The UN Human Rights Council

Bertrand G. Ramcharan
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The UN Human Rights Council provides a detailed insight into this important organization. The United Nations was founded in the hope that lasting peace would be built on the foundations of human rights and economic and social progress. In 2006 the Commission on Human Rights was replaced by the Human Rights Council as the principal UN body concerned with human rights. It is even possible that the council might eventually become a principal organ of the world organization.

The Human Rights Council is already the subject of major public interest and controversy. The council has been criticized for having dropped some of the protection strategies of the former commission, and this book aims to present a balanced view of the council, outlining its current role, acknowledging where it has made positive contributions, highlighting its deficiencies, and identifying options for improving the body’s future work.

This book is destined to become the leading text on the Human Rights Council and will be essential reading for all those concerned with the future of international relations, international organizations and human rights.

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1 Mandate and roles

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This chapter examines the mandate and roles of the Human Rights Council. It does so against the background of the historic mission of the United Nations as envisaged in its Charter, which emphasizes the need for the promotion and protection of human rights internationally. The chapter also takes into account the present challenges facing humanity.

It is important to keep in the foreground that the HRC is a political body in which states often act not from principle but from pragmatic, opportunistic, or nihilist perspectives. Indeed, power politics and raw state interest have had a heavy influence on the council. A review of the HRC will make clear that its protection mandate is ambiguous, that it overemphasizes cooperation and dialogue, that it has not been faithful in the discharge of the responsibility to protect, that it has not yet contributed anything to advancing national implementation of the right to development, and that it has not made any meaningful progress on the implementation of preventive human rights strategies. Essentially the council has thus far been a weak defender of human rights worldwide and must take more robust action if it is to remain a relevant body in the twenty-first century.

Policy perspectives

In considering the policy perspectives that should guide the Human Rights Council, a basic question arises: what should be expected of the world organization's leading human rights body, keeping in mind that the Charter and other UN documents and resolutions emphasize the interrelationship of peace, human rights, and development?

It would be reasonable to expect the council to spearhead international efforts to uphold international human rights standards worldwide. It should act as the UN flag-bearer in upholding the responsibility to protect; lead efforts to prevent human rights violations; respond promptly, adequately, and effectively to all gross violations of human rights; contribute to bringing to justice those responsible for criminal violations of human rights; promote the implementation of the right to development nationally, regionally, and internationally; combat all forms of discrimination; prepare standards to deal with new problems threatening human rights; promote a culture of human rights worldwide; encourage the spread of human rights education; champion democracy and the rule of law in all countries; give a voice to victims at the United Nations; and cooperate with regional human rights organizations and NGOs.

These are all things that the UN Human Rights Council—even one riddled with political horse-trading—should strive for. The UN Charter and the Universal Declaration of Human Rights recognize the dignity and worth of every human being. The advancement and protection of the rights of human beings should serve as the foundation of the HRC's work. Given that the three strands of the UN's work are intimately intertwined, the council's human rights work should contribute to, and be reinforced by, the world body's efforts in the areas of peace and development.

In order to discharge its role, the HRC should spearhead the deepening of a universal culture of human rights on the basis of international human rights law and norms. The entrenchment of such a culture requires modern promotional and educational strategies.
As the leading human rights body, the council should help advance the implementation of the right to development within countries. The implementation of this right must commence within each state, which should use available resources efficiently and equitably. International support and solidarity should be provided where needed.

The council should keep an eye over threats and challenges to human rights, nationally, regionally, and internationally, and it should act to prevent looming dangers to human rights. It should monitor national protection systems and evaluate their adequacy to protect populations and prevent human rights violations. The council's engagement with each government should have these priority objectives constantly in view. Prevention and protection must be the key goals of national engagement.

Where human rights are at risk or are being grossly violated in any part of the world, the council should act in a timely, principled, and effective manner. This is the essence of the responsibility to protect that world leaders affirmed at the United Nations World Summit in 2005. Where there are situations of criminal violations of human rights, the council should find ways of informally sharing this information with the International Criminal Court's prosecutor and with the General Assembly.

Where there are violations of human rights that might threaten international peace and security, the HRC should communicate with the Security Council. Habits of cooperation should be developed between the UN's main human rights body and the lead peace and security organ.

The Human Rights Council should apply the same measures to all countries. A human rights body should not be partial, selective, or politically biased.

**Politics and principle**

The Human Rights Council's mandate is quite expansive. The General Assembly resolution founding the body places much emphasis on its role in engaging in dialogue and cooperation with states. The foregrounding of cooperation and promotion rather than protection weakens the HRC. The council's predecessor, the Commission on Human Rights, was similarly mandated with a promotional role and only able to carve out a protection role through decades of practice. Thus, the perennial issue that has faced the UN in the field of human rights ever since its establishment in 1945 still stalks the council—the issue of idealism versus realism, of politics versus principle.

During the Second World War, Western leaders and NGOs made lofty statements that the future peace would have to be grounded in respect for human rights and fundamental freedoms. Yet, at the San Francisco conference that drew up the UN Charter, the Cold War was descending and human rights were nearly sidelined in the Charter. Some states were uncomfortable with the notion of international scrutiny.

It took determined efforts by NGOs to secure the human rights provisions of Charter Articles 1, 2, 13, 55, 56, and 68, but these were weak. Charter Article 2 (1), for example, asserts that one of the purposes of the world body is to achieve international cooperation by “promoting and encouraging respect for human rights.” Even the United States, the postwar champion of human rights, argued against giving the UN the competence to protect human rights as opposed to simply promoting them. Protecting fundamental rights was seen as primarily the concern of states, and only in circumstances when “such rights and freedoms were grievously outraged so as to create conditions which threaten peace or obstruct the application of provisions of the Charter, then they cease to be the sole concern of each State.”

In Charter-drafting Subcommittee I/1, the delegate of Panama argued that “promotion and encouragement of respect for” was weak and should be replaced by “promotion and protection of” human rights. The US delegation
and others opposed this change. They believed that this language "would raise the question as to whether or not the Organization should actively impose human rights and freedoms within individual countries, and that it would lead many peoples of the world to expect more of the Organization than it could successfully accomplish."2

Charter-drafting Subcommittee II/3 incorporated into the text of Charter Article 55 an Australian proposal that the world organization should promote not only respect for human rights but also their "observance." When this provision was discussed in the Coordination Committee of the San Francisco conference, it was explained that the intention behind the proposal was "to reinforce 'respect' which had the connotation of passive acceptance by 'observance,' which was intended to imply active implementation." It was further explained that "observance implied an obligation to change the laws of one's own country to implement this article, whereas 'respect' merely means respecting the laws of other countries in this regard." The word "observance" was thus inserted in Article 55.

According to Article 68, the Economic and Social Council was mandated to set up a commission for the "promotion" of human rights. ECOSOC, accepting the recommendation of a joint committee on the composition of its functional commissions, passed a resolution in June 1946 deciding that the commissions should consist of members of the United Nations selected by ECOSOC. ECOSOC agreed, however, that governments elected to membership had the option to nominate persons either as government representatives or as experts in an individual capacity.

This background is necessary for understanding difficulties that have plagued the United Nations in adopting a principled approach to human rights ever since its establishment. Nevertheless, delegations at San Francisco did agree that there would be a Commission on Human Rights, and they gave it the task of elaborating an international bill of human rights, which the CHR did. This was a solid achievement of the commission.

