
The United Nations Institutions: A Critical Analysis of Their Ability to Promote and Protect International Human Rights

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Introduction

After World War Two, the United Nations was founded and introduced the UN Charter, soon after the first modern international legal agreement to focus on human rights. Many nations accept the idea of international protection of human rights. Yet, the interpretation varies. There is an agreement in principle that is evident in the United Nations Charter, the Universal Declaration of Human Rights, and the formation of the Human Rights Council. This has led to a significant codification of standards, rules, and directives that serve as binding conventions in the international system. The UN Charter is a constitutional document delineating the institutional structures and functions of the UN system. The charter highlights the importance of human rights and proposes the promotion and protection of human rights as the key foundations of the United Nations. In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights and this later led to the formation of the Human Rights Council. On March 15, 2006 the UN General Assembly established the United Nations Human Rights Council (UNHRC), and this is seen as a successor to United Nations Commission on Human Rights (UNCHR). Even though there is widespread political acceptance of the idea of international protection of human rights, many human rights violations occur around the world. The failure of the United Nations systems to act promptly has resulted in numerous tragedies in Bosnia, Rwanda, Somalia and former Yugoslavia. This paper will critically assess and evaluate the legitimacy and effectiveness of the institutions of the United Nations in their ability to promote and protect human rights in the global system. This includes the International Bill of Rights; the Commission on Human Rights (1946–2006); the Human Rights Council (2006); the Vienna Conference (1993) and the Office of the UN High Commissioner for Human Rights (1994). The paper will also explore the political and legal foundations of the Universal Declaration of Human Rights and the capability of the United Nations in its role in the development of human rights worldwide and assessing the competence of its instruments, also considering the Vienna Conference (1993) that confirmed the varied interpretations of the meaning of universal human rights. However, this paper will not examine the International Covenant of Civil and Political Rights and the International Covenant of Economic, Social and Cultural Rights despite being a component of the International Bill of Rights. This paper will forego discussion of these elements as the primary purpose is to assess the key human rights institutions within the United Nations.

The International Bill of Rights and the Universal Declaration of Independence

The International Bill of Rights comprises of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic,

Social and Cultural Rights (1966). Susan Waltz offers a detailed history into the creation of the UDHR and suggests the document was formulated between specific elite nations (the West) at the time (2001). Stephen Marks supports Waltz's idea as during the Cold War, the terms "democracy", "freedom", and "human rights" often were used in opposition to communism until the early 1990s (2006). However, Jose Lingren Alves argues convincingly that the composition of states that created the UDHR was politically Westernised and therefore cannot be considered universal. The difficulty with the declaration is that it is not a formal international law because it was adopted as a resolution and not as a binding treaty. The UDHR may be considered outdated and requires possible revision and dialogue between the East and the West to ensure a compromise. Another setback, Drzewicki believes, is the deliberate resort to open-ended terms—such as 'promoting', 'encouraging', 'maintaining' and 'safeguarding'—that attributes no power functions to the United Nations organs such as the General Assembly, the Human Rights Council, or the Economic and Social Council (2004). Freeman notes the UDHR has a western bias in its "emphasis on rights rather than duties, on individuals rather than collective rights, on civil and political rather than economic, social and cultural rights, and its lack of explicit concern with the problem of imperialism". He concludes that the UDHR is an outdated document that was used to prevent a repetition of Nazism and requires updating.

The United Nations introduced measures to promote and protect human rights globally. These included the formation of the following: the Commission on Human Rights (1946–2006), the Human Rights Council (2006), and the High Commissioner for Human Rights (1994). The role of the Commission on Human Rights was to observe, assess, and report human rights violations in the international system. The commission comprised of 53 member states apportioned by region. The commission received criticism because of the permanent membership of certain countries (China, France, the Russian Federation, the United Kingdom, and the United States) who were suspected of having committed human rights violations and therefore undermining the confidence, credibility, and authority of the body. P. G. Lauren agrees with Terlingen that the Commission on Human Rights remained political, often protecting serious human rights offenders. Therefore, the politicisation of the Commission of Human Rights has negatively affected its ability to achieve effectiveness and legitimacy. A report in 2004 by the *Secretary-General's High-level Panel* writes:

'In recent years, the Commission's capacity to perform these tasks has been undermined by eroding credibility and professionalism. Standard-setting to reinforce human rights cannot be performed by states that lack a demonstrated commitment to their promotion and protection. We are concerned that in recent years states have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticise others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.'

