

# Internationalisation of Human Rights: Evaluating the Fundamental Nature of Human Rights within the United Nations

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## **Abstract**

*Human rights have emerged as a major focus of the international law system. This has not always been so. Initially, human rights were largely within the exclusive preserve of the territorial sovereignty of states. The establishment of the United Nations (UN) in 1945, with the immediate historical background of gross violations of human rights and threats to peace and security during the World War II, necessitated the shift from human rights only being within the domestic domain to becoming an area of concern for international law also. This international dimension of human rights is evident from the entire system of the UN. This includes provisions of the UN Charter and functions of the UN primary organs. Furthermore, bodies and instruments geared towards the direction of human rights have been created within the UN. This is undeniable progress in the status of human rights within the UN and the wider international law system. Regardless of this significant progress, human rights still fall short of being a fundamental feature of the UN in the absence of key indicators like sufficient synergy between relevant mechanisms and judicialisation of human rights issues.*

**Keywords:** Human rights, United Nations, Human Rights Council, judicialisation.

## **1. Introduction**

The establishment and operation of the United Nations (UN) have impacted the concept of human rights in international law. Hitherto, a domain much more within the exclusive preserve of domestic law has now become an area of concern also for international law generally, and the UN particularly. ‘Internationalisation of human rights’ as it is sometimes called. Thus, from the Charter of the UN to the functioning of its bodies, human rights have become one of their obvious features. This human rights

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commitment is further evidenced in the establishment of human rights Charter-based bodies. This article evaluates the fundamentality of human rights within the United System, including the effectiveness of human rights Charter-based bodies. The position in this essay is that while there has been progress within the UN human rights framework in terms of the development of instruments and adaptation of approaches, this progress is still subject to some major challenges that cast doubt over the fundamental nature of human rights to the UN. These challenges are tied to operational and political factors that make cohesion and judicialisation difficult to achieve.

This article starts with the background to the UN Charter, before delving into the provisions of the Charter and the organisational structure of the UN. The article further examines the developments in the realm of human rights within the UN, as well as some underlying issues that tend to undermine them. The developments cut across treaties, charter-based bodies, and treaty-based bodies. Being the central human rights body within the UN, there is also a more detailed examination of the Human Rights Council to evaluate its effectiveness.

## **2. Evaluating the Fundamentality of Human Rights within the United Nations System**

The UN Charter was adopted on 25 June 1945. It was an immediate result of World War II and the devastating destruction that occasioned it. Thus, when nations' representatives gathered in San Francisco to append their respective signatures to the UN Charter, peace and security were foremost in their minds. This is amply reflected in the initial parts of the preamble to the Charter which stated the determination 'to save succeeding generations from the scourge of war.'<sup>1</sup> As peace and security do not exist in isolation, the UN Charter, right from the preamble, further reflects the desire to reaffirm the human rights of all people. It is in this light that the erstwhile domestication of human rights has been noted to have

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<sup>1</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter)

become internationalised.<sup>2</sup> The reference to human rights in the preamble to the UN Charter seems to reflect the prominence of human rights to the UN system as a mechanism of promoting global peace. However, this initial confidence in the importance of human rights to the UN might begin to wane when the commitment of the UN system to human rights is examined in terms of the language of the UN Charter's substantive provisions and the UN organisational framework.

'Human rights' appeared seven times in the UN Charter from the preamble to the main body. This does not include indirect references to human rights with related words and phrases like 'non-discrimination'. Starting from the purposes of the UN, Article 1(3) of the UN Charter states the promotion of human rights as one of the objectives of the UN. Article 55(c) of the UN Charter also states that the UN shall promote universal respect for human rights, while Article 56 states the pledge of states to support the UN in this regard. Other relevant provisions, which shall be consequently examined under the respective UN organs, also contain some form of human rights-related provision. One thing that is common to most of these provisions is that they appear vague.<sup>3</sup> Aspirational at best. Despite this article not being a comparative analysis, one cannot but notice the disparity between apparently binding and obligatory provisions in areas such as force and security, as against the somewhat vague language used in reference to human rights in the UN Charter. This has led to questions on whether the UN Charter provides any direct human rights obligations for states, which first appears not to be so.<sup>4</sup> It has, however, been argued that because the human rights provisions in the UN Charter are not self-executing does not mean that they are not legally binding.<sup>5</sup> Subsequent resolutions of the Economic and Social Council (ECOSOC) also seem to challenge the position that gross violations of human rights such as of apartheid policies are not contrary to the UN Charter.<sup>6</sup> In the *Legal*

