

Children and non-discrimination

Interdisciplinary textbook



CREAN

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CHILDREN AND NON-DISCRIMINATION

Interdisciplinary textbook

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Children's Rights Erasmus Academic Network
(CREAN)

With the support of the Lifelong Learning Programme of the European Commission.



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ISBN 978-9949-9538-8-2

University Press of Estonia, 2014

LIST OF ABBREVIATIONS

AJIL	American Journal of International Law
CAT	Convention against Torture and Other Cruel Inhuman Degrading Treatment
CED	Convention for the protection of all persons from Enforced Disappearance
CEDAW	Convention on the Elimination of Discrimination against Women
CERD	Convention on the Elimination of Racial Discrimination
CIEEL	Centre of International and European Economic Law
CoE	Council of Europe
CRC	Convention for the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council
ECRI	European Committee on Racism and Intolerance
ETS	European Treaty Series
EU	European Union
FAO	Food and Agriculture Organization
FRA	Fundamental Rights Agency
G.A.	General Assembly
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, Cultural Rights
ICJ	International Court of Justice
ILM	International Legal Materials
ILO	International Labour Organization
IMF	International Monetary Fund
NGO	Non-Governmental Organization
NHRIs	National Human Rights Institutions
OAS	Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
OJ	Official Journal
OSCE	Organization for Security and Cooperation in Europe
Res.	Resolution
S.C.	Security Council
UDHR	Universal Declaration of Human Rights

12 List of abbreviations

UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNTS	United Nations Treaty Series
UPU	Universal Postal Union
WGC	Working Group on Communications
WGS	Working Group on Situations
WHO	World Health Organization
WTO	World Trade Organization

**PART I:
LEGAL APPROACH TO
NON-DISCRIMINATION
OF A CHILD**

CHAPTER 1: AN INTRODUCTION TO THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS¹

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1. Introduction

The purpose of this teaching material is to navigate the reader through the complex topic of children's rights and non-discrimination. In order to do so we deemed appropriate to pursue this effort by explaining certain basic things about the international protection of human rights to which the principle of non-discrimination as such is incorporated.

The general principle of equality and non-discrimination penetrates and pervades all conventions, treaties, declarations and resolutions that were drafted after the creation of the United Nations.²

This is a principle that was firstly seen in its preliminary form within the Charter of the United Nations³ and then was fully expanded, enlarged and diversified in other international texts where it gained its true extent as a result of an effort to abolish all forms of discrimination. The United Nations has been quite successful in its struggle against discrimination.⁴

¹ The author wishes to express her gratitude to Mr. Manos Kalaintzis for his academic research.

² See, *Struggle against Discrimination*, Studies on Human Rights, UNESCO, France, 2004.

³ Art. 1, 3 of the Charter of the United Nations.

⁴ See for example among others the Convention on the Elimination of all forms of Discrimination (CERD) and its rich case law.

We can easily find and categorize the recognized grounds that discrimination can be based on: gender/sex, sexual orientation, race, color, descent and ethnic origin, nationality, language, religion and belief, disability, age, political or other opinion, marital, parental and family status.⁵

The above list is not exhaustive, as intolerance and prejudice are unfortunately common phenomena in a diverse and pluralistic environment. A comprehensive universal conventional framework has been dispatched in order to be mobilized in a perpetual fight with the issue of discrimination so as to safeguard the general principle of equality.

2. General Considerations about Human Rights evolution

The international protection of human rights is a new branch of international law, which has been developed in a rapid way after the 2nd World War and the adoption of the Universal Declaration of Human Rights (UDHR-1948)⁶. Even the theory of international law was adapted to new circumstances, since the individual becomes a subject of international law, protected additionally to domestic by international norms.⁷ An impressive corpus of rules and principles of international acts was adopted either conventional or declarative changing in a positive manner the position of the individual and the group of individuals in the national societies as well as at the international level.

The common ground for the evolution of human rights is the respect and protection of the dignity of the individual and worth of the human person despite the diversity of numerous cultures that make up today's world. Human rights can be seen as the ultimate status of progress in the evolution of humankind, as the core values for the survival and prosperity of all mankind. The whole meaning of human rights is enshrined and well-contained in the famous quote of Nelson Mandela: "*to deny people their human rights is to challenge their very humanity.*"⁸

The effort of the international community to protect human rights is constant in almost all parts of the world and evident in the proliferation of human rights treaties and establishment of control protection mechanisms at universal as well as regional level.

⁵ International Centre for the Legal Protection of Human Rights, *Non discrimination in International Law: A Handbook for Practitioners*, Interights, London 2011, p. 4–11.

⁶ G.A. Res. 217 A (III), 10 December 1948.

⁷ See in general T. Skouteris and A Vermeer-Kunzli(Eds.), *The Protection of the Individual in International Law, Essays in honour of J. Dugard.*, Cambridge University Press, 2007 p. 25.

⁸ Joint Session of the House of Congress, Washington DC, USA, 26 June 1990.

Nowadays, the theory of the three generations⁹ of human rights is considered obsolete, as we observe that due to the groundbreaking steps taken on the field, human rights are universal, indivisible, interdependent and inter-related.

2.1. Universal/ Regional Protection

Universal protection of human rights encompasses basically the study of the UN System, the human rights treaties adopted within the framework of the United Nations (UN), the procedures and mechanisms established by the principal or subsidiary UN bodies, the Specialized Agencies and other bodies or programs functioning within the UN System. Human rights protection never settles as long as violations are still being committed. It is an evolving and malleable area of international law with a great rate of adaptability, where new bodies are created, additional texts are drafted (i.e. Optional Protocols)¹⁰ and the protection is becoming more specialized and individualized (immigrant workers, people with disabilities, indigenous etc).

Regional Protection of human rights has also been developed in the past 60 years; starting with the European Convention of Human Rights and Fundamental Freedoms (1950), followed by the American Convention on Human Rights (1976), the African Charter on Human and Peoples' Rights (1981) and the Arab Charter on Human Rights (2006). A quite new development in the Asian Region is the ASEAN Human Rights Declaration (2012).¹¹

There are distinctions between the UN and the regional protection of human rights, and this reflects an incremental development of human rights law whereby principles and rules in these different systems either are, or are not consistent. This is evident in the fact that in other regions the progress of the establishment of regional human rights protection system is slow. For

⁹ The first generation includes civil and political rights which were justiciable (i.e. the violation of which gives the individuals access to the court), while the second generation includes economic, social and cultural rights which were not justiciable as well as the third generation of rights which are included in the African Charter of Human and Peoples' Rights of 1981 (i.e. the right to solidarity, self-determination, right to development and others). The abandonment of the three generations theory is due to the adoption of the Optional Protocol to the IC-ESCR according to which individuals can bring communications against their country before the relevant Committee and after the adoption of the Protocol amending the African Charter, creating an African Court for Human and Peoples' rights, with the right for individual application. A second Protocol to the African Charter merged the Court of the African Union and the Court of the Protocol, creating the African Court of Justice and Human Rights situated in Arusha.

¹⁰ Optional or Additional Protocols to a treaty are international acts which either add new human rights or amend certain provisions of the treaty or the mechanism of implementation.