As early as 1947, however, the CHR took the position that it lacked the competence to deal with thousands of petitions from individuals from the communist countries. Even Eleanor Roosevelt, who was the commission's first chairperson and led its efforts to draft the Universal Declaration, supported this decision, which was denounced by UN assistant secretary-general Henri Laugier as "une honte," shameful. It was only some 20 years later that the CHR would attempt to tackle gross human rights violations. It started holding annual open debates, established a confidential petitions procedure, and appointed country and thematic rapporteurs to investigate situations of gross human rights violations.

As the CHR developed some teeth, governments accused of gross violations began seeking membership in the commission and formed a self-defense club to shield themselves from criticism. This became a major problem for the wider UN, and led Secretary-General Kofi Annan in 2005 to follow the US position and call for the CHR's abolition and replacement by a Human Rights Council.

As the resolution establishing the council was being drafted, many of the problems that had long been seen in the CHR resurfaced. How would members be selected? How many members would there be? What functions would the HRC have when it comes to dealing with gross human rights violations?

In the case of the CHR, ECOSOC had provided for consultation with the secretary-general on representatives who would serve on the commission. However, none of the secretary-generals preceding Kofi Annan had set up such a consultation procedure. This had been one of my leading recommendations to Annan, as I served as acting high commissioner for human rights.

The foregoing background shows that from the outset UN member states
have paid lip-service to human rights ideals, but have always pursued a
realist approach by placing limitations on the protection and enforcement
capacities of UN human rights bodies. Yes, the UN would set and promote
standards; yes, the UN would try to promote a culture of human rights
-especially during the ideological struggles of the Cold War; but no one—
neither Western, Eastern, nor developing country members—would give the
organization teeth for the active defense of human rights. Protection was for
governments in the first instance. If gross violations threatened peace, only
then were they no longer within the exclusive domain of governments. But,
hobbled by power politics, what could a weak UN do to protect human
rights?

This problem still bedevils the UN and its Human Rights Council,
notwithstanding the General Assembly's begrudging and still controversial
adoption of the concept of the responsibility to protect. And yet, the world
moves on. In the eyes of those who continue to profess faith in the UN, the
Human Rights Council should be what its name implies: a principled body
for the protection of human rights. The HRC attracts the heaviest criticism
precisely because it is neither principled nor a body for the protection of
human rights worldwide.

The UN Human Rights Council is a Charter-based institution established
by the General Assembly to help implement the Charter's mandate on
human rights. When the United Nations was founded, it was widely believed
that international peace and security could be maintained and sustained only
if human rights and fundamental freedoms were respected worldwide. At the
closing of the San Francisco conference, where the Charter was drafted,
President Truman echoed this belief when he declared that under the
Charter "we have good reason to expect the framing of an international bill
of rights, acceptable to all the nations involved. That bill of rights will be as
much a part of international life as our own Bill of Rights is a part of our
Constitution. The Charter is dedicated to the achievement and observance of
human rights and fundamental freedoms. Unless we can attain those
objectives for all men and women everywhere—without regard to race,
language or religion—we cannot have permanent peace and security."

The former Commission on Human Rights

The Commission on Human Rights was an imperfect body during its nearly
60 years of existence because of the interplay of morality, interests, politics,
and principle. It was nevertheless, at the same time, a builder, stone by
stone, of the yet unfinished palace of human rights and justice envisaged by
one of its founding members, the Nobel Laureate René Cassin. It was the
CHR that pieced together the Universal Declaration of Human Rights, the
two international covenants, and numerous other treaties and normative
instruments. It worked on standards for the prevention of enforced and
involuntary disappearances and for the protection of indigenous
populations. The commission's normative work will remain a lasting edifice
to its accomplishments.

Overview
The CHR never fulfilled the challenges of human rights protection, and this
was one of the most damaging criticisms leveled against it. From the UN's
founding, however, there was always a tension between promotion and
protection. At the San Francisco conference, the world's great powers—
including the United States, the Soviet Union, France, and the United
Kingdom—opposed giving the United Nations the competence to protect
human rights. The United States was a racially segregated country, the Soviet
Union a totalitarian state with gulags, and France and the United Kingdom
colonial powers that exploited subject populations. Clearly a UN empowered
with the capacity to protect human rights was not in their interests.
The great powers consistently sought to fend off the commission. The CHR never adopted a resolution criticizing the Soviet Union for the gulags or the United States for segregation or racial discrimination. Only on rare occasions was it critical of the great powers. For example, it criticized the United Kingdom over its “virginity checks” of immigrant women and condemned the Russian Federation over violations of human rights in Chechnya.

It was newly independent countries that acted through the General Assembly in the mid-1960s to convince the commission to consider human rights violations in any part of the world, particularly in apartheid South Africa and in colonized and dependent countries. NGOs and some experts used this opening to press the case for protection. The CHR subsequently established procedures and investigators to examine allegations of gross human rights violations. The work of the commission’s thematic and country investigators was substantial.

In the late 1980s and especially during the 1990s, the very developing countries that had sought to enhance the CHR’s capacity to deal with allegations of human rights violations sought to neutralize the commission’s protection procedures and instruments. African and Asian countries, in particular, argued against the work of the CHR’s investigators and opposed the adoption of resolutions critical of particular countries. States with atrocious human rights records sought membership of the commission and jointly opposed the practice of adopting resolutions expressing concern about human rights in particular countries. Third World countries argued for “dialogue and cooperation,” not confrontation.

The membership of human rights violators and developing countries’ use of their majority to block draft resolutions emerged as a major critique of the commission. Many developing countries believed that the CHR was being used as a political weapon against them by the advanced industrialized West. At a time when they were facing severe socio-economic problems stemming in part from the inequitable functioning of the international economic system, they felt they were being put in the dock.

The commission needed to bridge morality, principle, interests, and raw politics in order to function. Switzerland called for the commission’s elevation to a stronger Human Rights Council. Secretary-General Kofi Annan, in his annual address to the commission in 2005, endorsed the Swiss proposal. The CHR’s end came swiftly and a new Human Rights Council was established with a mandate to promote respect for the protection of human rights. The CHR had established important foundations for protection through its special procedures. The council was given the mandate to renegotiate practically every aspect of the commission’s work, including its special procedures. The HRC has so far opted for a mainly diplomatic approach in dealing with problematic situations, and human rights advocates are battling once again for protection of human rights within the UN’s leading human rights organ. In 2011 some progress was made in the council’s handling of situations in Iran, Ivory Coast, Libya, and Syria.

Prior to its abolition, the commission’s annual sessions had drawn the largest gatherings of civil society within a UN organ. During these sessions, anywhere from 2,000 to 3,000 NGO representatives from different parts of the world came to tell their stories, to plead for justice, and to make the case for further standards and strengthened protection. It should be noted, however, that quite a few NGOs were government sponsored (GONGOs).