<sup>2</sup> Thomas Buergenthal, 'The Normative and Institutional Evolution of International Human Rights' *HRQ* [1997] 19 (4) 703

<sup>3</sup> Hans Kelsen, *The Law of the United Nations* (The London Institute of World Affairs 1950) 29-32

<sup>4</sup> *ibid*

<sup>5</sup> Olivier de Schutter, *International Human Rights Law: Cases, Materials, Commentary* (Cambridge University Press 2010) 49

<sup>6</sup> ECOSOC, 'Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and

*Consequences for States of the Continued Presence of South Africa in Namibia case*, the International Court of Justice (ICJ) in its advisory opinion noted that the continued occupation of South Africa in Namibia was a violation of its human rights obligations under the UN Charter.<sup>7</sup> All these are progressive interpretations of the human rights provisions within the UN Charter to prevent gross violation of human rights. In light of this, it has been noted that in the initial period of the operation of the UN Charter, commitment to human rights was limited to issues such as apartheid and self-determination.<sup>8</sup> Apparently, the UN Charter primarily contain foundational human rights provisions which subsequent treaties have been built.<sup>9</sup> Thus, it seems that while human rights within the UN was initially non-comprehensive and seemed less obligatory, progressive interpretation and further development have strengthened them.

A vital component of the UN is its organisational structure. The UN has six main organs as established under its Charter. These organs are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat.<sup>10</sup> What immediately becomes noticeable is that unlike for security, a core human rights body is not among the main organs of the UN. While the functions of most of these organs seem to capture human rights-related issues, they appear incidental to their major functions. Admittedly, human rights issues cut across several areas and can so reflect; nevertheless, the absence of a human rights organ among the main UN organs casts doubts over the fundamentality of human rights to the UN. Even further strengthening this doubt is the creation of the first main human rights body (the Commission for Human Rights) under a less prominent organ of the UN like ECOSOC which

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other dependent countries and territories' Res 1235 (XLII) (6 June 1967); ECOSOC, 'Procedure for dealing with communications relating to violations of human rights and fundamental freedoms' Res 1503 (XLVIII) (27 May 1970)

<sup>7</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16, para 131

<sup>8</sup> Andrew Clapham, 'The High Commissioner for Human Rights' in Fredric Megret and Philip Alston (eds), *The United Nations and Human Rights: A Critical Appraisal* (2nd edn, Oxford University Press 2020)

<sup>9</sup> Thomas (n 2) 705-706

<sup>10</sup> UN Charter (n 1) art 7

has been of negligible importance in the UN framework due to its mere recommendatory powers.<sup>11</sup>

The Security Council is almost unarguably the strongest organ of the UN. This is due to its enforcement powers and the veto powers of the permanent members.<sup>12</sup> The Security Council's primary function is the maintenance of international peace and security.<sup>13</sup> The UN Charter does not directly provide any human rights function for the Security Council. However, considering the high tendency of the Security Council to be politicised, as well as states' resistance to interference in their domestic affairs under the umbrella of human rights, this was probably not a wrong path to tow.<sup>14</sup> Notwithstanding, going by the highly questionable human rights record of the permanent members of this extremely vital organ of the UN, it is difficult to reconcile this with the commitment of the UN to human rights. Concerning the role of the Security Council, it has increasingly been construed to accommodate peacekeeping operations and humanitarian interventions that are intricately linked to human rights issues as well as peace and security.<sup>15</sup> An instance of this is the 1992 Security Council resolution authorising intervention in Somalia due to deterioration of peace, security and human rights.<sup>16</sup> Further attempts to widen such operations based on the right to protect have, however, been subject to much resistance.<sup>17</sup> Indeed, it is difficult to ignore the obvious progression of human rights within the functioning of the Security Council. This is a way for human rights to have some form of enforcement possibility, albeit with legitimate concerns of politicisation. As it is, the application of the powers of the Security Council in this regard is limited to such gross