¹¹ See P. Naskou-Perraki, *International Mechanisms protecting Human Rights*. Texts, comments, case law, Ant. N. Sakkoulas – Bruylant, Athens- Brussels, 2010, p. 25–46, 343–344, 446–448, 467–468, 535–536, 595–596, 613.

example, in certain sensitive parts of the world, i.e. the Arab states, it was only recently that a new Charter of Human Rights was adopted, and in Asia this effort was just finalized only last year. However, it should be noted that the level of protection granted by regional human rights instruments and control mechanisms is higher than that afforded by universal human rights treaties, mostly due to the political and cultural cohesion that each region demonstrates. The homogeneity of textures within a certain geographic terrain allows the protection to be oriented to the key-problems in ways that are more compatible to the civil components of those societies. The universal framework lacks agility and flexibility in terms of individuality, to which the concept of human rights is intimately and inevitably linked; meanwhile, the regional system is known for its vigorousness – a feature that is lost in the universal structure's immense complexity.

2.2. Basic Principles for the Protection of Human Rights

The basic principle of international human rights law lies with the territorial sovereignty and equality of states. All states have the primary responsibility to protect individuals under their jurisdiction as foreseen in national constitutions, national laws and laws ratifying international treaties. The prerequisite for the application of international law is the ratification of international conventions-protocols or other international acts by states.

2.2.1. Exhaustion of domestic remedies

Based on the above principle, individuals have to solve their problems within the national framework before appealing to international mechanisms. Consequently, the protection of human rights is mainly national¹², while international protection is subsidiary from the mechanisms' point of view. Individuals or groups of individuals are obliged to address the matter and provide adequate redress to the terms of this principle by applying local remedies.

¹² It is worth mentioning at this point that according to G.A. Res. 48/134 of 20 December 1993 (Paris Principles) each state is obliged to establish by legislation a National Human Rights Institution/ Committee (NHRIs), which will be independently working as an advisory body to the government and the parliament for the implementation of the international treaties and the promotion and protection of human rights. The principles envisage that NHRIs may have a "quasi-judicial" power in order to work effectively. See among others B. Burdekin, *National Human Rights Institutions in the Asia-Pacific region*, The Raoul Wallenberg Institute Human Rights Library, M. Nijhoff, Leiden, 2007, p. 7 et seq., Asia-Europe Meeting, National and Regional Human Rights Mechanisms, Proceedings of the 11th Meeting on Human Rights, Prague, 20–25 November 2011, Asia-Europe Foundation, Singapore, 2012, p. 18 et seq.

2.2.2. Hierarchy of Human Rights

There are certain rights included in constitutions as well as in international treaties which may not be derogated under any circumstances, mainly war or public emergency threatening the life of the nation. The derogation clause is common in human rights treaties and includes certain human rights which are protected under any circumstances.¹³

The fact that four of these rights – the right to life, the prohibition of torture, prohibition of slavery, and the non-retroactivity of criminal offences – are common to all derogation clauses, is evidence of their status as *jus cogens*¹⁴ rules of international human rights law, higher in the hierarchical denomination. The principle of non-discrimination can be added to this category, since every human rights act includes a non-discrimination clause.¹⁵

2.2.3. Sources of human rights law

The basic sources of human rights law are the conventions. There are more than 300 international Conventions, Treaties, Protocols, Covenants and others, adopted by the General Assembly of the UN, the Specialized Agencies and the Regional Organizations. For educational reasons sources can be divided in general sources – as the two Covenants on Human Rights and on a regional level the European Convention on Human Rights, the American Convention of Human Rights, the African Charter on Human and Peoples' Rights etc. – and special sources that come from texts with a limited and specific scope, for example the Convention on the Elimination of Racial Discrimination, the Convention against Discrimination in Education, the Convention for the Elimination of Discrimination Against Women, the Convention on the Rights of the Child, the Convention on the Status of Refugees etc.

Each state ratifying a treaty undertakes the obligation to introduce it to its internal legal order and implement it in good faith, without the principle of reciprocity.¹⁶

¹³ These are art. 4 of the International Covenant of Civil and Political Rights, art. 15 European Convention of Human Rights, art. 27 American Convention on Human Rights, and art. 4 Arab Charter on Human Rights.

¹⁴ Art. 53 of the Vienna Convention on the Law of Treaties under the title: "Treaties conflicting with a peremptory norm of general international law (*jus cogens*)" reaffirms: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." See D. Shelton "Normative Hierarchy in International Law", 100 AJIL, 2006, p. 291.

¹⁵ See i.e. UDHR art.1,2, ICCPR and ICESCR art. 2, 3, CRC art. 2, CRPD art. 5, 6 etc.

¹⁶ Reciprocity contains equivalent treatment of foreign citizens in another state. The principle of reciprocity does not apply as far as human rights protection is concerned. For example

Protecting Human Rights is a rule of national obligation. State organs implement national law or international treaties ratified by national parliaments. International protection is subsidiary and intervenes only as rule when national protection fails.

3. The protection of Human Rights at the Universal Level: the United Nations System

3.1. The United Nations Charter

The UN Organization¹⁷ has been a pioneer in human rights protection since its establishment. This of course did not come unchallenged. In its preamble, the Charter “proclaims the faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women...” and in a number of its provisions emphasizes the importance that is rested upon these rights.¹⁸ According to article 1 among the purposes of the Organization is “respect for human rights and for fundamental freedoms for all without discrimination as to race, sex, language or religion”. In art. 1, 3 the Charter undertakes the burden to coordinate all states to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms. This provision transformed the face of the world as with its intentional vagueness it brought an unintentional development, a component that the drafters of the Charter did not foresee.

In addition, the obligation of states to encourage the respect for human rights and cooperation with the Organization’s assistance in order to successfully achieve this very purpose is mentioned in other provisions of the Charter. Article 2, 7 of the Charter stipulates that the Organization should not “intervene in matters which are essentially within the domestic jurisdiction of any state”.¹⁹ In recent years the international community has identified the need to shift its unyielding interpretation in order to adapt to the new status quo. We should take under consideration the fact that human rights protection does not solely fall within the domestic jurisdiction, especially when the states fail to respond effectively to atrocities.²⁰

if a country violates the rights of citizens of the state X, that does not imply that the other state will do the same to the citizens of the first state.

¹⁷ The UN Charter was adopted in 1945, came in force on the 24th October 1945, with 193 member states, as of February 2014. See UNTS vol. 1.

¹⁸ Arts.1, 8; 13(b); 55(c); 62(2); 76(8) of the UN Charter.

¹⁹ See also G.A. Res. 2131(xx), 21.12.1965, G.A. Res. 2625(XXV) of 1970, together with the Final Act of Helsinki of 1975.

²⁰ A characteristic example is the Apartheid in S. Africa and the condemnation by the G.A. Res. 2506 (XXIV) of 21.11.1969 as well as humanitarian intervention and the new notion “responsibility to protect” giving the option to the international community to intervene in cases of crimes against war, genocide, etc.

It is now accepted that the human rights provisions of the Charter have the force of positive international law. As such they establish basic duties that all members must fulfill in good faith.²¹

3.1.1. Main Institutions protecting Human Rights

The main Institutions of the UN, entrusted to pursue the principles and purposes set forth in the preamble and the 1st article of the Charter, are the General Assembly (G.A.) and the Economic and Social Council (ECOSOC). They have been vested with the powers to institute subsidiary organs²² in order to assist them in their mission. Within that competence, a variety of bodies, Commissions, Committees and Sub-Committees have been created to which the Organization has delegated specific functions in the field of human rights promotion and protection.²³ These organs and institutions comprise a quite complex, but effective structure that operates in the framework of the Organization.