Implications of the Vienna Conference

Before the creation of the Human Rights Council and whilst the Commission on Human Rights was a functioning body, the United Nations hosted the World Conference on Human Rights (also known as the Vienna Conference) in Vienna, Austria, on June 14 to June 25, 1993 (2010). This stressed that human rights are not only universal, but indivisible, interdependent, and interrelated. However, this was a reiterating a point that had been made at the Tehran Conference in 1968. Feeney believes there was recognition of the importance of gender in human rights abuses, specifically the campaign for women's rights (1993). Nevertheless, the conference did not address the issues raised about the problem of refugees and displaced people. The result of the conference led to the Vienna Declaration and Program of Action (VPDA). Kedzia advocates VPDA reflected the consensus of the international community to accept the links between human

rights, democracy and development (2009). Alston accepts the Vienna Declaration and Program of Action, but he was unable to ensure universal ratification by 2000 (1994).

Another result of the conference was the creation of the Office of the United Nations High Commissioner for Human Rights (2010). The High Commissioner for Human Rights (OHCHR) monitors human rights activities within the UN system and works alongside the UNHRC. The responsibilities of the OHCHR include promoting and protecting human rights worldwide by coordinating human rights activities and assisting other UN organs. This involves setting standards, monitoring, and implementing human rights activities to provide assistance to states with their human rights law and human rights education. A good example is the Columbia Office of the Office of High Commissioner for Human Rights. The office carried out field missions to vulnerable areas where the state has been weak or non-existent with the purpose of promoting preventive and protective measures for the communities. There are criticisms of OHCHR for being 'donor driven,' and as a result, the OHCHR proposed that the allocation of voluntary contributions should be decided or approved by member states. The human rights non-governmental organisations believe that requiring state approval of the use of extra-budgetary funds would be detrimental as it could lead to a decline in contributions, weaken the office's ability to act, and politicise the office's work. The OHCHR has strong guidelines. Additionally, the inclusion of international organisations and non-governmental organisations furthered strengthened their mandate. Ramcharan notes that urgent attention is required for the development of a reporting and monitoring system for the protection of the children (2005). He concludes, "The High Commissioner has a responsibility to protect in respect to international human rights law and international humanitarian law" (p. 5, 2005). However, there are two weaknesses to the OHCHR. First, there is a significant restriction on the availability of resources. Second, children's rights are not reflected across the full range of the mandate and activities.

The Establishment of the UN Human Rights Council

The *Secretary-General's High-level Panel* recognised a reform of the UNCHR was necessary and recommended, "the membership of the Commission on Human Rights to be expanded to universal membership". Furthermore, Lauren notes the problem created by the voting procedure for membership (2007). To become a member of the Commission the guidelines only required twenty-eight votes from the Economic and Social Council. This low threshold allowed states to represent regional groups further politicising the Commission. For example, in 2001, the Sudan, Sierra Leone, Uganda, and Togo were elected as members despite their blatant human rights violations. In addition, the terrorist attacks on September 11, 2001 shocked the United States. Immediate action followed, and the George W. Bush's administration took this opportunity to forward the war against Iraq. Kofi Annan's *In larger freedom: towards development, security and human rights* report proposed the establishment of a Human Rights Council with certain conditions such as being a standing body, members would be elected by the entire membership of the General Assembly, and a smaller membership allows the council to have a more focused discussion. This led to the UN General Assembly voting to replace the UNCHR with the UN Human Rights Council (HRC) created in 2006.