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<sup>11</sup> J Renninger and United Nations Institute for Training and Research Dept, *ECOSOC: Options for Reform* (United Nations Institute for Training and Research 1981)

<sup>12</sup> Fredric Megret and Philip Alston, 'Introduction: Appraising the United Nations Human Rights Regime' in Fredric Megret and Philip Alston (eds), *The United Nations and Human Rights: A Critical Appraisal* (2nd edn, Oxford University Press 2020) 15

<sup>13</sup> UN Charter (n 1) art 24

<sup>14</sup> Fredric Megret, 'The Security Council' in Fredric Megret and Philip Alston (eds), *The United Nations and Human Rights: A Critical Appraisal* (2nd edn, Oxford University Press 2020) 40

<sup>15</sup> Office of the High Commissioner for Human Rights, 'Protecting human rights: the role of the UN Security Council' (*United Nations*, 5 May 2021) < <https://www.ohchr.org/en/2021/05/protecting-human-rights-role-un-security-council> > accessed 9 January 2023

<sup>16</sup> UNSC Res 773 (23 January 1992) UN Doc S/RES/733

<sup>17</sup> Subramanian SR, 'UN Security Council and Human Rights: An Inquiry into the Legal Foundations of the Responsibility to Protect in International Law' *UJIEL* [2022] 37(1) 20

violations of human rights that may threaten global peace and security and not to more systemic forms of violations.

The General Assembly is also another prominent organ of the UN. The General Assembly consists of all members of the UN.<sup>18</sup> It has powers over a wide range of issues including promoting the realisation of human rights under article 13(1)(b) of the UN Charter. Unlike the Security Council, the General Assembly has no enforcement powers, and its functions cover a wider range of issues. The General Assembly is also empowered to establish subsidiary organs to aid its operation.<sup>19</sup> It was under this power that the Office of the High Commissioner for Human Rights (OHCHR) was established in 1994 and the Human Rights Council in 2006, both of which shall be examined subsequently.<sup>20</sup>

Another organ of the UN is the International Court of Justice (ICJ). The ICJ is the principal judicial organ of the UN with members elected by the General Assembly and the Security Council.<sup>21</sup> It is responsible for adjudicating on matters provided for in the UN Charter, treaties, and conventions as referred to it by parties.<sup>22</sup> This includes human rights issues. In the case of *Belgium v Senegal*, for instance, the ICJ assumed jurisdiction based on the empowering article 30(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in finding Senegal in violation of article 7 of the Convention.<sup>23</sup> While, due to the reluctance of states to submit human rights issues before it, the growth of human rights jurisprudence by the ICJ was initially stunted, the situation appears to have improved over the years.<sup>24</sup> Regardless of this progress on the part of the ICJ, the absence of separate judicialisation framework for human rights might operate to downplay human rights integrality within the UN system.<sup>25</sup> This is because, rather than the ICJ exercising general functions, human rights complaints are usually heard by the Human Rights Council,

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<sup>18</sup> UN Charter (n 1) art 24

<sup>19</sup> *ibid* art 24

<sup>20</sup> United Nations General Assembly Resolution (UNGA Res) 60/251 (15 March 2006) A/RES/60/251

<sup>21</sup> *Statute of the International Court of Justice* (adopted 18 April 1946) 33 UNTS 993 art 3 and 4

<sup>22</sup> *ibid* art 36

<sup>23</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Judgment) [2012] ICJ Rep 422

<sup>24</sup> Fredric and Alston (n 12) 17

<sup>25</sup> Surya P. Subedi, *The Effectiveness of the UN Human Rights System: Reform and the Judicialisation of Human Rights* (Taylor & Francis Ltd 2017) 112

which operates as a quasi-judicial body with merely recommendatory powers.