3.1.1.1. *The General Assembly*

The G.A. is the principal organ of the UN, whereby all member states participate with full competence to deal with issues that fall within the scope of the Charter to ensure the realization of human rights and fundamental freedoms for all in respect with the principle of equality and non-discrimination.²⁴

Within its context operate six Committees, each of them dealing with human rights within their mandates as well.²⁵ Significant is the role of the third Committee of the G.A. (Social, Cultural and Humanitarian Committee), the fourth Committee (Special, Political and Decolonization) both of which have contributed heavily to the promotion of human rights. Apart from those the sixth Committee (Legal), with a standing-setting process, constitutes a major forum of negotiations for new international legal instruments on human rights as well.

At times, although not on a frequent basis, the G.A. had recourse to the advisory proceedings mechanism before the International Court of Justice (ICJ), in order to receive a clarification and a certain interpretation on questions of international law, dealing with human rights.²⁶

²¹ Namely Arts. 1,3, art. 8, art. 13, art. 55a,c, art. 62,2, art. 73 a,c of the Charter.

²² See Arts. 13, 55, 56, 62 and 68 of the Charter.

²³ Rh. K.M.Smith, *Textbook on International Human Rights*, Fifth Edition, OUP, Oxford, 2012, p. 56–82.

²⁴ See Art. 13 of the Charter.

²⁵ See, *Basic Facts about the UN 2014*, UN Department of Public Information, New York 2013, pages 24–25.

²⁶ See Advisory Opinions of ICJ i.e. *Legality of the Threat or Use of Nuclear Weapons* (1996) and most recently, in the case of *Legal Consequences of the Construction of the Wall in the*

It has also established various subsidiary bodies under the mandate of carrying out its duties and has contributed to the adoption of a number of international Conventions and Declarations, starting with the adoption of the UDHR.

Since then, a long string of international Conventions has followed; some of these incorporate a mechanism of protection (Commission or Committee).²⁷

For the purpose of this book, special attention will be focused on the Convention on the Rights of the Child (1989) and the three Optional Protocols, the first on the rights of the Child on the involvement of children in armed conflict (2000), the second on the sale of children, child prostitution and child pornography (2000), and the third on a Communications Procedure (2012). The CRC is considered to be the most complete Convention on the protection of human rights since it incorporates all categories of human rights (civil, political, economic, social and cultural) as well as special categories of children like refugees, disabled, immigrants and others.

The G.A. also adopts a prolific number of resolutions, which although of a legally non-binding nature, make a particular contribution to the formation of international law and the emergence of other valuable aspects for consideration. This kind of decision is often referred to as soft law; in other words

Occupied Palestinian Territory (2004) Especially in the latter case this was deemed an alternative means of using pressure to stop possible or existing human rights violations, South African presence in Namibia (1971).

²⁷ As for the International Convention on the Prevention and Punishment of the Crime of Genocide (1948); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949); the International Convention on the Elimination of All forms of Racial Discrimination (1965); International Covenant on Civil and Political Rights (1966) and the Optional Protocol of the Covenant on Civil and Political Rights (1966) and the Second Optional Protocol of the Covenant on Civil and Political Rights, aiming at the abolition of death penalty (1989); International Covenant on Economic, Social and Cultural Rights (1966) and the Optional Protocol of the Covenant on Economic, Social and Cultural Rights (2008); Convention Relating to the Status of Stateless Persons (1954); Convention on the Reductions of Statelessness (1961); Convention on the Non-Applicability of the Statutory Limitation to War Crimes and Crimes against Humanity (1968); International Convention on the Suppression and Punishment of the Crime of Apartheid (1973); Convention on the Elimination of all forms of Discrimination Against Women (1979) and the Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women (1999); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), International Convention for the Protection of All Persons from Enforced Disappearance (2006), Convention on the Rights of Persons with Disabilities (2006) and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006).

For more details see: H.J. Steiner, P. Alston, R. Goodman, *International Human Rights in Context*, Third edition, Oxford, 2008, p. 151 et seq.

the resolutions integrate norms which reflect the member states' intention regarding the evolution of positive law in the future through the adoption of either an international convention or customary law. Soft law as a term describes the maturing process of international law; it marks the transmutation of a concept from a political and moral principle to a legal right and consequent obligation.

Finally, one should not underestimate the G.A.'s contribution to the gathering and the examination of all the reports submitted by the various Committees through ECOSOC with regard to the ratification and implementation of treaties and conventions that are signed by the member states. It is the universality of such a forum that adds immense pressure to a state, which constantly violates its obligations under international treaties and is reported in front of the wholesome of the international community through the concluding reports, which are published by the relevant committees for each state.²⁸ Regardless of the non-binding character of this institution's decisions, its input to human rights is enunciated merely in the frequent citation of the topic. One of the most characteristic examples on the issue of non-discrimination was the phenomenon of apartheid and the discrimination of African people in South Africa. This incident led many organizations to expel South Africa from their list of members.²⁹

3.1.1.1.1. Subsidiary bodies of the General Assembly: The Human Rights Council

The Human Rights Council (HRC) was created³⁰ as a subsidiary body of the G.A.³¹, replacing the Commission on Human Rights which operated initially under ECOSOC³² and had been many times a subject of criticism for its unsatisfactory work as well as its membership. The HRC is composed of 47 members who are persons of high moral character and qualifications, real experts regarding the promotion and protection of human rights.³³ The HRC is assisted by a number of special rapporteurs and independent experts who

²⁸ See the CRC Committee's Concluding Reports on different states parties.

²⁹ ILO and UPU.

³⁰ G.A. Res. 60/251, 15 March 2006. K. Annan, In Larger Freedom: Towards Development, Security and Human Rights for All, G.A., A/59/2005/Add.3,26/05/2005, § 182.

³¹ N. Schrijver, The UN Human Rights Council: A new "society of the committed" or just old wine in new bottles, in Skouteris Th., Vermeer-Kunzil A. (eds), The Protection of the individual in international law. Essays in honour of John Dugard, 2007, p. 181.

³² Art. 68 of the Charter, The Commission was created in 1946, while in 1947, the Sub-Commission on the Prevention of Discrimination and the protection of Minorities was established.

³³ 13 from Africa, 13 from Asia, 6 from Eastern Europe, 7 from Western Europe and others, and 8 from Latin America and Caribbean.

offer services on a free-salary basis.³⁴ An Advisory board of 18 independent experts assists the work of the HRC.

The main functions of the HRC are among others to 1) promote education and human rights learning, to 2) contribute to the full implementation of human rights' obligations, to 3) review periodically on a global level the implementation of human rights, to 4) cooperate closely with governments, regional organizations, national committees on human rights and the civil society, to 5) submit an annual report to the G.A.

Individual communication

The procedure of individual communication was based on the "1503" procedure of ECOSOC.³⁵

The HRC was instructed by the G.A. to upgrade within one year, if deemed necessary, the mechanisms, the function and the competence of the former Commission on Human Rights with the purpose of establishing a system of special procedures on individual communication. The latter would be judged – objectively – on the effectiveness of the protection of the alleged victim.

According to Resolution 5/1³⁶, the communication that is admitted before the HRC shall fulfill the following requisites:

- it should concern any human rights violations of any state and under any circumstances;
- it should maintain its confidentiality;
- it should not be anonymous or ill-manifested – otherwise it will not be admitted to the Working Group on Communications (WGC) which examines the communications along with the Secretary-General;
- any domestic remedies should have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged;
- should it become admitted, to be communicated to the state concerned in order for the latter to form its arguments.