In contrast to the CHR, which convened one annual session for six weeks, the Human Rights Council meets for up to 10 weeks in up to three sessions at different times of the year. This procedural departure has positive features. A key one is that the council can respond to urgent situations swiftly. To date the HRC has held 16 special sessions on situations such as Israeli actions in occupied Palestine, Myanmar, and Sri Lanka, and on issues such as the
world food crisis. The council has been criticized for not being ready to take action on all urgent situations such as in Zimbabwe. A downside is that NGOs from different parts of the world, especially the global South, cannot sustain their presence in large numbers. Southern NGOs continue to attend the March session mainly and have less of a presence in the other sessions. The HRC’s work should be organized so as to facilitate the world gathering of civil society human rights activists. The challenge for the HRC will be to build on the commission’s achievements in the quest for stronger protection of human rights. 8

**Historical development**

The Economic and Social Council established the Commission on Human Rights pursuant to Article 68 of the United Nations Charter. It was ECOSOC’s only functional commission expressly called for under Article 68. ECOSOC resolution 5(1) of 16 February 1946 had authorized a smaller body known as the “nuclear commission” to prepare the work of the commission. The full commission was established by ECOSOC resolution 9(II) of 21 June 1946. Over the years the CHR’s membership expanded from 9 to 53.

The commission’s mandate was to submit proposals, recommendations, and reports to ECOSOC regarding: “(a) an international bill of rights; (b) international declarations or conventions on civil liberties, the status of women, freedom of information, and similar matters; (c) the protection of minorities; (d) the prevention of discrimination on grounds of race, sex, language, or religion; and (e) any other matter concerning human rights.” ECOSOC also authorized the CHR to call in ad hoc working groups of non-governmental experts in specialized fields or individual experts, with the approval of ECOSOC’s president and the secretary-general. ECOSOC further authorized the commission to establish a Sub-Commission on Freedom of Information and of the Press, a Sub-Commission on the Protection of Minorities, and a Sub-Commission on the Prevention of Discrimination.

At its first session in 1947, the CHR established a Sub-Commission on Freedom of Information and of the Press and a Sub-Commission on Prevention of Discrimination and Protection of Minorities. The former lasted until 1952. The latter held its last session in 2006 and has now been succeeded by a smaller advisory body with a limited mandate.

The full commission opened its first meeting at Lake Success, New York, on 27 January 1947, after a year of preparatory work by the nuclear commission. Representatives of Australia, Belgium, Byelorussian Soviet Socialist Republic, China, India, Iran, Lebanon, the Philippines, the Soviet Union, the United Kingdom, the United States, and Uruguay attended. Also present were representatives of the ILO, the UN Educational, Scientific and Cultural Organization (UNESCO), the World Federation of Trade Unions, and the International Cooperative Alliance. The Secretariat was represented by Henri Laugier (France) and John Humphrey (Canada).

Laugier called the meeting to order emphasizing the significance of the commission’s first session. He stated that “no one part of the action undertaken by the United Nations to make peace secure had more power or wider scope than this. The task of the human rights commission amounted to following up in the field of peace the fight which free humanity had waged in the fields of war, defending against all offensive attacks to the right and dignity of man, and establishing, upon the principles of the United Nations Charter, a powerful international recognition of rights.” 9

Even though, from the outset, there were ideological and political battles in the commission, the CHR succeeded in creating a vision that has inspired the United Nations ever since, one that remains valid for the present and the future. Early on, in 1947, the commission declared that it would work toward establishing an international bill of human rights consisting of three parts: a declaration, one or more treaties, and implementation measures. The
declaration was achieved in less than two years, and the CHR’s work on the international covenants was completed in 1956. The commission had difficulties on the third part, the measures of implementation. A reporting procedure was inserted into the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights. An optional petitions arrangement and optional bilateral complaints procedures were inserted into the civil and political covenant. On the wider issue of implementation outside of the covenants, the commission would wrestle with this issue until its demise.

Conceptually, implementation measures should take place at the national level. The international community is expected to play a role as a facilitator if there has been a breakdown nationally, or if national means are lacking. How could the commission successfully tackle this issue? It could not substitute for national governments. In the aftermath of the Second World War—with countries in ruins, colonies controlled by metropolitan powers, gulags, and segregation, apartheid, and widespread discrimination—the protection of human rights was a formidable task.

What could have been expected of the commission was that it would take a principled stance in condemning gross violations wherever they took place. From the very beginning, the CHR called for the establishment of an implementation agency and it indicated its readiness to submit to the Security Council situations of gross violations of human rights that might adversely affect international peace and security. The major powers, however, wished to condemn their adversaries and save themselves from criticism. In a deal with the devil, the commission adopted an infamous decision in 1947 stating that it lacked the competence to deal with the thousands of petitions it received of gross human rights violations. It was a dark moment for implementation and protection.

How, then, did the commission seek to rise to the challenge of human rights implementation? Having declared its incompetence to act on complaints, it relied on alternative measures, which were largely promotional. It adopted a periodic reports system, disseminated international standards, encouraged teaching and education, fostered a role for national and regional institutions, provided advice and technical assistance, and included reporting and complaints procedures in the two covenants and subsequent human rights treaties. It was only in the late 1960s, under pressure from newly independent countries, that the commission began developing timider procedures for dealing with petitions and initiated an annual debate on human rights violations in any part of the world. In the late 1970s, it began to experiment with factfinding through working groups and rapporteurs. From the 1970s onward, it established a practice of adopting resolutions critical of particular countries; however, it was never equitable in the way that it did this. Some countries escaped condemnation while some were repeatedly criticized. By the time of its demise, the commission’s strongest implementation assets were its annual debates on human rights violations and the reports of its investigating rapporteurs and working groups.23

Norm development

The CHR’s most effective role was not in implementation but in the development of human rights norms and standards. Most of the great international instruments on human rights in use today were drafted by the commission, assisted by its sub-commission. The Universal Declaration, the International Covenant on Civil and Political Rights and its Optional Protocols, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Rights of the Child, and the Convention against Torture were all based on drafts worked out in the CHR, as were other treaties such as the Convention on the Rights of Persons with
Disabilities. The Convention on the Elimination of Discrimination against Women and the Convention on the Rights of Migrant Workers and their Families were, following governmental initiatives, drafted directly by working groups of the General Assembly.

The commission was unique for the drafting of these human rights instruments because it provided a forum in which governments, international and regional organizations, specialized agencies, and nongovernmental organizations could bring their special insights into the drafting process. The CHR, moreover, was fairly flexible about the UN status of those NGOs that participated in its work. Civil society thus was able to shape these human rights instruments. The commission’s drafting work must go down in history as one of its great, historic achievements.

The CHR must also be credited for the research and studies it initiated and carried out directly or through its sub-commission. The commission itself undertook historic studies, such as on the right of freedom from arbitrary arrest and detention and the right to development. The CHR initiated or authorized ground-breaking studies in its sub-commission, on topics including: political rights, equality in the administration of justice, the rights of women, racial discrimination, the protection of minorities and indigenous populations, terrorism and human rights, and human rights and bio-ethics. The commission also requested from the secretary-general landmark reports on themes such as human rights and development, and the impact of international conditions on human rights. The body’s research and studies provided the foundation for important declarations and conventions. Examples are the Declaration on the Elimination of All Forms of Religious Intolerance and the Declaration on the Rights of Human Rights Defenders.

A comparison of the state of understanding of human rights problems and normative development in 1947 with today’s knowledge and standards clearly reveals the significance of the commission’s accomplishments.

## Promotional work

From its inception, the commission was aware of the importance of promotional and dissemination work and adopted early resolutions calling for human rights information and education. It also encouraged the active involvement of national human rights institutions in promoting norms. Over the course of its existence, the CHR also called upon the secretary-general to undertake world campaigns on human rights and similarly called upon the Secretariat to stimulate human rights education and to support national-level institutions.