The Trustee Council, the ECOSOC, and the Secretariat all appear to have some human rights-related function. While that of the Trustee Council and the ECOSOC is evident from the UN Charter, that of the Secretariat appears to be based on the individual initiative of the Secretary-General heading the organ at a particular time. Article 76 (c) and Article 62 of the UN Charter set out the responsibilities of the Trustee Council and ECOSOC respectively to promote human rights. Furthermore, Article 68 also empowers the ECOSOC to set up commissions for the promotion of human rights. In the exercise of its human rights-related functions, the ECOSOC has made draft conventions and convened human rights conferences. It further set up the erstwhile Commission on Human Rights in 1946.<sup>26</sup> From the Charter provisions, it appears ECOSOC is the organ primarily in charge of human rights issues. The grouping of human rights with economic and social issues in the UN Charter is further evident from the fact that of the six times ‘human rights’ appears within the substantive provisions of the UN Charter, three of them are under the respective Chapters on Economic and Social Cooperation, as well as the Economic and Social Council. This, in a way, reflects the low priority placed on human rights under the UN Charter as opposed to other issues such as peace and security. Furthermore, the ECOSOC under which human rights bodies are ordinarily to be established has been described as non-integral to the UN system.<sup>27</sup> The establishment of the Human Rights Council as a subsidiary of the General Assembly in 2006 was therefore quite innovative and necessary.

The office of the Secretary-General is the head of the UN Secretariat and the chief administrative officer of the UN. While this office is largely based on administrative functions and has no direct reference to human rights, the Secretary-General is empowered to bring to the attention of the Security Council issues that may threaten global peace and security.<sup>28</sup> This can include human rights situations

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<sup>26</sup> ECOSOC Res 9(II) (21 June 1946)

<sup>27</sup> Renninger (n 11)

<sup>28</sup> UN Charter (n 1) art 99

that require humanitarian intervention. In practice, the Secretary-General performs functions including inter-state mediation and fact-finding missions on issues that may relate to human rights. Nevertheless, it has been argued that the office of the Secretary-General is less compatible with human rights functions due to the neutral stance it is expected to take.<sup>29</sup> Regardless, this has not stopped some of the officeholders from weighing in on human rights issues. For instance, the former Secretary-General, Kofi Annan was known to be vocal and active on human rights issues.<sup>30</sup> This is, however, more tied to the exercise of personal initiative rather than an express requirement from the office.

Before the Commission for Human Rights was replaced in 2006, one of its major achievements was its role in the drafting of the Universal Declaration of Human Rights (UDHR). This further influenced the drafting of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.<sup>31</sup> In total, there are currently nine core human rights treaties in the UN.<sup>32</sup> There are also other treaties that borders on issues that are intricately linked to human rights like the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>33</sup> The core human rights treaties can, however, be primarily distinguished based on their independent expert monitoring mechanism.<sup>34</sup> There can hardly be a denial of the vastness and wider acceptance of human rights treaties in terms of ratifications. For instance, there has been a significant increase in the ratifications of human rights treaties such as the Convention on the Rights of the Child.<sup>35</sup> Although, these ratifications frequently come with reservations which are sometimes widely constructed. Regardless, Schutter stated that human rights treaties have acquired a status

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<sup>29</sup> Andrew (n 8) 702

<sup>30</sup> Fredric and Alston (n 12) 16

<sup>31</sup> Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Pennsylvania University Press 1999)

<sup>32</sup> 'The Core International Human Rights Instruments and their monitoring bodies' (*United Nations*) <<https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>> accessed 8 January 2023

<sup>33</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277

<sup>34</sup> 'The Core International Human Rights Instruments and their monitoring bodies' (n 32)

<sup>35</sup> Schutter (n 5) 55

somewhat superior to other norms of international law.<sup>36</sup> This is a sweeping generalisation as even within the regime of indivisible and interconnected human rights, the status and attention accorded to human rights tend to vary. For instance, certain violations such as the breach of the right against torture are subject to universal jurisdiction, while the violations of some other human rights like freedom of expression are not.<sup>37</sup>

Another critical component of human rights within the UN is the charter-based bodies. The Human Rights Council (HRC) is the primary charter-based body for human rights and shall be examined in more detail in the second part of this article. Established to replace the Commission on Human Rights, the HRC was made a subsidiary body of the General Assembly with a mandate that includes the promotion of human rights, addressing gross and systemic violations, and reviewing the situation of human rights in states.<sup>38</sup> Deploying several mechanisms such as the Universal Periodic Review, the HRC has been appraised as largely effective despite some major challenges like the inability to enforce its recommendations.<sup>39</sup> Also as a charter-based body, the Office of the High Commissioner for Human Rights (OHCHR) was adopted by a consensus of the General Assembly on 20 December 1993.<sup>40</sup> The OHCHR conducts several human rights functions including engagement with governments, monitoring of human rights situations around the world, and issuing critical statements against violations.<sup>41</sup> A major undermining factor of the OHCHR in this regard has also been the lack of enforcement powers too.