³⁴ The Council deploys numerous rapporteurs each year. The institution is designed to offer valuable insight in specific aspects of human rights, and eligible for positioning are accredited experts on the field. Especially on Child protection: i) Special Rapporteur on trafficking in persons, especially in women and children; ii) Special Rapporteur on the sale of children, child prostitution and child pornography; iii) Special Rapporteur on the right to education; iv) Independent Expert on minority issues.

³⁵ G.A. Res. 60/251§ 5 which was modified by ECOSOC Res. 2000/3 and the decision of the Human Rights Council under the title "Human Rights Council: Institution-Building", ECOSOC Res. 1503 (XLVIII) 27 May 1970.

³⁶ Res. 5/1 of the HRC.

The WGC, composed of five members of high integrity, examines the admissibility of the communications. The WGC under the HRC Complaint Procedure refers particular situations for examination to the Working Group on Situations (WGS). The WGS makes recommendations about the necessary measures to be taken. The HRC shall take the final decision.

Special procedures

The UN Special Procedures is deemed to be an effective and flexible mechanism. The term “Special Procedures” includes individuals variously designated as “Special Rapporteur”, or “Independent Expert”, Working Groups usually composed of five independent experts, “Special Representative of the Secretary-General” and “Representative of the Secretary-General”. According to this mechanism, a limited number of mandateholders are mandated by the HRC to investigate the situation of human rights in all parts of the world, irrespective of whether a particular government is a party to any of the relevant human rights treaties.

In order to maintain the integrity of Special Procedures, the Coordination Committee was established having as main tasks to enhance the coordination among mandate holders and to act as a bridge between them and the Office of the High Commissioner for Human Rights (OHCHR), the broader UN human rights framework, and civil society, thus promoting the standing of the Special Procedures system.

3.1.1.2. ECOSOC

This UN organ consisting of 54 members is authorized by the Charter to enact laws to promote respect and the guarantee of human rights and fundamental freedoms, to draft treaties and to submit them to the G.A. for approval, to convene international conferences on human rights, and to set up Committees on the protection of human rights. The Charter specifically provides that ECOSOC shall promote “higher standards of living, full employment, and conditions of economic and social progress and development...[as well as] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”³⁷ Following the agreement between UN member states and Specialized Agencies, ECOSOC may also receive reports on the implementation of ECOSOC’s decision and the G.A.’s recommendations by the states and communicate its observations regarding the aforementioned reports of the G.A. in its annual report. The Commissions which function within the context of international treaties that are adopted by the G.A., submit their reports to ECOSOC, which are then submitted to the G.A.

³⁷ Art.55 (a) and (c) of the Charter.

ECOSOC is linked to a number of Specialized Agencies and coordinates their activities and collaborates with the civil society via NGOs.³⁸ It has also created a number of subsidiary bodies.³⁹

3.1.1.3. *The Security Council (S.C.)*

The S.C. has occasionally tackled issues with regard to violations of human rights while its main mandate is the preservation of international peace and security. When international peace is under threat due to violations of human rights, the S.C. may act in accordance with Chapter VII of the Charter.

It is noteworthy that in cases where violations of human rights are implicating a permanent member state of the S.C., the latter was stalemated leading to inaction due to the exercise of the veto power.⁴⁰ After the end of the Cold War, the Security Council has become quite active and initiated a number of measures in order to safeguard peace and security worldwide. It has taken special measures to confront situations in Sudan, Angola, Afghanistan, Congo, and Libya etc in the context of Chapter VI and VII of the Charter, while creating ad hoc Criminal Tribunals to effectively deal with humanitarian law violations.⁴¹

The S.C. has established the Working Group on Children and Armed Conflict⁴², in monitoring and reporting on children affected by armed conflict.⁴³ The Working Group is mandated to: a) review reports on violations against children, b) develop and implement national action plans of children in armed conflict⁴⁴, c) make recommendations to the S.C. on measures to promote the protection of children affected by armed conflict. The Secretary General drafts periodic reports, which are submitted to the Working Group for consideration and are officially presented by the Special Representative for Children in armed conflict.⁴⁵ After thorough assessment of the situation, the Working Group dispatches recommendations to the conflicting parties.

³⁸ Art. 63 of the Charter.

³⁹ Namely the Commission on Population and Development, Commission for Social Development, the Commission on Sustainable Development, the Commission on Status of women, and the Commission on Crime Prevention and Criminal Justice.

⁴⁰ i.e. Syria 2013.

⁴¹ The S.C. by Res. 808 and 827 (1993) established the International Criminal Tribunal for the Former Yugoslavia and by Res. 955 (1994) the relevant for Rwanda.

⁴² S.C. Res. 1612 (2005).

⁴³ According to humanitarian law, there are six main violations against children in situations of armed conflict: killing or maiming of children; recruitment or use of children as soldiers; rape and other grave sexual abuse of children; abduction of children; attacks against schools or hospitals; denial of humanitarian access for children.

⁴⁴ S.C. Res.1539 (2004).

⁴⁵ The first Special Representative ever to be appointed is Mrs Leila Zerrougui from Algeria, who was granted the rank of the Under-Secretary General.

The latest recommendations were issued in 2013 and dealt with the situations in South Sudan, Democratic Republic of Congo, Central African Republic, Philippines and Syrian Arab Republic.

3.1.1.4. *The International Court of Justice (ICJ)*

The ICJ does not entertain jurisdiction for cases that concern individuals, however it may hear interstate petitions that regard the violation of conventions which protect human rights or concern the interpretation of the provisions of these conventions.⁴⁶ The ICJ has promoted human rights by examining in a series of jurisprudence the character of several human rights provisions under the prism of jus cogens rules or erga omnes obligations.⁴⁷

3.1.1.5. *Secretary General (SG)*

The S.G. participates in many meetings of the UN bodies and has often been invited to accomplish an important role in the field of human rights. The S.G. may “bring to the attention of the S.C. any matter which in his opinion may threaten the maintenance of international peace and security” and uses his “good offices” confidentially to raise human rights concerns with member states, including issues such as the release of prisoners and commutation of death sentences. Results of such communications are reported to the S.C. The world has witnessed the paramount contribution of the S.G. in the maintenance of peace, security, and the promotion of human rights and the reform of the Organization through his reports to the 3 principal organs (G.A., S.C., ECOSOC) that intend to draw their attention on certain urgent matters while giving valuable insights.⁴⁸

3.1.1.6. *UN High Commissioner for Human Rights (HCHR)*

In 1993, the UN established the new position of the HCHR.⁴⁹ He/She has the rank of the Deputy Secretary General and is appointed for four years with a possibility of one term renewal, following a recommendation by the SG with the approval of the G.A.

The High Commissioner carries out the “good offices” with regard to the protection of human rights on behalf of the SG. The HCHR is deemed to be

⁴⁶ i.e. Bosnia-Herzegovina vs. Serbia and Montenegro in 1992, Croatia vs. Serbia and Montenegro in 1999 violation of the Convention against the Crime of Genocide.

⁴⁷ Erga omnes obligations mean that all states can be held to have a legal interest in their protection. Barcelona Traction (1970), one of the most world renowned cases in the history of the court, Nicaragua v. USA (1986), Portugal v. Australia (1995), Legality on the threat or use of Nuclear Weapons (1996 – Advisory Opinion), Bread (1998), LaGrand (1999), F.E. Schwelb, The ICJ and Human Rights clauses of the Charter in 66 AJIL., p. 337–350.