The CHR was not particularly successful in its promotional work. It was dependent on the United Nations Secretariat, which had limited resources at its disposal. At no time—even during the world human rights conferences of 1968 in Tehran and 1993 in Vienna—was there a stirring of the global public imagination about the human rights cause. The commission’s failure to deal with allegations of human rights violations hardly placed it in a position to stir global interest in human rights.

However, the commission had established invaluable cooperative relationships with national human rights institutions. Some 40 such institutions came to the commission’s annual sessions, participated in special meetings devoted to such institutions, and organized activities on the margins of the commission.

## Fact-finding

The Commission on Human Rights ended its existence with two features characterizing its fact-finding work: first, the reports and intercessions of its thematic and country investigators represented the strongest global protection work at the United Nations. The Security Council has greater powers but has exercised them only when situations were deemed matters of international peace and security. Second, the range and scope of the fact-finding work of the commission’s special procedures were dramatic.

Unfortunately some member countries were strongly opposed to this work, and the CHR rarely gave the reports of its fact-finders the attention or follow up they merited. Nevertheless, within the countries investigated, the
reports had great impact and were without a doubt of great value.

As the commission exited the international stage in 2006, the future of
the special procedures was under discussion. The ability of the Human
Rights Council to build on them will be one of its most difficult tests. The
HRC has decided to continue the special procedures as a system, but it
subsequently cut mandate-holders in two country situations (Byelorussia
and Cuba) and introduced a Code of Conduct for mandate-holders that has
the effect of placing constraints on their activities.

**Protection**

The commission’s most significant protection measures were its annual
public debate, the adoption of resolutions about violations, the work of its
fact-finders, its examination of petitions under the confidential procedure
established by ECOSOC resolution 1503, the participation of NGO
representatives, and its cooperation with the Office of the High
Commissioner for Human Rights in places such as Colombia, where gross
human rights violations have unfolded for decades.

Overall the commission was weak on protection, and much of the
criticism leveled against it on this point was justified. There were many
situations that did not receive the commission’s attention. The agony in war-
torn Darfur, which had already lasted some three years by the time the CHR
was abolished, was one such situation.

For all of its faults, however, there was no other global body with its
fingers on the pulse of human rights worldwide. The CHR’s annual sessions
were where the human rights movement assembled to plead the case for
justice, for effective protection, for research and studies, and for further
standard-setting. The scale of the participation of civil society
representatives and of representatives of national human rights institutions
clearly illustrated the extent to which the CHR provided a world human
rights forum of great importance. In 2005, 724 representatives of the
commission’s member states participated, while 764 observers from non-
member states attended. There were 39 other observers, 256 observers from
the UN system and other intergovernmental bodies, 149 representatives of
national or regional human rights institutions, and 1,934 representatives
from non-governmental organizations. All together 3,866 representatives or
observers attended the commission’s annual meeting that year.\(^2\)

**From commission to council**

As the Commission on Human Rights approached its 60th session in 2004,
this author—in my capacity as the high commissioner for human rights—
addressed the commission on two occasions with regard to its structural
problems. In an address to the commission’s organizational session in
January 2004, I traced the history of the CHR’s membership structure,
underlining that ECOSOC, when it first discussed the membership of
functional commissions such as the CHR, had given consideration to
including individual experts in the commission’s membership. Furthermore,
the CHR’s governing resolution had provided for a procedure according to
which governments would consult the secretary-general about govern-
ment-nominated representatives. Such consultations had never been conducted.

In May 2004, I discussed these issues with Secretary-General Kofi
Annan, who asked for an internal paper on the possibility of electing the
commission’s members in a manner similar to the judges of the
International Court of Justice. The secretary-general also had asked for a
briefing paper on the issue of a consultations procedure, which the OHCHR
provided.

At the time, the secretary-general was facing attacks on integrity issues of
financial and moral probity concerning the Oil-for-Food Programme in Iraq.
The CHR’s problems were put on the back-burner until a year later, when
Annan unexpectedly announced that the commission was discredited and should be replaced by a Human Rights Council. Until then, in his previous eight annual addresses to the commission the secretary-general had consistently lauded its historical contribution to the promotion and protection of human rights.

The achievements of the Commission on Human Rights have, by any measure, been outstanding, even while recognizing that it could have been more principled and even-handed in dealing with human rights violations. Among its great achievements are the vision of an international bill of human rights, with pride of place given to the Universal Declaration of Human Rights and the two covenants; the drafting of most of the international instruments on human rights in force today; its groundbreaking studies and reports; its contribution to the development of awareness of the importance of human rights issues across the globe; its provision of a global forum where governments, international and regional organizations, NGOs, national institutions, and representatives of civil society could gather in great numbers and voice issues and problems; its establishment of numerous thematic and country fact-finders; and its contribution, overall, to the entrenchment of a universal culture of human rights.

As long ago as 1975, a high-level group on reforms in the economic and social sectors of the United Nations, chaired by Professor Richard Gardner of Columbia University, had called for the replacement of the Trusteeship Council by a Human Rights Council. The aim was to elevate the status of the human rights organ and give it more effective powers. At the turn of the millennium, the Swiss government commissioned reports and organized expert and consultation meetings calling for the commission’s replacement by a Human Rights Council. The aim of this initiative was also the creation of a stronger human rights body.

The council’s policy foundations

General Assembly resolution 60/251 establishing the Human Rights Council reaffirmed some of the essential foundations of international human rights law, including the United Nations Charter, the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and the two international human rights covenants.

The General Assembly reaffirmed that, while the significance of national and regional particularities and various historical, cultural, and religious backgrounds must be borne in mind, all states, regardless of their political, economic, and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms. The assembly reiterated its commitment to strengthen the United Nations human rights machinery with the aim of ensuring effective enjoyment by all of all human rights—civil, political, economic, social, and cultural rights, including the right to development and, to this end, resolved to create a Human Rights Council.

There are thus solid legal foundations for the work of the Human Rights Council.

The General Assembly also laid down some significant policy premises for the HRC. The assembly affirmed the need for all states to continue international efforts to enhance dialogue and broaden understanding among civilizations, cultures, and religions. It recognized that the promotion and protection of human rights should be based on the principles of cooperation and dialogue and aimed at strengthening the capacity of member states to comply with their human rights obligations for the benefit of all human beings.

The HRC’s core mandate is to promote universal respect for the protection of all human rights and fundamental freedoms for all. The council was tasked with addressing situations of violations of human rights,
including gross and systematic violations, and making recommendations. The General Assembly decided that the HRC’s work should be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue, and cooperation.

The Council is further mandated to promote human rights education and learning as well as advisory services, technical assistance and capacity building, to be provided in consultation and with the consent of the member states concerned; to serve as a forum for dialogue on thematic issues; to make recommendations to the General Assembly for the further development of international law in the field of human rights; to promote the full implementation of human rights obligations undertaken by states and the follow-up of the goals and commitments related to the promotion and protection of human rights emanating from United Nations conferences and summits; to contribute, through dialogue and cooperation, to the prevention of human rights violations and respond promptly to human rights emergencies; to work in close cooperation in the field of human rights with governments, regional organizations, national human rights institutions, and civil society; to make recommendations; and to undertake a universal periodic review of the fulfilment by each state of its human rights obligations and commitments. Similar to the CHR, the Human Rights Council must take forward the challenges of building a world on the foundations of justice. That will be its historic mission. The peoples of the world expect positive results from this reform.