Closely related to the charter-based bodies are the treaty-based bodies. These are groups of individual experts that monitor the implementation of core human rights instruments by state parties. The first to be established is the Committee on the Elimination of

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<sup>36</sup> *ibid* 48

<sup>37</sup> *Attorney General v Eichmann* [1962] 36 ILR 5

<sup>38</sup> United Nations General Assembly Resolution (UNGA Res) 60/251 (15 March 2006) A/RES/60/251

<sup>39</sup> Eric Tistoune, *The UN Human Rights Council: A Practical Anatomy* (Edward Edgar Publishing 2020)

<sup>40</sup> United Nations General Assembly Resolution (UNGA Res) 48/141 (20 December 1992) A/RES/48/141

<sup>41</sup> UN Secretary-General's bulletin, 'Organization of the Secretariat of the United Nations' ST/ SGB/ 1997/ 10 (15 September 1997) para 2(1)

Racial Discrimination (CERD) which became operational in 1970.<sup>42</sup> After this, nine additional treaty-based bodies were established; bringing the total to ten.<sup>43</sup> Like in other areas of human rights within the UN, the development in the number of treaty-based bodies is undisputable. Of course, this is when the increase in numbers is the deployed metric for measuring development, as the integrality of this proliferation within the UN remains objectionable. There have been concerns about the lack of sufficient synergy within the treaty-body system which has led to calls for their reform.<sup>44</sup> Egan argued to the effect that the truth of an unplanned, haphazard evolvement lies beneath the masquerade of the UN human rights treaty body system.<sup>45</sup> He also noted that the lack of a proper structural operation of these numerous bodies along with the scarcity of resources points to a systemic failure and questionable commitment of the UN to human rights.<sup>46</sup>

### 3. Evaluating the Effectiveness of the UN Human Rights Council in Fulfilling Its Mandate

The Human Rights Council is the major human rights Charter-based body within the UN. Therefore, it is important to examine its functioning in a little more detail. The Human Rights Council replaced the Commission on Human Rights in 2005. The latter at the time was subjected to wide criticism as being over-politicised and selective in its approach.<sup>47</sup> Unlike the previous Commission which was established by the Economic and Social Council of the United Nations (UN), the Council is a subsidiary of the UN General Assembly and is made up of member states. This reflects the direct involvement of states in its activities. The resolution establishing the Council further revealed its mandates. These generally include promoting human rights, addressing gross and systemic violations,

<sup>42</sup> Patrick Thornberry, 'The Committee on the Elimination of Racial Discrimination (CERD)' in Fredric Megret and Philip Alston (eds), *The United Nations and Human Rights: A Critical Appraisal* (2nd edn, Oxford University Press 2020) 311

<sup>43</sup> 'The Core International Human Rights Instruments and their monitoring bodies' (n 32)

<sup>44</sup> Suzzane Egan, 'Strengthening the United Nations Human Rights Treaty Body System' *HRLR* [2013] 13(2) 209

<sup>45</sup> Suzzane Egan, 'The Reform of the UN Human Rights Treaty Body System' in Fredric Megret and Philip Alston (eds), *The United Nations and Human Rights: A Critical Appraisal* (2nd edn, Oxford University Press 2020) 647

<sup>46</sup> *ibid*

<sup>47</sup> Report of the High-level Panel on Threats, Challenges and Change transmitted to the UN Secretary-General, 'A More Secure World: Our Shared Responsibility' (1 December 2004) A/59/565 Annex

and reviewing the human rights situations in states.<sup>48</sup> To achieve its mandate, the Council utilises some mechanisms, which shall be subsequently examined to have an insight into the level of the effectiveness of the Council.