⁴⁸ See Arts. 97–99 of the Charter.

⁴⁹ G.A.Res.(48/141, 20.12.1993) and Arts. 1, 13, 55, of the Charter.

the UN official with main responsibility for human rights related activities. It is his/her responsibility to promote and protect human rights for all and to maintain a continuing dialogue with member states bringing to light violations of human rights that occur worldwide. The HCHR takes action, either in the form of cooperation and coordination of activities or through diplomatic or public pressure to governments in order to stop the violations and prevent their recurrence. Specifically, the HCHR shall bear the responsibility for all the activities undertaken under the auspices of the UN with regard to human rights, i.e. crisis management, prevention and early warning, assistance to states in periods of transition, promotion of substantive rights, coordination and rationalization of the human rights programme.

His/Her tasks also include the international cooperation on human rights affairs, the encouragement and the coordination of the UN system for any activities in the field of human rights, the provision of support to organs, bodies or Committees (as set up by the various international conventions) that deal with the protection of human rights, the undertaking of preventive action for violations and prompt response to violations of human rights, the encouragement of establishment of national committees on human rights, and the dissemination of information and provision of technical assistance when deemed necessary for the protection of human rights. The HCHR shall cooperate with governments, judicial bodies, regional organizations, universal organizations, NGOS, civil society, and help in the promotion of the protection of human rights on a national level in accordance with the international human rights conventions.

3.2. Specialized Agencies

The UN Specialized Agencies are intergovernmental organizations incorporated into the UN system, which are active in a constrained and specialized field.⁵⁰ They function independently and they co-operate with the UN. They have their own institutions and they shape up their own policies on their fields of specialization and, thus, the field of human rights if it falls within their competence. Some of the Specialized Agencies whose mandate includes the protection of human rights are the International Labour Organization (ILO) with more than 190 Conventions some of which are referring to the protection of the Child⁵¹, the UN Educational Scientific and Cultural Organization (UNESCO) with a characteristic Convention against Discrimination in Education (1960) and the Additional Protocol (1962) including a mechanism for

⁵⁰ See Art. 57, 63 of the Charter.

⁵¹ In particular ILO Conventions protecting Children among the recent ones are 182 and 190 (1999).

protection⁵², the World Health Organization (WHO), as well as the Food and Agriculture Organization (FAO). There are also other international organizations that have recently developed a human rights strategy in certain fields of their activities such as the World Bank, the International Monetary Fund (IMF), and the World Trade Organization (WTO). Apart from the aforementioned agencies, the UN has created a number of bodies and programs such as the UN Conference on Trade and Development (UNCTAD), the Office of the UN High Commissioner for Refugees (UNHCR), the UN Population Fund (UNFPA), the UN Children's Fund (UNICEF), the World Food Programme (WFP), and the UN Human Settlement Programme (UN-Habitat).

3.3. Main Conventions Protecting Human Rights

In the framework of the UN, some human rights treaties are characterized as of great value. Apart from the provisions of the UN Charter, the UDHR, the two Covenants and their Protocols constitute the "Bill of Human Rights" at a universal level. Thus, special emphasis will be given to these international instruments.⁵³

3.3.1. Universal Declaration of Human Rights (UDHR)

The UDHR⁵⁴ was the first human rights instrument to be adopted by the UN. It is comprised by a preamble and 30 articles and enshrines all civil, political, social, economic and cultural rights. It is a unique mixture of rights of the most diverse nature.⁵⁵ The proclamation of the Article 1 is of utmost importance and its meaning reflects the evolution of human rights legal instruments: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." This is the very first time that a conventional text makes such a clear cut to ensure and reaffirm the inherent character of equality in all of its forms, with a special emphasis on equality in terms of rights. No human being shall be deprived of his/her rights as he/she is born bearing them in his/her bare existence. Article 2 comes to solidify the general principle of equality and non-discrimination in a triumphant manner.⁵⁶

⁵² Human Rights: International Protection, Monitoring, Enforcement, J. Symonides ed., UNESCO Publishing, 2003 p. 91–134.

⁵³ Non-discrimination in International Law: A Handbook for practitioners, o.p, p. 4–11.

⁵⁴ G.A. Res.217(A) III,, 10 December 1948.

⁵⁵ See L. Henkin, The International Bill of Rights: The Universal Declaration and the Covenants, in R. Bernhardt and J.A. Johowicz (eds), International Enforcement of Human Rights, 1, 1987, Ph. Alston, Reflection on the Universal Declaration of Human Rights, 50th Anniversary Anthology, M. Nijhoff, The Hague, 1998, p. 28 et. seq.

⁵⁶ A. Eide, G. Alfredsson, G. Melander, A. Rehof, A. Rosas(eds.) The Universal Declaration of Human Rights: A Commentary, Scandinavian University Press, Oxford, 1992.

As a G.A. resolution, the UDHR lacks a legally binding background and thus was at first seen as vague and as an effort to put to rest peoples' rightful demand. Its purpose was to provide "a common understanding of human rights, according to its preamble, and to serve as a common standard of achievement for all peoples and all nations..."⁵⁷

Since its adoption, however, a domino of legal acts has followed, which in their vast majority used the UDHR as a basis and depicted the Declaration's content reaffirming that way its colossal significance. The multi-dimensional legal efflorescence that followed in the subsequent few decades vindicated the drafters of the UDHR and gave the document the high status that it deserved, as customary international law or as including general principles of law *erga omnes*.

3.3.2. International Covenant on Civil and Political Rights (ICCPR)⁵⁸

The ICCPR, adopted in 1966, lists a number of civil and political rights, more than the UDHR, as well as obligations that states parties have to implement after ratification. To these belong, among others, the principle of non-discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property or birth (art. 2,1)⁵⁹, as well as the protection of members of ethnic, religious or linguistic minorities and their right to enjoy their own culture, to protest and practice their own religion, or to use their own language (art. 27).⁶⁰

The mechanism provided by the Covenant is the *Human Rights Committee*, a body of 18 independent experts (arts. 40–41) with the main task to monitor the implementation of the Covenant.

All states parties are obliged to submit reports to the Committee on their progress of implementation on the civil and political rights of the Covenant. Additionally, article 41 of the Covenant provides for the Committee to consider inter-state complaints. The Committee's competence is expanded with the first Optional Protocol⁶¹, which gives the Committee the competence to examine individual complaints with regard to alleged violations of human rights by states parties to the Protocol. As prerequisites for the admissibility of individual communications, article 2 defines the exhaustion of all available domestic remedies.⁶² Additionally, article 2 of the Optional Protocol sets out

⁵⁷ B. Simma and Ph. Alston, *The source of Human Rights Law; Customs jus cogens and General Principles*, 12 *Australian Yearbook of International Law*, 1992, p.82.

⁵⁸ G.A. Res. 2200A (XXI), 1966, 167 ratifications.

⁵⁹ See B.G. Ramcharan, *Equality and non-discrimination*, in L. Henkin (ed.), *The International Bill of Human Rights*, 1981, p.246 seq.

⁶⁰ See General Comment No 23 (50) art. 27 Doc. CCPR/C/21/Rev.1. Adopted 5, 1994.

⁶¹ G.A. Res. 2200A (XXI), 1966, 115 ratifications.