The establishment of the HRC presents an opportunity to modernize the roles of the UN’s principal human rights body. It should assume leadership in human rights protection. It should also promote effective coordination among different UN bodies that are engaged in this issue area and the mainstreaming of human rights within the UN system. The UN’s principal specialized agencies will continue to have a valuable contribution to make to the HRC’s work. Cooperation should thus be institutionalized in the Human Rights Council. Related to this, the mainstreaming of human rights in all parts of the UN system should be the avenue for cooperation with the UN’s principal programs as well as the International Monetary Fund and the World Bank.

The Human Rights Council must develop enhanced partnerships with non-UN actors, such as NGOs and regional organizations, including the African Commission on Human Rights, the European Court of Human Rights, and the Inter-American Commission and Court of Human Rights. It should also enhance the parliamentary role of the Human Rights Council.

Given the international community’s current emphasis on prevention, the Human Rights Council should focus on establishing a robust preventative capacity. Prevention refers to the detection of potential gross violations before they occur and acting to head them off, in cooperation with other partners.

The Human Rights Council should play a leading role in the formulation of strategies and programs to combat discrimination. In 1945, the UN’s founders made the principle of non-discrimination a founding tenet of the world body. Six-and-a-half decades later, there remains a great deal of discrimination on grounds of race, gender, language, and religion, which means that the world remains far from fulfilling the Charter’s aspirations.

Human rights education has a key role to play in combating discrimination and in advancing universal values of respect and tolerance. The Human Rights Council should take the lead in encouraging human rights education in the schools, universities, and other educational institutions of every country. This is an immense task that has hardly begun. Working together with UNESCO and UNICEF, the Human Rights Council should make this a priority issue for consideration.

A central concept of recent human rights reforms at the UN has been the
strengthening of national protection systems. This focuses on constitutions and laws that are reflective of international human rights norms, and their application by national and local courts, human rights education and institutions such as commissions, and early warning and urgent-response arrangements where needed, particularly in multidimensional societies. The Human Rights Council must make it a central part of its work to contribute to the strengthening of national protection systems in every country. It is on this issue of national protection systems that a peer review process can have an important role in the council. The national protection system should take the lead in preventive strategies, supported by regional and international bodies.

The Human Rights Council must take forward and improve upon the system of special procedures—rapporteurs and working groups working against torture, arbitrary executions, disappearances, arbitrary detention, violence against women and children, and other blots on our civilization. It should cover economic and social rights, including the right to development, as well as civil and political rights.

**International law binding on the council**

A crucial issue that needs to be addressed is the extent to which international human rights law is binding on the Human Rights Council and its members. Drawing on the terms of the Second American Restatement of the Foreign Relations Law of the United States, "a state is obliged to respect the human rights of persons subject to its jurisdiction: (a) that it has undertaken to respect by international agreements; (b) that states generally are bound to respect as a matter of customary international law; and (c) that it is required to respect under general principles of law common to the major legal systems of the world." 22

It further asserts, "A state violates international customary law if, as a matter of state policy, it practices, encourages, or condones: (a) genocide; (b) slavery or slave trade; (c) the murder or disappearance of individuals; (d) torture or other cruel, inhuman or degrading treatment or punishment; (e) prolonged arbitrary detention; (f) systematic racial discrimination; or (g) a consistent pattern of gross violations of internationally recognized human rights." 23

Remedies for breaches of human rights are summarized in US foreign relations law as follow: "(1) A state party to an international human rights agreement has, as against any other state party violating the agreement, the remedies generally available for violation of an international agreement, as well as any special remedies provided by the agreement. (2) Any state may pursue international remedies against any other state for a violation of the customary international law of human rights. (3) An individual victim of a violation of a human rights agreement may pursue any remedy provided by that agreement or by other applicable international agreements." 24

The Human Rights Council must be faithful to the precepts of international law if it is to be respected in the world as a principled human rights body. It has so far shown only little awareness of the requirements of international human rights law and has certainly not been respectful of the principle that there must be justice for victims of gross human rights violations—wherever they take place.

**Policy options**

Since its establishment in 2006, the Human Rights Council has made minimal progress in protecting human rights. Many of the challenges that plagued the commission still face the council. One of the most pressing is the need for this political body to pursue a principled approach. Some key policy options for the future center on strengthening the protection and preventive roles of the council and enhancing its autonomy.

In order to enhance the protection mandate of the HRC, the General Assembly should add to the council’s mandate a provision requiring it to implement the responsibility to protect. The assembly, moreover, should specify that it expects the council to take action on all situations where a consistent pattern of reliably attested gross violations of human rights is
taking place.

The General Assembly should also invite the HRC to emphasize preventive strategies, particularly in its discussions of states under the Universal Periodic Review process. In order to provide an independent perspective in the council, the General Assembly could add 10 experts to the HRC’s membership, two from each UN geographical region. From the outset, the United Nations had included this as a policy option for the composition of bodies such as the Human Rights Council with a lofty mandate of being the flag-bearer of universal values. Thus far the council has fallen far short of this aspiration.
2 Institutional and procedural architecture

- Composition and member selection
- Agenda, methods of work, and rules of procedure
- The complaints procedure
- Subsidiary bodies
- A principal UN organ?
- Conclusion

This chapter discusses the Human Rights Council's composition and method of selecting members. It presents the core rules of procedure. It looks briefly at the council's subsidiary bodies and outlines the complaints procedure for handling petitions concerning human rights violations. Finally, it explores the idea of transforming the council into a principal UN organ, a prospect that is mentioned in General Assembly resolution 60/251 that established the council.

Composition and member selection

When the UN Economic and Social Council discussed the establishment of the former Commission on Human Rights, it considered three options regarding its membership: a commission made up solely of government representatives; a commission of experts; and a commission that included both states and experts. In the end ECOSOC decided to create a body with a membership of government representatives. However, while governments would be elected as members, they were supposed to consult the UN secretary-general on their candidates. Moreover, proposed government representatives were subject to confirmation by ECOSOC. As already noted in the preceding chapter, a consultation procedure was never established, and the confirmation procedure became a routine process of placing the names of designated representatives before ECOSOC.

Membership-related issues surfaced in the negotiations over the HRC's establishment. During the General Assembly's discussions on the body's founding resolution, the size of the council emerged as a serious issue. Universal membership was considered; and the merits of a much smaller council against a larger one were debated. Other significant points included: country qualifications for membership; the nature of voluntary commitments to be made by governments presenting their candidacy; the method of election; and the problem that regional groups often presented slates of candidates that corresponded to the number of vacancies. These candidates were consequently elected without a vote and without discussion of their merits or demerits. Reformers sought to change this practice so as to ensure that there would be individual votes on candidate countries.

The then high commissioner for human rights, Louise Arbour, favored a human rights body with a universal membership. She transmitted this idea to the UN High-level Panel on Threats, Challenges and Change, which included it among its recommendations in its report to Secretary-General Annan in 2004. The United States did not support this idea; and Annan rejected it and proposed instead a small Human Rights Council whose members would be elected by a two-thirds majority of the General Assembly. Annan's proposal was actively championed by the then US permanent representative John Bolton, but it did not win in the end. Instead, the assembly decided that members would be elected by a simple majority. Ambassador Bolton also strongly argued for a council with 32 members, which would be much smaller than the CHR's membership of 53. The General Assembly ultimately chose a membership of 47, with the following regional distribution: 13 African states; 13 Asian states; six Eastern European states; eight Latin American and Caribbean states; and seven Western
European and other states. The assembly also determined that the HRC's members would serve for a period of three years and would not be eligible for immediate re-election after two consecutive terms.