The Universal Periodic Review (UPR) is one of those mechanisms. It is a peer-review process where states come together and examine the report of a specific state about human rights within its territories.<sup>49</sup> The review is conducted by a working group that is comprised of the President of the Council and the 47 member states of the Council.<sup>50</sup> During the process, the state concerned presents a report that is open to recommendations by other states within the Council, after which a response is further made by the state concerned.<sup>51</sup> The final outcome of the UPR is the adoption of a report.<sup>52</sup> The UPR has been described as arguably the most effective mechanism of the Council.<sup>53</sup> The degree to which states under examination have engaged in both self-reflection and acceptance of recommendations has been also appraised. However, many times, the response and commitments of states during UPR appear too generic and superficial. For instance, the UK used its existing social security measures as a blanket response to Egypt's recommendations on addressing socio-economic inequalities.<sup>54</sup> There have also been serious concerns about politicking and time manipulation during UPR sessions.<sup>55</sup> Abebe, for one, argued about the block politics of African nations during UPR sessions on issues that affect them.<sup>56</sup> Even aside from the review sessions, the dynamics for the implementation of conclusions have also been of concern.<sup>57</sup> Divergence on issues such as universalism and relativism of human

<sup>48</sup> United Nations General Assembly Resolution (UNGA Res) 60/251 (15 March 2006) A/RES/60/251

<sup>49</sup> *ibid* para 5(e); Human Rights Council Resolution (HRC Res) 'Institution-building' 5/1 (18 June 2007)

<sup>50</sup> HRC Res 'Institution-building' 5/1 (18 June 2007) para 18

<sup>51</sup> *ibid*

<sup>52</sup> *ibid* para 26 & 27

<sup>53</sup> Eric Tistounet, *The UN Human Rights Council: A Practical Anatomy* (Edward Edgar Publishing 2020)

<sup>54</sup> HRC, 'Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review' (13 August 2008) A/HRC /8/25/Add. 1; Leanne Cochrane and Kathryn McNeilly 'The United Kingdom, the United Nations Human Rights Council and the first cycle of the Universal Periodic Review' *IJHR* [2013] 17(1) 152, 157

<sup>55</sup> Rosa Freedman, 'New Mechanisms of the UN Human Rights Council' *NQHR* [2011] 29(3) 289, 304

<sup>56</sup> Allehone Mulugeta Abebe, 'Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council' *HRL* [2009] 9(1) 1

<sup>57</sup> *ibid* 31

rights also tend to complicate the implementation of some recommendations in some states.<sup>58</sup>

Due to the allure of a multilateral approach, the Council utilises other mechanisms to discharge its mandates. Special procedures, commissions of inquiries, fact-finding missions, and other investigations are some of these. These measures are all suited to address specific issues with less politics. Special procedures are specifically made up of unpaid independent human rights experts. Their activities include country visits, communicating with states, and advocacy. They report to the Council and the General Assembly. The commissions of inquiries, fact-finding missions, and other investigations usually focus on investigating and reporting on possible gross violations.<sup>59</sup> The effectiveness of special procedures has been arguably revealed in instances such as the Rwandan civil war, and the Indian and Pakistan armed conflict.<sup>60</sup> Flexibility and independence seem key to their functioning. However, it appears that the influence of these specific measures is more persuasive and far less compelling on states.<sup>61</sup> For instance, despite the investigation and comprehensive report on human rights violations in the Ethiopian-Tigray conflict in 2021, there appears to be no action to improve the situation on the ground.<sup>62</sup> Furthermore, the activities of these independent special measure groups tend to make states uneasy and less cooperative. The US for instance has raised questions on the competence of special procedures to address its activities in the fight against terrorism.<sup>63</sup> The disposition of states to these special procedures might be a reflection of their effectiveness and independence from states' manipulation. However, the challenge is

<sup>58</sup> Bhumika Nanda, 'India and the United Nations Human Rights Council: Gender at a Crossroads' *JGLR* [2019] 10(2) 269