⁶² Th. Buergenthal, D. Shelton, D. Stewart, *International Human Rights in a nutshell*, West Group, United States of America, Fifth Edition 2009, p.43–63.

three negative conditions in order for the communications to be admissible, namely they must not be anonymous, abusive of the “right of submission” or “incompatible with any provision of the Covenant”. A second Optional Protocol was added to the Covenant in 1989 and its objective is the abolition of death penalty.⁶³ The case law of the Committee is impressive.⁶⁴

Apart from the aforementioned, the Committee is responsible for the interpretation of the Covenant and its Optional Protocols and for that sake issues General Comments⁶⁵ that include guidelines to facilitate states parties implementing the provisions.⁶⁶ Over the years, the General Comments have been developed to a quasi-judicial instrument.

3.3.3. International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶⁷

The ICESCR was adopted in 1966 and enumerates several basic rights that are attached to the economic, social and cultural welfare of a person and aims at its overall development and proper integration in the social structures. The Covenant offers the framework in which the states should enact and take all the necessary steps to affirm a standard of protection of the rights included in the Covenant. The Covenant recognises the sensitivity of those rights as well as the diversity of a state’s capacity to attempt the protective implementation of its provisions. Thereby, as stated in Article 2, each member state is responsible to undertake “steps, individually through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the Covenant.”

*The Committee on Economic, Social and Cultural Rights (CESCR)*⁶⁸, a body of independent experts that monitors the implementation of the Covenant by its states parties and examines reports on the measures the states have adopted, was established by ECOSOC in 1985.⁶⁹ Designed in the same pattern as the Human Rights Committee, it examines states’ reports and until 2008 lacked the competence to consider individual communications. After the adoption of the Optional Protocol Its competence was expanded and the

⁶³ G.A. Res. 44/128, 1989, 78 ratifications.

⁶⁴ For a detailed list of the case law see, P. Naskou-Perraki, *International Mechanisms Protecting Human Rights*, o.p., p. 62–134.

⁶⁵ Art. 40, 4 ICCPR.

⁶⁶ See among others General Comment N. 18: Non discrimination, 10/11/1989, CPPR.

⁶⁷ G.A. Res. 2200A (XXI), 1966, 161 ratifications.

⁶⁸ P. Naskou-Perraki, *The International Covenant on Economic, Social and Cultural Rights and monitoring of its enforcement*, in N. Aliprantis (editor), *Social rights: challenges at European, regional and international level*, Bruylant, Brussels, 2010, p. 179–213.

⁶⁹ ECOSOC, Res. 1985/17, 1985.

Committee was empowered to consider individual communications as well.⁷⁰ The Protocol entered into force in May 2013, following the required number of ratifications.

Additionally, it has the competence to issue General Comments clarifying the true proportions of the protective nexus that it has established, endorsing legal certainty and correct implementation.

3.3.4. Other UN Treaties protecting Human Rights

Apart from the Bill of Human Rights, there are seven more international conventions dealing with specific categories protecting human rights and providing a control mechanism where individuals can send written communications in case the states' parties violate their rights. These are:

*Convention on the Elimination of Racial Discrimination (CERD)*⁷¹, 1965 – with an important case law by the Committee on the Elimination of Racial Discrimination (CERD);

*Convention on the Elimination of all forms of Discrimination against Women (CEDAW)*⁷², 1979 – with the Optional Protocol of 1999 and an ongoing case law before its Committee⁷³ (CEDAW);

*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*⁷⁴, 1984 – with an Optional Protocol⁷⁵ and a very rich case law before the Committee (CAT);

Convention on the Rights of the Child (CRC), 1989 – with three Optional Protocols, the first being on the involvement of children in armed conflict (2000), second on the sale of children, child prostitution and child pornography (2000) and the third on an individual communications procedure (2012). The relevant Committee on the Rights of the Child (CRC) has not provided any caselaw, yet;

*Convention on the Protection of the rights of all Migrant workers and members of their families (CMW)*⁷⁶, 1990 – without any case law yet by the relevant Committee;

⁷⁰ G.A. Res. A/RES/63/117, 2008.

⁷¹ G.A. Res. 2106 (XX), 1965.

⁷² G.A. Res. A/34/180, 1979.

⁷³ G.A. Res. A/54/4, 1999.

⁷⁴ G.A. Res. A/39/46, 1984.

⁷⁵ G.A. Res. A/57/199, 2002.

⁷⁶ G.A. Res. A/45/158/1990.

*Convention on the Rights of Persons with Disabilities (CRPD)*⁷⁷, 2006 – with an Optional Protocol⁷⁸ (2006) which came in force recently and a limited number of case law by the Committee;

*Convention for the protection of all persons from Enforced Disappearance (CED)*⁷⁹, 2006 – which also came into force recently. The relevant Committee has not provided any case law yet.

The Committees can consider a case concerning violations of human rights after the exhaustion of local remedies; this is a procedure that takes quite a few years in some cases.

All the above conventions issue General Comments/Recommendations where they try to interpret certain provisions of the conventions and facilitate states parties with the implementation, they can undertake provisional measures and contact inquiry in case of vast violations.

Due to the fact that this teaching material concerns the protection of children and their right to non-discrimination, we are going to elaborate more on the Convention on the Rights of the Child.

3.3.4.1. *United Nations Convention on the Rights of the Child (CRC)*⁸⁰

The CRC was adopted in 1989 and entered into force on September 2, 1990. It is considered as the most complete human rights treaty and as the most widely accepted human rights instrument. The Convention accords children an extensive catalogue of civil, political, economic, social and cultural rights “irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”⁸¹ The CRC recognizes the children’s vulnerability and observes the fact that they often are subject to unacceptable treatment. The Convention construes as its basis and main priority the best interest of the child.

The CRC’s content is quite familiar since it borrows provisions from other human rights legal instruments of the past, although the Convention’s innovation lies in the fact that children are singled out and have the privilege to be exclusive subjects of an international treaty. The protection enshrined in the Convention seeks to abolish a series of maltreating practices against children: economic exploitation, illicit use of drugs, sexual exploitation, trafficking, abuse, child-soldiers. Other than that, the *Committee on the Rights of the*

⁷⁷ G.A. Res. A/61/106/2006.

⁷⁸ Ibid.

⁷⁹ G.A. Res. A/RES/61/177.

⁸⁰ G.A. Res. A/44/25, 1989, 193 ratifications, except USA and Somalia.

⁸¹ Art. 2,1 of the Convention.

Child was established under the Convention with the special task to “examine the progress made by states”⁸² while it consists of 18 independent experts. The Committee monitors the implementation of the three Optional Protocols to the Convention – on the involvement of children in armed conflict and on sale of children, child prostitution and child pornography⁸³ – on a Communications Procedure, which will allow the Committee to consider individual communications submitted by children regarding specific violations of their rights under the Convention and its first two Optional Protocols. The Third Optional Protocol entered into force on 14 January 2014 after the deposit of the tenth instrument of ratification, offering to individual children or groups of children the right to submit complaints in case of violation of their rights under the CRC Convention and under the two other Protocols, taking under consideration that their government has ratified this Protocol. Apart from the aforementioned, the Committee is responsible for the interpretation of the Convention and its Protocols and for that sake, issues General Comments clarifying the true meaning of its provisions.⁸⁴

4. Protecting Human Rights at the Regional Level

In addition to the UN system of human rights protection at the universal level, there is also regional protection of human rights. The examination of the existing regional protection systems in Europe, Africa and the Americas as well as human rights law in the Arab countries reveal the recent changes in procedure together with substantive developments in the field of human rights law. We will mainly examine the European system.⁸⁵

4.1. Europe

4.1.1. Council of Europe (CoE)

The European system of human rights protection surfaced with the founding of the CoE,⁸⁶ the first European political Organization that was established by ten Western-European states with the purpose of working for the “maintenance and further realization of human rights and fundamental freedoms” (preamble). According to the Statute of the CoE (art. 3), states “must accept the principles of the rule of law and of the enjoyment by all persons within its

⁸² Art. 43,1 of the Convention.