The structure of the council has had a major overhaul in terms of limiting the size of its members by an improved election process. As a result, the UNHRC plays a prominent role in human rights protection within the UN. Furthermore, the UN Human Rights Council meets more often compared to the former UN Commission on Human Rights. The UNHRC does have flaws such as African and Asian member states potentially have a considerable dominance in setting the agenda. The flaws of the UNHRC become apparent when the organisation failed to identify the Sudanese government's human rights violations, particularly in the Darfur region. Terlingen argues that institution building is the UNHRC's highest priority,

with human rights as the main focus within the organisation. Terlingen's argument for the creation of the UNHRC is persuasive though there are three difficulties to consider. First, due to the council only recently being created in 2006, it is difficult to assess their effectiveness without giving a sufficient period of time. Second, due to the focus on restructuring the body, measures to address current human rights violations have been delayed. Thirdly, the issue of the protection of national sovereignty versus the protection of human rights is currently debated. This is elucidated in the failure to intervene in Darfur, Sudan.

It should be noted that the formulation of the Human Rights Council (HRC) was borne out of a nearly unanimous dissatisfaction with the Commission on Human Rights, yet motivated by numerous profoundly diverse perceptions (Cox, 2010). The HRC is an international bureaucratic institution. Because of this, the HCR is subjected to the political actors that wield the greatest influence in the international system. Because of these political influences, the most disheartening development of the formulation of the HRC was the failure of member states to establish criteria that disallowed non-democratic states with poor human rights records to profoundly affect outcomes in the HRC (Cox, 2010). Certain characteristics changed very little from the HRC's predecessor. These include failing to institute some sort of mechanism that disallows states with abhorrent human rights records to hold seats, not significantly reducing the size of the institution, and the distribution of state types that are present in the HRC (Cox, 2010; Freedman, 2013). This dramatically calls into question the effectiveness of the institution that meant to replace and re-establish credibility regarding human rights. As Freedman (2013) reveals, from 2006–2009 selectivity occurred as a manifestation of a power struggle between member states and the United States. As a result, precious time and resources were diverted from areas with more pressing needs. such as the conflict in Darfur, Sudan. By member states selectively choosing to repeatedly single out the United States and Israeli human rights abuses, resources and time that could have been used to address other pressing human rights violations were instead used for political bickering.

In addition, a component of the Council involves the introduction of a Universal Periodic Review (UPR) that bases its reports from government to non-government organisation's contributions. International and non-government organisations are included in the discussion process, for example, *Amnesty International* called for an inquiry on May 31, 2010 into the deaths caused by Israel's military action and the UNHRC responded on June 2, 2010 by adopting a resolution to provide the dispatch of an independent fact-finding mission. This example shows an improved dialogue between these organisations. The UPR ensures that all states, including members of the council are subject to the review of their human rights record. Terlingen suggests the UPR allows holding states to become more accountable. Under the auspices of the UPR apparatus, the conception of which has been lauded as the Council's most innovative reform, the human rights record of every UN member state will be examined and judged every four years through a method of written reports and interstate discourse (Harrington, 2010). Historians of the United Nations system will note that the former Human Rights Commission established a similar reporting practice in the 1950s and 1960s, which was eventually abolished in 1981 because the reports produced were considered to be of little to no use (Gaer, 2007). Despite this revelation, Harrington asserts there are those that believe the UPR mechanism of the HRC will nurture a means to impartially assess every state's performance of its human rights responsibilities. Further, there is the hope the UPR apparatus will allow for the allocation of best practices among states, support interstate collaboration in the promotion of human rights, and enable the establishment of technical assistance by identifying states in need (Harrington, 2010; United Nations, 2007). If the UPR mechanism is an effective means for these aspired ends, it can be confidently asserted that the prospects for the promotion and protection of human rights will be greatly enhanced. However, if the HCR fails to take into account the shortcomings that occurred in the 1950s and 1960s, the Universal Periodic Review will surely become obsolete and be of little use to the international community. Despite these initial aspirations for the UPR, the political nature of the UN has reared its ugly head and disallowed,

thus far, effectiveness measures to come to fruition that were espoused previously.