<sup>59</sup> 'International Commissions of Inquiry, Commissions on Human Rights, Fact-Finding missions and other Investigations' (United Nations Human Rights Council, 2022) <<https://www.ohchr.org/en/hr-bodies/hrc/co-is>> accessed 24 October 2022

<sup>60</sup> Philip Alston, Jason Morgan-Foster, and William Abresch, 'The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the War on Terror' *EJIL* [2008] 19(1) 183, 207-208

<sup>61</sup> Olivier de Schutter, *International human rights law: cases, materials, commentary* (Cambridge University Press 2010) 883

<sup>62</sup> Ethiopian Human Rights Commission and Office of the United Nations High Commissioner for Human Rights, *Report of Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia* (2021) <<https://www.ohchr.org/sites/default/files/2021-11/OHCHR-EHRC-Tigray-Report.pdf>> accessed on 26 October 2022

<sup>63</sup> Alston, Morgan-Foster, and Abresch (n 60) 183

that the efficacy of international law, and consequently measures under it, is largely dependent on the will of a reasonable number of states to submit to it. In response to the concerns of some states, a code of conduct for special procedures was adopted to guide the official activities of mandate holders.<sup>64</sup>

The complaint procedure is also an integral mechanism of the Council. The complaints mechanism permits individual complaints and their examination to determine the best course of action.<sup>65</sup> The mechanism addresses gross and systemic violations of human rights. The complaint procedure is also a soft mechanism and recommendations to the Council do not exactly receive any enforceable verdict since the Council itself has no power to sanction.<sup>66</sup> Subedi, thus, argued for a reform of the entire UN Human rights system to promote a more effective system characterised by judicialisation.<sup>67</sup>

The character of the UN human rights system is one of multiple institutions and mechanisms, which includes Charter-based bodies like the Council. While this multilateral approach seems to be more suited for a complex global turf, it also comes with challenges. A major challenge is the increased possibility of conflict and lack of synergy between specific mechanisms like the activities of Charter-based bodies and treaty-based bodies. Abebe distinguished between the UPR which is state-based and treaty-based monitoring mechanisms which are expert-based.<sup>68</sup> Nonetheless, he falls short of revealing how they complement each other. Apparent similarities exist among special procedures, treaty-based bodies, and the Council's advisory committee with no established platform to exchange information and collectively develop strategies.<sup>69</sup> Although it has been argued that the lack of synergy can be subjective and depend on deployed assessment criteria, it is nevertheless difficult to convincingly posit that charter-based bodies are adequately synergized with the rest of the UN human rights mechanisms.<sup>70</sup>

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<sup>64</sup> Schutter (n 15) 886

<sup>65</sup> HRC Res 'Institution-building: Complaint Procedure' 5/1 (18 June 2007)

<sup>66</sup> Surya P Subedi, *The Effectiveness of the UN Human Rights System: Reform and the Judicialisation of Human Rights* (Taylor & Francis Ltd 2017) 112

<sup>67</sup> *ibid*

<sup>68</sup> Abebe (n 56) 3

<sup>69</sup> Tistoune (n 53)

<sup>70</sup> *Ibid*

#### **4. Conclusion**

The article is an assessment of the status of human rights within the UN system. It starts from the examination of the UN framework to the effect that from the background of the UN Charter, its provisions, as well as the organisational structure and composition of the UN, it appears that the fundamental nature of human rights to the UN is highly questionable. This is due to the largely aspirational language of the UN Charter in reference to human rights, and the failure to adequately engineer the core UN organs in the human rights direction. Admittedly, these are partially due to the nature of international law at the time the UN Charter was adopted. Thus, there has been subsequent undeniable development of human rights within the UN framework. This is reflected in the speedy increase in the number of human rights treaties, documents, bodies, and activities. The effect of these is that human rights have become more obvious within the UN system. However, the integrality of human rights to the UN is still questionable in the absence of certain indicators like judicialisation and greater synergy within the UN human rights system. This examination is not in any way comprehensive and is not to disregard other challenges faced by the UN Human Rights Framework such as funding for charter-based bodies. The major aim has been to evaluate and conclude that human rights within the UN have experienced tremendous progress, as well as significant challenges. These challenges are what needs to be addressed to keep the ship of international human rights afloat.