⁸³ Both Protocols were adopted by G.A. A/RES/54/263, 2000.

⁸⁴ Till this day the Committee has adopted 17 General Comments.

⁸⁵ See among others M. N. Shaw, *International Law Sixth Edition*, Cambridge, 2008 p. 345 et seq.

⁸⁶ The Statute of the Council of Europe was signed in London on 5 May 1949 and entered in force on 3 August 1949. The Organisation has 47 member states.

jurisdiction of human rights and fundamental freedoms,” in order to be accepted as members of the CoE and the must be exempted from the CoE when they have violated their obligations⁸⁷ (art.8 of the Statute).

4.1.1.1. European Convention on Human Rights (ECHR)

The most important accomplishment of the CoE is the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)⁸⁸, which is completed by 16 Protocols. The “jewel in the crown”, as the Convention is usually referred to, protects and guarantees mainly civil and political rights as well as the right to education and property of the individuals who live in 47 member states.

Article 14 of the Convention explicitly deals with non-discrimination and affirms that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. The phrasing of Art. 14 makes quite clear that the right to non-discrimination was not intended to be a separate one and has always been considered to have a supporting role to the other rights within the ECHR, meaning that individuals did not have the capacity to allege a human rights violation based solely on non discrimination grounds but were obliged to combine their application with another right contained in the Convention.⁸⁹

In 2005, the most essential of the Protocols was adopted, Protocol 12, which emphasizes (art. 1,1) that the “enjoyment of any right set forth by law shall be secured without discrimination on any grounds...” Par. 2: “No one shall be discriminated against by any public authority on any grounds...”⁹⁰ The critical contribution of this Protocol is that after its adoption the right to non-discrimination is considered to be an additional and self-sufficient right

⁸⁷ See the famous “Greek case” before the organs of the CoE, on violations of human rights during the military junta of Greece 1967–1974 and the expulsion of Greece from the CoE.

⁸⁸ Adopted in 1950, entered in force in 1953, ETS n. 1., See among others I. Cameron, *An introduction to the European Convention on Human Rights*, 6th ed., Justus, Uppsala, 2011.

⁸⁹ There is a rich case law concerning non-discrimination and it is worth mentioning that the Court has broadened its scope of prohibition against discrimination contained in art. 14 with regard to its conjunction with the right to family and children’s rights. See *Case of Kroon and others v. The Netherlands* (Application no. 18535/91), *Case of Godelli v. Italy* (Application no. 33783/09), *Case of Anayo v. Germany* (Application no. 20578/07), *Case of X v. Lativa* (Application no. 27853/09), *Case of Y.C. v. The United Kingdom* (Application no. 4547/10) and others. See among other P. Van Dijk, F. Van Hoof, A. Van Rijn and L. Zwaak (eds) *Theory and Practice of the European Convention on Human Rights*, 4th Edition, Intersentia, Antwerpen, 2006.

⁹⁰ The Protocol was signed in Rome on 4th November 2000 and entered into force 1st April 2005.

to the Convention that can be invoked as such in front of the Court (art. 3 of the Protocol).

Concerning the administrative structure of the Court, the 11th Protocol of 1998 has been changed as follows:⁹¹ the permanent European Court of Human Rights (Court) has compulsory jurisdiction to deal with interstate and individual applications. The individual has a *locus standi*⁹² to file cases directly before the Court, which is composed of 47 independent judges that were elected by the Parliamentary Assembly from a list of three candidates proposed by the member states. A Single judge has the competence to declare an application inadmissible, committees of three judges examine the admissibility of the application, while Chambers of seven judges issues the decision on the merits. The Grand Chamber, composed of seventeen judges, accepts the request if the case raises serious questions concerning the interpretation of application of the Convention or the Protocols, or a serious issue of general importance. The plenary Court exercises mainly administrative functions. The Committee of Ministers of the CoE supervises the execution of the judgment⁹³, ensuring that the state takes all appropriate measures to implement the decision of the Court. The Convention is not invoked in the Court alone, but also in national courts in many countries. States parties try to bring their municipal law and its application in conformity with the provisions of the Convention, or amend national legislation if needed. The European system is considered the most advanced effective enforcement mechanism in the protection of human rights in the world.

4.1.1.2. *Other Conventions*

Apart from the European Convention on Human Rights the legislative work of the CoE has been vast. Some of the most important convention that were adopted in the framework of this organizations are the following: the European Social Charter (1961) and in the Revised European Social Charter (1996) guarantees social and economic rights; the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987); the European Charter for Regional or Minority Languages (1992) giving emphasis to the respect to the provisions of education in minority languages; the Framework Convention for the Protection of National Minorities

⁹¹ The European Commission on Human Rights was abolished.

⁹² *Locus Standi* means that the individual has the right to stand before the Court and defend himself/herself, filing an application against his/her country alleging a breach of the Convention. This is the only regional human right Court where individuals have *locus standi*. In other regional Courts the individuals appears before a Committee that decides whether the case can be brought before the Court.

⁹³ Art. 46,2 of the ECHR.

(1995); the European Convention on the exercise of Children's rights⁹⁴ (1996) which involves the child in the decision-making process, with a standing Committee to review its implementation; the Convention on Human Rights and Biomedicine (1997) and its Protocols: Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings (1998); Additional Protocol to the Convention on Human Rights and Biomedicine, on Transplantation of Organs and Tissues of Human Origin (2002); Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research (2005); Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Genetic Testing for Health Purposes (2008).

4.1.1.3. Other Institutions

On an institutional level and for a more effective protection of human rights, the CoE has set up an independent institution: the Office of the Commissioner for Human Rights⁹⁵ (1999). The Commissioner is mandated to promote the awareness and respect of human rights in the member states. The CoE has also established the European Commission against Racism and Intolerance (ECRI), which is independent human rights monitoring body specialised in combating racism, racial discrimination, xenophobia, anti-semitism and intolerance.

4.1.2. European Union

4.1.2.1. Lisbon Treaty

The Treaties that established the European Communities had no specific reference to human rights; hence policies adopted by its institutions and Heads of States underlined principles such as democracy and respect of human rights and fundamental freedoms.

References to human rights appear in the preamble of the Single European Act (1987) and later on in the Maastricht Treaty (1992), and in the Treaty of Amsterdam (1999).

It is noteworthy that since 1969 the Court of Justice of the European Communities played a very important role in protecting fundamental rights within the sphere of Community law.

The Court of the European Communities gradually developed a quite extensive case law referring to the respect of fundamental rights as the European Convention on Human Rights guarantees them (and as they derive from

⁹⁴ P. Naskou-Perraki; P. Papapashalis, Child protection in the framework of the Council of Europe, CIEEL, Working papers 2, Ant. N. Sakkoulas, Athens-Komotini, 2002, p. 45 et seq.