In theory, the General Assembly’s resolution called for council members to be elected individually, instead of by regional states. In practice, regional states have continued. The fact of the matter is that, if there are vacancies on the council in a particular region and the same number of candidates is presented from that region, in all likelihood the candidates presented will be elected. It is possible for the General Assembly to reject a particular candidacy, but if the regional group has achieved a consensus then the chances of this occurring are low. It has happened that countries have announced their candidacy but have withdrawn them in the face of lobbying by opposed governments and NGOs. Byelorussia, for example, announced its candidacy at one stage but vigorous NGO lobbying against it forced its withdrawal.

General Assembly resolution 60/251 specifies that countries aspiring to membership shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the council, and shall be reviewed under the universal periodic review mechanism during their membership term. When electing HRC members, states voting in the UN General Assembly are required to take into account the contribution of candidates to human rights promotion and protection as well their voluntary pledges and commitments. The General Assembly—by a two-thirds majority of the members present and voting—may suspend a council member if it commits gross and systematic human rights violations. In 2011, the assembly terminated the membership of Libya following a recommendation of the HRC.

Candidate countries also, in most instances, make voluntary pledges upon seeking membership. So far, the council itself has not sought to follow up on these pledges. This is theoretically possible under the UPR system, which reviews every UN member state once every four years. In practice, however, there has been little follow-up on voluntary pledges.

Policy perspectives
A number of policy issues arise for reflection. One is whether the council’s size should remain as it is, be reduced, or expanded to include all UN member states. A further policy question that would merit examination is whether elected government representatives should be either judges or academics. A good case could be made for this. A good case could also be made for expanding the council’s membership to include experts. A majority of governmental representatives plus a quota of independent experts would offer a good mix for a global human rights body. A third policy issue that would merit discussion in the General Assembly is whether the assembly might establish an expert group of, say, five judges or academics to review periodically the compliance of HRC members with their voluntary pledges.

Agenda, methods of work, and rules of procedure
The HRC’s agenda and framework were eventually agreed upon by council members in 2007 and were grounded in the principles of universality, impartiality, objectivity, non-selectivity, constructive dialogue and cooperation, predictability, flexibility, transparency, accountability, balance and inclusiveness/comprehensiveness, gender perspective, and implementation and follow-up of decisions. The agenda adopted in 2007 consisted of the following ten items: (a) organizational and procedural matters; (b) the annual report of the United Nations high commissioner for human rights and reports of OHCHR and the secretary-general; (c) the promotion and protection of all human rights including the right to development; (d) human rights situations that require the council's
attention; (e) human rights bodies and mechanisms; (f) the Universal Periodic Review; (g) the human rights situation in Palestine and other occupied Arab territories; (h) follow-up and implementation of the Vienna Declaration and Programme of Action; (i) racism, racial discrimination, xenophobia and related forms of intolerance, and the follow up and implementation of the Durban Declaration and Programme of Action; and (j) technical assistance and capacity building.

At least two issues are worth commenting upon regarding this agenda. First, at the request of the UN General Assembly, the former Commission on Human Rights had an item on its agenda since 1967 that dealt with violations of human rights worldwide. Under this agenda item, any UN member or accredited NGO could raise any situation or issue of gross violations of human rights. This annual debate allowed the possibility of reviewing human rights violations worldwide. A majority of council members deliberately decided not to include such an item on the HRC’s agenda, although item (d) in the preceding paragraph could be said to cover this. However, a specific item was included on the agenda on the human rights situation in Palestine and other occupied Arab territories. Israel and its supporters have consistently protested that this amounts to inequitable and discriminatory treatment.

In establishing institution-building measures in resolution 5/1 in June 2007, the council repeatedly placed a premium on the principles of cooperation and genuine dialogue aimed at strengthening the capacity of member states to comply with their human rights obligations. The HRC recalled that, in accordance with General Assembly resolution 60/251, its methods of work should be transparent, impartial, equitable, fair, pragmatic, clear, predictable, and inclusive. In this spirit the council called for briefings on prospective resolutions or decisions; open-ended information meetings by the council’s president; and informal consultations on proposals convened by the main sponsors. In a highly contested provision, the HRC stated that proposers of a country resolution have the responsibility to secure the broadest possible support for their initiatives (preferably 15 members) before action is taken. It is not clear whether this is an advisory or a mandatory provision. The council signaled that there was need for early notification of proposals; early submission of draft resolutions; early distribution of all reports; and restraint in resort to resolutions in order to avoid their proliferation.

The Bureau of the Human Rights Council consists of a president and four vice-presidents, one of whom serves as rapporteur. The bureau deals with procedural and organizational matters. It is required to share regularly the contents of its meetings with the council membership through a timely summary report. Given that the bureau only deals with procedural and organizational matters, it is open to discussion whether the bureau, together with the president, could react to urgent situations requiring immediate action, such as the despatch of fact-finders to brief the council. Advocates of the responsibility to protect would argue that the bureau should have such competence.

Regarding the council president’s informational meetings, HRC resolution 5/1 states:

The President’s open-ended information meetings on resolutions, decisions and other related business shall provide information on the status of negotiations on draft resolutions/decisions so that delegations can gain a bird’s eye point of view on the status of such drafts. These consultations shall have a purely informational function, combined with information on the extranet, and shall be held in a transparent and inclusive manner. They shall not serve as a negotiating forum.6

According to the procedural rules set forth in resolution 5/1, the Office of the UN High Commissioner for Human Rights shall act as a secretariat for the council. This is without prejudice to the right of the high commissioner
as representative of the secretary-general to make statements on any matter before the council.

The HRC meets regularly throughout the year and must schedule no fewer than three sessions per year, including a main session for a total duration of 10 less than 10 weeks. The council is based in Geneva. A High Level Segment of the council is held once a year during its main session in March. This is followed by a General Segment, in which delegations that did not participate in the High Level Segment can make general statements.

Special sessions may be held at the request of a council member with the support of one-third of the council’s membership. With a council membership of 47, this means that 15 other members must support the request. The special session must be convened as soon as possible after the formal request and in principle not earlier than two working days and not later than five working days after the formal receipt of the request. The duration of the special session shall not exceed three days (six working sessions) unless the council decides otherwise.

In principle the HRC applies the rules of procedure of the General Assembly’s main committees, as applicable. The participation of, and consultation with, observers, including states that are not council members, the specialized agencies, other intergovernmental organizations and national human rights institutions, and NGOs, are based on the arrangements and practices observed by the former Commission on Human Rights.

Even before the establishment of the United Nations, NGOs mobilized to prepare blueprints for a future world organization with a central mandate to promote and to protect human rights. At the San Francisco conference where the UN Charter was drafted, it was the lobbying of NGOs that brought about the human rights provisions and the stipulation in Article 68 that there would be a human rights commission.

From the CHR’s inception in 1947, NGOs contributed documents and ideas on the drafting of the Universal Declaration and the international covenants and participated as observers in the commission’s sessions. Ever since, NGOs have contributed to standard setting, research, fact-finding, the implementation of human rights treaties, the exposure of gross violators of human rights, and the development of policies and strategies for dealing with new human rights challenges. Human rights NGOs have been crucial to the UN’s discharge of its human rights mission.