Freedman (2013) offers a detailed analysis of the UPR to date. The author asserts that the UPR has been politicised in a number of ways: the apparatus has been deficient in equitable treatment of different states, especially those that have been singled out as “adversaries” of the main groups of the HRC. Freedman further elucidates that the first cycle of sessions exhibits regional manoeuvres, specifically where developing states protect each other through various means, consistent with other Council proceedings. Regionalism and group tactics used by blocs of states to shield those with lacklustre human rights records were employed during the first session of the UPR. This was enabled by the emphasis on cooperation and consent as the UPR’s main bases. As a result, states ignored human rights issues that were raised in the reviews, deflected attention away from gross and systemic violations, and avoided considering recommendations (Abebe, 2009). In light of these revelations, one would not be remised to assert the overall effectiveness of the first round of the UPR was a dismal failure. Blocs of states had the ability to obstruct and avoid the recommendations of the UPR. One such example is the African Group acting in accord during the Special Sessions to shield its regional ally, Sudan, throughout the Special Session that focused on the situation in Darfur. Perhaps with a commendable amount of foresight, there have been attempts made to push the HRC and its utilization of the UPR to adhere to its founding principles, namely from the United States, to avoid situations previously discussed.

Given the boisterous nature of the United States during the formulation of the UPR and the HRC, it is worth noting their role in the development of the Council. At the onset of the HRC, the United States remained apprehensive about fully committing itself to the newly formed body. This was evinced by the US declining to stand for full membership, opting for permanent observer status until the end of the Seventh Session. Observer status permitted the US to be present at all Council meetings, and to partake in all deliberations. The US took full advantage of this privilege and was not fearful about expressing its preliminary source of trepidation. The US was concerned that the HRC would be biased and opaque, continuing the politicisation that was rampant at the former Commission (United Nations, 2005). Further, the US unwaveringly expressed the necessity for dialogue, foregoing confrontation that was commonplace in the Commission, and the significance of involving non-governmental organisations (NGOs), national observers, and all other relevant stakeholders (Freedman, 2013). The US further stressed the HRC’s fundamental doctrines, including ‘the need to have clarity and transparency’, emphasizing the HRC ‘must follow clear and predictable guidelines’ (United Nations, 2007). The US regularly expressed to the body that there was the need for, ‘independent, impartial experts in order to maintain credibility’ (United Nations, 2007). The American delegation time and time again reminded the HRC of the need to enhance human rights apparatuses at the UN, citing the Secretary General’s report, particularly the robust denigrations contained within, that had spurred the HCR’s creation. Regardless of the motivations of the US, the Americans did attempt to inject some sort of accountability into the HRC—constantly reminding the body of its founding principles and the motives for its existence—espousing the necessity to remain objective and even-handed.

It is prudent for all states, especially the US, to heed the call for objectivism and even-handedness when examining the work of the HRC. If the HRC is to effectively engage in the protection of human rights the US must forego the application of double standards when it comes to addressing the human rights failures of its allies. Similarly, other member states must cease to unremittingly focus on Israel when comparing with states committing equal or worse levels of human rights violations (Freedman, 2013). If member states of the HRC are able to objectively and even-handedly address global human rights issues, the prospects for success of the organization are greatly enhanced. However, if states continue to act in a selfish manner, which has been the trend since the inception of the UN, the HCR will most certainly suffer the same fate as its predecessor. Member states of the HCR should seize this unique opportunity to uphold its fundamental principles and promote the protection of human rights, not to shield allies or promote national

security interests. Freedman offers a very pointed and negative assessment of the HRC activities thus far (2013). She asserts that the Council has failed, systematically, to protect and promote human rights, principally through its disregarding, or being prohibited from addressing, copious dire human rights situations. The most disappointing characteristic of the Council has been its continued politicisation, a characteristic that tremendously hinders the effectiveness of the HRC (Human Rights Watch, 2010).

