:
http://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_6_102.pdf

Universal Periodic Review (2)

32

- **Based on:**
 - a state report, prepared with consultations of stakeholders (NHRIs and NGOs) at national level (20pp) Guidelines for reporting:
http://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_6_102.pdf
 - two compilations prepared by the OHCHR:
 - Information from other UN procedures, such as treaty bodies and special procedures (10pp)
 - Credible and reliable information from other stakeholders (10pp)
- **4 hrs for the inter-active review process of each country before the WG**
 - WG consists of 47 states – each state review assisted by three states, a «troika», acting as rapporteurs
- **Questions can be submitted in writing in advance**
- **Recomendations and questions by other states during the review process in the HRC**
 - **Other stakeholders may make general comments before the adoption of the outcome of the UPR**

Universal Periodic Review (3)

33

- Outcome:
- A report
- Prepared by the «troika» in cooperation with the state and assisted by OHCHR
- Summary of the inter-active dialogue
- Conclusions and recommendations
 - Broad range of issues – no in depth discussion
- The State accepts or rejects recommendations and may make voluntary commitments

HRC: Special procedures:

34

- Specific countries (13) and thematic (36) (on 1 April 2013)
 - Country mandates 1 year and thematic 3 years
- Individuals (Special Rapporteur, Independent Expert, Special Representative of the Secretary-General) or
- Working Groups (5 members from different regions)
- Personal capacity – independence of states
- Activities: Country visits, responding to individual complaints, public reporting...
- Code of Conduct for Special Procedures Mandate-holders
 - HRC Res 5/2 (2007)

Special procedures cont.

35

- **Special Rapporteur on Torture (2011):**
 - Mr. Juan Mendez (Argentina)
- **Independent expert on minority issues (2011):**
 - Ms. Rita Izák (Hungary)
- **Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (2010):**
 - Mr. James ANAYA (United States of America)

Special procedures cont.

36

- Special Rapporteurs on Economic, Social and Cultural Rights:
 - Adequate housing, cultural rights, education, food, physical and mental health, and drinking water and sanitation
- Open-ended Working Group on the Right to Development
- Independent Expert on human rights and extreme poverty (2008, 2011):
 - Ms. Maria Magdalena SEPÚLVEDA CARMONA (Chile)
- Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (2008,2011):
 - Mr. Cephas LUMINA (Zambia)

Developments of Special Procedures

37

- A new Working Group on the issue of discrimination against women in law and in practice was established in 2010
- A new Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment established in 2012
 - HRC Res 19/10, 19 April 2012
 - Mr. John Knox(USA)
 - Started in August 2012

HRC: Complaint procedure

38

- Established by HRC Res 5/1 (2007) based on ECOSOC Res 2000/3 of 19 June 2000 revising the “old” resolution 1503(XLVIII):
- Two working groups (on Communications and on Situations) to address
 - consistent patterns of gross and reliably attested violations of human rights
- Confidential procedure
- Manifestly ill-founded and anonymous communications are screened out

Human Rights Council (7)

39

- **WG on Communications**
 - 5 independent and qualified experts from the HR Council Advisory Committee
- **Admissibility and merits, and it transmits to**
- **WG on Situations**
 - 5 member states of the HR Council
- **Report on consistent patterns of gross and reliably attested violations of human rights, and,**
- **Recommendations to the HR Council**

Complaint procedure cont.:

40

- **Inadmissible if:**
 - Manifestly political motivations and not consistent with applicable instruments
 - No factual description
 - Abusive language
 - Not victim – group or individual
 - Exclusively based on information from mass-media
 - Already dealt with by:
 - ✦ Special procedure
 - ✦ Treaty body
 - ✦ Regional complaint procedure
 - Exhaustion of domestic remedies (may include a quasi-judicial procedure of a National Human Rights Institution)