⁹⁵ Res. (99) 50 on the CoE Commissioner for Human Rights, 7 May 1999.

the common constitutional traditions of member states) as general principles of Community law.⁹⁶

The Treaty on the EU, as amended by the Lisbon Treaty⁹⁷ provides in art. 6 that “the EU is founded on the principles of liberty, democracy, respect of human rights and fundamental freedoms and the rule of law, principles that are common to all member states”. Furthermore “the Union shall respect fundamental rights, as guaranteed by the ECHR (...) and the constitutional traditions of member states.” With the treaty of Lisbon, the EU undertakes the responsibility to accede as a whole to European Convention on Human Rights, a great step towards the harmonization and the unification of the two legal orders.

4.1.2.2. The Charter of Fundamental Rights of the European Union

Furthermore, the Treaty of Lisbon incorporates the Charter of Fundamental Rights⁹⁸ (Charter) into European primary law ensuring better protection of Europeans. The Charter applies to EU member states when they implement EU law. It includes a long list of human rights divided in seven chapters and influences the judgments of the Court and the policies of EU institutions. In particular, it guarantees the freedoms and principles, especially the one of non-discrimination⁹⁹, set out in the above Charter while giving its provisions, including civil, political, economic and social rights with a legally binding status.¹⁰⁰

4.1.2.3. EU Institutions

Among other EU Institutions, the Fundamental Rights Agency (FRA) was established in 2007¹⁰¹ with the purpose of providing the Community institutions and the member states of the EU with assistance and expertise relating to fundamental rights when implementing Community law.¹⁰² The FRA supports member states to take measures or decide on courses of action within their respective spheres of competence to respect fundamental rights. Among

⁹⁶ H.G. Schermers, D. F. Waelbroeck, *Judicial Protection in the European Union*, Kluwer Law International, The Hague, London, New York, Sixth Edition, 2001.

⁹⁷ The Treaty of Lisbon was signed in 2007 and entered into force in 1/12/2009 amending without revising the EU and EC treaties and providing the EU with legal personality.

⁹⁸ It was first drafted on 2000 and was later incorporated in the text of the Lisbon Treaty and came in force 1 January 2009.

⁹⁹ Art. 21 of the Charter of Fundamental Rights.

¹⁰⁰ G. Di Federico (Ed.), *The EU Charter of Fundamental Rights, From Declaration to Binding Instrument*, Springer, Bologna, 2011, p.320.

¹⁰¹ Council Regulation 168/2007 of 15/02/2007, replacing the European Monitoring Center on Racism and Xenophobia [EUMC].

¹⁰² European Union Agency for Fundamental Rights, *Handbook on European non-discrimination law*, Publications Office of the European Union, Luxembourg, 2011.

its main areas of work is discrimination based on different grounds and the rights of the child including protection of children, most recently on children and justice.

4.1.3. Organisation for the Security and Cooperation in Europe (OSCE)

The Organization for the Security and Cooperation in Europe (OSCE)¹⁰³ has as priorities: to consolidate common values and build civil societies, to prevent local conflicts, restore stability and bring peace to war-torn areas, to overcome real and perceived security deficits and to avoid the creation of new divisions by promoting a co-operative system of security. It has created three organs to cope and deal with human rights issues, the Office for the Democratic Institutions and Human Rights (1991) in order to supervise free elections and democratic institutions, the High Commissioner on National Minorities (1992), and the Representative on Freedom of the Media (1997). The OSCE provides training to national human rights institutions, NGOs, while it focuses on gender equality, combating torture, trafficking in human being and freedom of religion.¹⁰⁴

5. Conclusion

The protection of human rights is an important matter for humanity. It should be the states' priority to sign, ratify and implement human rights treaties and protect human rights as they are included in their constitutions and national laws. It is their duty to create National Human Rights Committees and support NGOs working in the field of human rights. States have to create ombudsmen, especially for children and other mechanisms at the national level. If states fail to accomplish all the above, the international mechanisms provide protection, a protection the states agreed upon after their ratification of international treaties. The ratification of a treaty is interlinked with major obligations from the part of the state, the first being the revision of national and domestic law in accordance with the one that emanates from the text of the Convention. Principally, states have to incorporate the course of human rights protection in the educational program at all levels of education. It is a commonplace that only through education and information we can respect human rights and the principle of non-discrimination.

Human Rights need mechanisms of implementation; without control, the human rights' implementation would be like democracy without free elec-

¹⁰³ (OSCE). Based on the Paris Charter, which was signed in Paris on 19–21 November 1990 and entered into force on 21 November 1990, ILM 1991. It is composed of 55 member states.

¹⁰⁴ D.J. Galbreath, *The Organization for the Security and Co-operation in Europe*, Routledge, London and New York 2007, p. 92–116.

tions: an empty promise. The need for an International Court for Human Rights seems now more pressing than ever. The quasi-judicial mechanisms that the different treaties have established have a specific spectrum when it comes to their judgements which excludes and prohibits, in terms of admissibility, the invocation of other legal basis concerning a certain infringement of human rights.¹⁰⁵

The UN Charter places the respect for human rights on the same level as the maintenance of international peace and security, while prioritizing both as indispensable standards for the welfare of the international community.

There is need to understand that conflicts are an evolving scheme, which is constantly reshaping. In this manner it is possible to speak of international law as no longer being limited to the regulation of relations between sovereign states, but also extending to the treatment of individuals within states. Individuals are now put on the map, while the international legal order's vision, which has been compromised and myopic to entities, apart from states, has now dramatically improved. Taking into consideration that this conservative abbreviated conception of international law as dealing only with states does not comply with the ongoing circumstances of the 21st century, we understand that humanity needs a permanent international institution with legal personality, empowered and delegated to decide in a final and legally binding manner on all alleged human rights violations based on complaints brought before it. The paradigm of the CoE with the evolution of a permanent Court within the structure of the Organization has exerted a strong influence over the proliferation and dissemination of human rights not only in Europe but also in other regions¹⁰⁶, while at the same time providing a good practise and therefore a precedent for the institution of a global initiative.¹⁰⁷

¹⁰⁵ M.C. Bassiouni and W. A. Shabas (eds.), *New Challenges for the UN Human Rights Machinery, What Future for the UN Treaty Body System and the Human Rights Council Procedures?*, Intersentia, Cambridge-Antwerp-Portland, 2011, p. 17–32.

¹⁰⁶ The American Convention of Human Rights, the African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights are regional instruments that aspired to create a regime similar to the one instituted by the CoE. See among others: P. Naskou-Perraki, "The African Court on Human Rights and People's Rights", *Revue Hellenique de Droit International*, 2003, p. 205–222, P. Naskou-Perraki, "The Arab Charter on Human Rights: A new start for the protection of human rights in the Arab World", in *Revue Hellenique de Droit International*, 2009, p.117–136.

¹⁰⁷ Rh. K. M. Smith, *Texts and Materials on International Human Rights*, Third Edition, Routledge, London and New York, 2013, p. 389–435.

Questions for reflection

- Which are the main International treaties protecting the principle of non-discrimination?
- Explain whether the Universal Declaration is legally binding upon states.
- Which system of human rights protection is the most effective and why?
- Propose changes at Universal level for more effective protection of human rights.
- How does the Human Rights Council work?
- Identify international human rights obligations under the United Nations Charter.
- European state X, having signed and ratified the ICCPR and the ECHR, is discriminating against Y, an Afghan child. Y's parents come to you for advice and ask which is the most effective mechanism for the protection of Y's rights and why?

Further readings

- Bassiouni, M.C. and Shabas, W.A. (eds.), *New Challenges for the UN Human Rights Machinery, What Future for the UN Treaty Body System and the Human Rights Council Procedures?*, Intersentia, (Cambridge-Antwerp-Portland, 2011) 480.
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