Despite the bleak outlook for the HRC, there is still hope the organisation may be an effective institution. The Council should build upon its successes to develop a more effective institution. Human Rights Watch (HRW) articulates some of the successes of the Council, applauding the UPR for indicating that a collaborative framework can be used to deliberate human rights situations and that resolutions are not the only way to address human rights issues. HRW further endorses the UPR by asserting selectivity and double standards can begin to be overcome by cultivating a more collective approach to the analysis of specific situations, rather than avoiding engagement entirely. The HRW report also extols the use of independent commissions of investigation, fact finding missions, expert groups, the Council's increased use of topical procedures for particular country circumstances, and public hearings that allow victims and witnesses to engage directly in the work of the HRC. It should be noted, however, that the HRW report does acknowledge that the UPR is an unsatisfactory instrument for reacting to circumstances that necessitate persistent or urgent engagement by the HRC. In light of these achievements of the HRC, member states of the Council would be wise to further develop these successful experiences as a means to enhance the effectiveness of the HRC. If this is done, over time, the Council will most likely avoid the pitfalls that plagued the Commission and be able to live up to, more fully, its idealist fundamentals by meaningfully promoting and protecting human rights.

The human rights failures of the United Nations are often highlighted, but despite their weaknesses, one can argue the UN Charter and institutions constitutes a major development in progressive expansion of international human rights law. Sundberg believes the lack of a global enforcement mechanism inhibits the progression of human rights though admits that the special rapporteurs of the commission has had partial impact on accountability (2009). Furthermore, Sundberg claims the establishment of the International Criminal Court in 2002 is a significant step forward to enforce respect for certain human rights. In contrast, Forsythe considers the United Nations to be a decentralised and poorly coordinated system because the UN Human Rights Commission has been unable to resolve most human rights problems (2006). However, Forsythe recommends that the formation of UN High Commissioner for Human Rights has improved coordination and monitoring. The UN Charter can be also looked upon as the further harmonization of human rights. The UN Charter created the charter based organs responsible for the protection and promotion of human rights. The United Nations General Assembly and its subsidiary bodies can initiate studies on human rights issues such as the recent studies on human rights, human trafficking, indigenous people, and the study on children in internal conflicts. In accordance with article 13, the Charter also provides for the codification and progressive development of human rights law. The UN General Assembly has the power to establish committees on human rights issues such as the establishment of: the Committee for the Inalienable rights of the Palestinian people (2010); and the Special Committee to investigate Israeli practices affecting the human rights of the population of Arab occupied territories (2010). In addition, the Security Council is a principle organ of the United Nations that has the ability to put a human rights mandate into peacekeeping operations. The Security Council can consider gross violations of human rights that can threaten peace and security in accordance with articles 39–42 and recommend enforcement measures. Finally, the Security Council possesses the power to establish international criminal tribunals and examples include: the Special Court for Sierra Leone, and the Commission for Reception, Truth and Reconciliation in East Timor (2010).

Conclusion

This paper has shown there are weaknesses regarding the Commission on Human Rights on whether it served as a protector of victims of human rights violations or as a shield for violators. The latter is more evident, due to the Secretary-General's High-level Panel report and the creation of the Human Rights Council to replace the Commission on Human Rights. The establishment of the UN Human Rights Council is an important step for the promotion and protection of human rights. It has been established that member states must take into account the shortcomings of the Commission and build upon the successes of the HRC, incrementally improving the effectiveness of the Council. Furthermore, Kofi Annan former Secretary-General (2005) and Yvonne Terlingen (2007) provide strong persuasive arguments to justify the creation of the UNHRC. The Vienna Conference played a pivotal role in establishing the Office of the United Nations High Commissioner for Human Rights and together with the UNHRC ensured improved coordination and monitoring of human rights activities and investigating human rights violations. In addition, there should be recognition of peace and security as they are interwoven within human rights issues. The paper has focused on the positive and negative aspects of the UN Human Rights Council and the Office of the UN High Commissioner for Human Rights. Although, the United Nations continues to assert inter-dependence and promote human rights, the tension over the human rights doctrine is inevitable, when statesmen believe in differing political ideologies specifically regarding the Universal Declaration of Human Rights (Alves, 2000; Freeman, 2009; Waltz, 2001). It is clear there is a limited consensus on human rights doctrines due to the inability to differentiate between basic human rights and secondary human rights. While UN members are obligated to promote human rights domestically and internationally, there is no international agreement about the role human rights should play in foreign policy. It is essential states and the UN principle organs should work closer with each other. Consequently, the relationship between the UNHRC, OHCHR, and other UN bodies must mutually support one another and therefore enhancing the likelihood progress is achieved.

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