In the years before its demise, some 2,000 or more NGO representatives participated in the CHR’s annual sessions. Diverse NGOs participated; some were long established and professional with solid human rights credentials—such as Amnesty International, the International League for Human Rights, the International Commission of Jurists and Human Rights Watch—while others were fledgling or small-scale organizations or government-sponsored NGOs (GONGOs). Given their invaluable role overall in the Commission on Human Rights, General Assembly resolution 60/251 encouraged their continued role, deciding that the participation of NGOs in the Human Rights Council “shall be based on arrangements, including ECOSOC resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities.”

The package of measures on institution building approved by the Human Rights Council in June 2007 contained other provisions concerning the participation of NGOs. The principles concerning the Universal Periodic Review called for ensuring the participation of all relevant stakeholders, including NGOs and national human rights institutions in accordance with resolution 60/251 and ECOSOC resolution 1996/31, in any decisions that the council may take in this regard. While observer states can take part in the working group stage of the UPR, NGOs cannot take part. In the phase of the adoption of the review outcome, “Other relevant stakeholders ... have the
opportunity to make general comments before the adoption of the outcome by the plenary. NGOs participate at this plenary stage.

On the process of the selection and appointment of special procedures mandate-holders, NGOs may suggest candidates. The new Human Rights Council Advisory Committee is urged, in the performance of its mandate, to “establish interaction with ... NGOs and other civil society entities in accordance with the modalities of the Council.”

The complaints procedure

HRC resolution 5/1 established a confidential complaints procedure for dealing with allegations of consistent patterns of gross and reliably attested violations of all human rights and fundamental freedoms occurring in any part of the world. The procedure was largely based on ECOSOC resolution 1503 (1970) as revised by ECOSOC resolution 2000/3. The revisions were intended to ensure that the complaint procedure be impartial, objective, efficient, victims-oriented, and conducted in a timely manner. The confidential nature of the procedure was retained “with a view to enhancing cooperation with the state concerned.”

The admissibility criterion requires that a communication not refer to a case already being dealt with by a special procedure or treaty body or another United Nations or similar regional complaints procedure in the field of human rights. This admissibility requirement is new, and its rationale is not entirely clear.

The procedure calls for two working groups to examine the communications and to bring to the HRC’s attention consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms. Both working groups are invited, to the greatest possible extent, to work on the basis of consensus and, in the absence of consensus, decisions are taken by simple majority of the votes. The first working group is a Working Group on Communications (WGC) consisting of five members of the Human Rights Council Advisory Committee, appointed for three years with the possibility of one renewal. The chairperson of the Working Group on Communications is expected, together with the secretariat, to undertake an initial screening of the communications based on the admissibility criteria before transmitting them to the states concerned. Manifestly ill-founded or anonymous communications are to be screened out by the chairperson and not transmitted to the state concerned. WGC members decide on the admissibility of the communication and assess the merits of the allegations of violations, including whether the communication alone or in combination with other communications appears to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.

The Working Group on Situations (WGS) consists of five representatives of council member states, one appointed by each regional group. Their appointment is for one year with the possibility of one renewal if the state concerned is a council member. WGS members are to serve in their personal capacity. So far there is no evidence whatever of this. The WGS is required, on the basis of the information and recommendations provided by the WGC, to present the council with a report and to make recommendations to the HRC on the course of action to take. All WGS decisions should be duly justified and indicate why recommended action has been put forward or the consideration of a situation has been discontinued. WGS decisions to discontinue consideration of a situation are to be taken by consensus, if possible, or by a simple majority of the votes.

Both working groups meet at least twice a year for five working days each period in order to promptly examine the communications. The heavy political influence on both these groups has yielded little or no practical benefit. Unfortunately, to date, the complaints procedure has been deeply politicized, and seasoned watchers have deemed it worthless.
What is innovative about the complaints procedure is that it provides for
the two working groups to meet at least twice a year. This could turn out to
be a useful development in improving the timeliness of the UN’s response to
situations of gross violations of human rights.

Subsidiary bodies
The former Commission on Human Rights had a Sub-Commission on the
Promotion and Protection of Human Rights (previously the Sub-Commission on
Prevention of Discrimination and Protection of Minorities). In the HRC, the sub-
commission has been replaced by an Advisory Committee which is discussed in
detail in Chapter 9. The former sub-commission had a Working Group on
Indigenous Populations that began its existence in 1982. In 2003, the Economic
and Social Council established a higher organ, the Permanent Forum on
Indigenous Peoples. There had been a point of view that the Working Group on
Indigenous Populations should give way to the Permanent Forum. The HRC,
however, decided to continue an Expert Mechanism on the Rights of Indigenous
Peoples. The former sub-commission also had a Social Forum, which the HRC has
retained. The HRC, however, replaced the former sub-commission’s Working
Group on Slavery and Slavery-like practices, which came into being during the
1970s, with a special rapporteur on slavery. The following sections discuss these
HRC subsidiary bodies, as well as its Forum on Minority Issues.

Expert Mechanism on the Rights of Indigenous Peoples
In HRC resolution 36, adopted at its sixth session on 14 December 2007, the
Human Rights Council decided to establish a subsidiary expert mechanism to
provide the council with thematic expertise on the rights of indigenous peoples.
The mechanism focuses mainly on studies and research-based advice and may
suggest proposals for the council’s consideration and approval but not adopt
resolutions or decisions. It determines its own methods of work, and reports
annually to the council.

The expert mechanism consists of five independent experts with due regard to
experts of indigenous origin. The mechanism invites the special rapporteur and a
member of the Permanent Forum to attend and contribute to its annual meeting.
Members serve for a three-year period and may be re-elected for one additional
period.

The mechanism meets once annually for up to five days. Its sessions may be a
combination of open and private meetings. The annual meetings are open to the
participation, as observers, of states; United Nations mechanisms, bodies,
specialized agencies, funds, and programs; intergovernmental organizations;
regional human rights organizations and mechanisms; national human rights
institutions and other relevant national bodies; academics and experts on
indigenous issues; and nongovernmental organizations in consultative status
with the Economic and Social Council. Meetings are also open to indigenous peoples’
organizations and NGOs whose aims and purposes are in conformity with the
spirit, purposes, and principles of the UN Charter, based on arrangements—
including Economic and Social Council resolution 1996/31 of 25 July 1996 and
practices observed by the Commission on Human Rights—through an open and
transparent accreditation procedure in accordance with the HRC’s procedural
rules.

Forum on Minority Issues
In HRC resolution 15, adopted at its sixth session on 28 September 2007, the
Human Rights Council established a Forum on Minority Issues to provide a
platform for promoting dialogue and cooperation on issues pertaining to persons
belonging to national or ethnic, religious, and linguistic minorities. This body is
entrusted with the task of providing thematic contributions and expertise to the
work of the independent expert on minority issues. The forum is expected to
identify and analyse best practices, challenges, opportunities, and initiatives for
the further implementation of the Declaration on the Rights of Persons Belonging
to National or Ethnic, Religious and Linguistic Minorities. Similar to the expert
mechanism, the forum is open to the participation of outside actors, including,
states, UN entities, NGOs, experts, and other relevant actors working on minority issues.

The forum meets annually for two working days, which are allocated to thematic discussions. The HRC's president appoints for each session, on the basis of regional rotation and in consultation with regional groups, a chairperson who is selected from among experts on minority issues nominated by council members and observers; the chairperson, serving in his/her personal capacity, is responsible for the preparation of a discussion summary, which is available to all forum participants.

The council's independent expert on minority issues is expected to guide the forum's work and prepare its annual meetings. The independent expert also produces a report that includes thematic recommendations and recommendations for future thematic subjects for the council's consideration.

The Social Forum

In HRC resolution 13, adopted at its sixth session on 28 September 2007, the Human Rights Council decided to preserve the Social Forum as a unique space for interactive dialogue between the United Nations human rights machinery and various stakeholders, including grassroots organizations, and underlined the importance of coordinated efforts at national, regional, and international levels for the promotion of social cohesion based on the principles of social justice, equity, and solidarity as well as for addressing the social dimensions and challenges of globalization.

The Social Forum meets annually for three working days. Its discussions are focused on the eradication of poverty in the context of human rights, including the right to development; capturing best practices in the fight against poverty; and the social dimensions of globalization. It holds an interactive debate with relevant thematic procedures mandate-holders of the Human Rights Council on issues related to the topics of the Social Forum, and it receives feedback from civil society. It formulates recommendations to be presented to relevant bodies through the Human Rights Council.

The HRC’s president appoints the Social Forum’s chairperson and rapporteur from candidates nominated by regional groups. As under the CHR, the Social Forum remains open to participation by interested stakeholders, including member states and UN bodies, especially mandate-holders of thematic procedures and mechanisms of the human rights machinery, the regional economic commissions, specialized agencies and organizations—in particular the United Nations Development Programme (UNDP), the World Bank, the IMF, and the World Trade Organization (WTO). It also allows for participation among accredited NGOs and others, in particular newly emerging actors such as rural and urban associations from the North and the South, anti-poverty groups, peasants and farmers’ organizations, voluntary organizations, youth associations, community organizations, trade unions, and worker associations, as well as representatives of the private sector, regional banks, and other financial institutions.

A principal UN organ?

This section addresses the issue of the HRC possibly becoming a principal organ of the United Nations. The General Assembly, in establishing the council, kept this option as a future possibility. In the first place, it needs to be noted that the establishment of the HRC as a permanent organ would require an amendment to the UN Charter that must be approved by the membership. The policy question arises as to whether the General Assembly should consider this option in the near future.

Senior OHCHR staff members have publicly contended that it is inconvenient to have council decisions await approval by the General Assembly at its annual sessions before financing is authorized for implementation of actions. This is a weighty argument; however, it would be premature to transform the council into a principal organ soon. In the first place, the council has not yet settled down to performing its functions in a
responsible manner and is entangled in numerous controversies that detract from its capacity to uphold human rights worldwide. The HRC needs time to resolve its difficulties before a decision is taken to make it a principal organ. Launching into a principal organ at this stage would require revisiting many of the difficult issues of composition and work methods and only further heighten the political dimensions of the council’s work. Thus, the idea of establishing a principal UN organ should be kept on the table for future consideration. In the meantime, the General Assembly could make suitable arrangements to finance the implementation of council decisions.

Conclusion
The conclusion that stands out from the foregoing discussion of the institutional and procedural architecture of the council is the highly political nature and functioning of the body.

Given a mandate to be the standard-bearer of human rights values worldwide, the great majority of HRC members act from narrow political perspectives. By not including on its agenda an item on the question of violations of human rights worldwide, the council effectively turns its back on a principled approach to dealing with situations of gross violations.

The emphasis on dialogue and cooperation sounds rich, but it is a pretext for vacuity. The participation of NGOs is basically tolerated rather than facilitated and encouraged. The council’s Advisory Committee, as we shall see in a subsequent chapter, continues many of the questionable features of the sub-commission, with governments still putting up many of their chosen favorites for election. Many members of the Advisory Committee, moreover, continue to take a highly politicized approach in considering complaints of alleged gross human rights violations. In short, there is little about the HRC’s institutional or procedural architecture that helps it to be an organ of human rights rather than an organ of crass politics.
Notes

Front matter

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3 Flanagan and Schear, Strategic Challenges, 32.
4 Flanagan and Schear, Strategic Challenges, 34.
5 Flanagan and Schear, Strategic Challenges, 37.
6 Flanagan and Schear, Strategic Challenges, 40.
7 Flanagan and Schear, Strategic Challenges, 40.
8 Flanagan and Schear, Strategic Challenges, 41.
10 The former Commission on Human Rights adopted the Paris Principles in 1992. They articulate human rights promotion and protection responsibilities for national institutions.
11 See the director's summary of the meeting, held in December 2009. The director's summary can be found on the website of the Ditchley Foundation: www.ditchley.co.uk.
12 See Bertrand G. Ramcharan, Contemporary Human Rights Ideas (London: Routledge, 2008), Table 9.2.
17 The charts are reproduced in Bertrand G. Ramcharan, Preventive Human Rights Strategies (London: Routledge, 2010).
23 Human Rights Council, General Assembly resolution 60/251, 3 April 2006.

1 Mandate and roles
2 Sohn and Buergenthal, ed., The International Protection of Human Rights, 11.
3 Sohn and Buergenthal, ed., The International Protection of Human Rights, 11.
4 Sohn and Buergenthal, ed., The International Protection of Human Rights, 11.
5 René Cassin's vision was of a Palace of Human Rights with several pillars representing justice, equality, liberty, and solidarity.
10 For an account of how the special procedures of the commission were established, see Ramcharan, The Quest for Protection.
11 This is based on a Secretariat document of May 2006: Commission on Human Rights Statistical Comparative Study.
12 Restatement (Second) of the Foreign Relations Law of the United States, Article 701.
13 Restatement (Second) of the Foreign Relations Law of the United States, Article 702.
14 Restatement (Second) of the Foreign Relations Law of the United States, Article 703.
15 See on this Bertrand G. Ramcharan, Preventive Human Rights Strategies (London: Routledge, 2010); and Bertrand G. Ramcharan, Preventive Diplomacy at the UN (Bloomington: Indiana University Press, 2008).

2 Institutional and procedural architecture
4 "Human Rights Council," General Assembly resolution, 60/251, 3 April 2006, para. 11.
6 HRC resolution 5/1, 18 June 2007.

3 The Universal Periodic Review
1 International Labour Conference, Report of the Committee of Experts on the Application of Conventions and Recommendations (Geneva, Switzerland:...
4 Legislative role
7. Vienna Declaration and Programme of Action, (UN document A/CONF.157/25), 12 July 1993. This is a selective listing from the topics covered in the declaration and programme of action.

5 Promotional and educational role
1. Inter-American Court of Human Rights, Velásquez-Rodríguez case, 4 Inter-Am. Ct. H.R. (ser C), para. 165.
4. The full text of the draft declaration can be found in the “Annex to Advisory Committee” resolution 4/2, adopted on 29 January 2010.

6 Preventive role
6. More details on these decisions are given in Chapter 8.

7 Fact-finding role
8 Protection role


9 The Advisory Committee

1. This section draws on an unpublished background note prepared for some members of the sub-commission as it discussed its future following the establishment of the Human Rights Council.

10 NGOs and the council


4. ECOSOC resolution 1996/31, Article 18.


7. ECOSOC resolution 1996/31, Articles 9, 12.


9. ECOSOC resolution 1996/31, Article 9.

10. ECOSOC resolution 1996/31, Articles 5–6.

11. ECOSOC resolution 1996/31, Articles 5–6.


11 Conclusions


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