

The United Nations Human Rights Commission: Evolution and The Journey So Far*

Abstract

The second half of the twentieth century brought with it a body of international human rights law. Such human rights need adequate protection by human rights institutions like the United Nations Human Rights Commission (UNHRC) which is the first human rights commission. Thus, this paper traces the evolution and development of this Commission and captures circumstances leading to the establishment of the Commission as well as challenges faced in the process of its creation. It goes further to critique the procedures and mechanisms employed in its operations as well as the enforcement capacity it possesses. The paper x-rays the standards set by the Commission as guidance to other commissions because of their significance in setting up global, regional and National Human Rights Commissions (NHRC). The paper concludes with optimism that if such guidelines are strictly followed, it will not only be of great assistance in the formation of other human rights bodies, it will also be easy to identify and monitor human rights violators at the local, regional and global level.

Introduction

The second half of the twentieth century saw the development of a rich body of international human rights law. This momentous development began as a result of the atrocious human rights violations in modern history that occurred in Europe and Asia during the Second World War.¹ The

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¹ Ramdas Tikamdas & Sothi Rachagan, 'Introduction' in S. Sothi Rachagan & Ramdas Tikamdas (eds.), Human Rights and the National Commission, Kuala Lumpur: HAKAM, 1999, 2.

belief was that some of the violations might have been prevented if there was an effective international system for the protection of human rights. Hence, the protection of human rights became an imperative.² The recognition that basic human rights were important for maintaining international peace and the desire to create means of upholding them became paramount.³ Innovative steps were taken in global political and economic governance, resulting in the establishment of institution like the United Nations in 1945.⁴ The United Nations Charter that was adopted by the participating states is measured in its reference to human rights. The first Article of the Charter proclaims the principle of human rights and fundamental freedom for all without any distinction.⁵ It would be recalled, however, that the Charter only makes reference to promoting, encouraging and having respect for human rights without providing the means of actualising them or a mechanism for enforcement of the rights.

Therefore, there was a need for an international Commission that could protect human rights and help nation states in need of human rights protection. For the United Nations to accomplish this mission, the Economic and Social Council (ECOSOC), an organ of the UN, established the first Commission on Human Rights. The Commission's work was the adoption of Universal Declaration of Human Rights (UDHR).⁶ The final

² A. Abdullah & BY Stephen, (eds.) *Guidance For Good Governance: Exploration in Qur'anic, Scientific and Cross-Culture Approaches*. IIUM: IIUM Press and Caux Round Table, 2008, 116.

³ Manfred Nowak, *Introduction to the International Human Rights Regime* (Boston: Martinus Nijhoff Publisher, 2003) 23

⁴ See The Charter of the United Nations, 26 June, 1945, Can. T. S. 1945 No. 7; Stat. 1031, TS 993, 3Bevans 1153, (entered into force October 24, 1945)

⁵ Article 1 (3) proclaims, "To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

⁶ The Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (111) of 10 December 1948. It contains extensive provisions that are grouped essentially into sets of human rights; Articles 1-21 provide for traditional civil and political rights, whereas provisions for economic and social rights are contained in Articles 22 to 28. Although the General Assembly resolution is not legally binding on UN member states, it sets out international standards of achievement to be attained by all nations. Accordingly, it provides the normative basis for other UN General Assembly resolutions and treaties concerning human rights.

draft of the Declaration had input from delegates from Chile, China, Egypt, India, Iran and Lebanon notwithstanding that the Declaration was the product of the Allied victors.⁷ The principles that emerged were truly universal in nature as one of the articles captures the universality of the rights that the Declaration proclaims.⁸ The UDHR which is succinct and declaratory in nature has been enlarged into two binding covenants. They are the International Covenant on Civil and Political Rights (ICCPR)⁹ and the International Covenant on Economic, Social and Cultural Right (ICESCR).¹⁰ The Declaration, the Covenants and two optional protocols¹¹ to the two Covenants are today referred to as the International Bill of Rights (IBOR).

United Nations Human Rights Commission

It is not in doubt that human right provisions as contained in these international human rights instruments are laudable. However, they seem irrelevant to individuals unless they are actualised in one way or the other. The lofty ideals they contain need a strong and virile institution that will translate the international concepts and norms into a local culture of human rights. Thus, the United Nations took the responsibility of monitoring

⁷ Tikamdas & Sothi Rachagan, (n. 1) at 2.

⁸ Article 1 proclaims, "All human being 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"

⁹ International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp (No. 16) at 52, UN Doc. A/6316 (1966), 999 UNTS 171 (entered into force Mar. 23, 1976). It provides for "first generation" civil and political rights. Article 28 of ICCPR establishes the UN Human Rights Committee which examines periodic state reports on matters regarding the implementation of the ICCPR

¹⁰ International Covenant on Economic, Social and Cultural Rights, GA res. 2200A (XXI) 21 UNGAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), UNTS 3, (ICESCR entered into force Jan. 3, 1976). It provides for "second generation" rights. These rights can briefly be categorised into three groups; first, those rights which protect and promote the rights to work in just and favourable conditions; second, those rights which safeguard the means to social protection, an adequate standard of living, and the rights to education and to enjoyment of the benefits of cultural freedom and scientific progress.

¹¹ First Optional Protocol to the International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 59, UN Doc. A/6316 (1966), 999 UNTS 302, entered into force March 23, 1976, and Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of Death Penalty, GA Res. 44/128, Annex, 44 UN GAOR Supp. No. 49 at 207, UN Doc. A/44/49 (1989) entered into force July 11, 1999

human rights observance in the world by submitting proposals and reports to ECOSOC. The procedures and mechanisms adopted by the ECOSOC are to examine, monitor and report human rights situations in specific countries or regions; or on major phenomena concerning human rights violation worldwide. The procedures and mechanisms are referred to as the Special Procedures of the ECOSOC.¹²

1. Evolution of the UN Commission

After the realisation that the expectations and concern of people cannot be fulfilled, the relevant international instruments (the ICCPR and ICESCR) established monitoring committees and institutions.¹³ The aim was to ensure that states comply with their international human rights obligations. The main functions of these institutions are to monitor states compliance with treaty obligations as well as promotion and protection of the rights guaranteed by the treaties. Regrettably, these committees and institutions could not achieve these goals so much so that their existence was questioned on several occasions.¹⁴ The ECOSOC foresaw this problem as early as 1946 when it called for establishment of local, regional or national institution for the protection and promotion of human rights. This notwithstanding, the UN needed to forge ahead in the fulfilment of its charter.

Undoubtedly, the UN has played major and foundational roles in the promotion and protection of human rights. In fact, the acclaimed

¹² See Office of the United Nations High Commissioner for Human Rights, Commission on Human Rights: Background Information <http://www.ohchr.org/english/bodies/chr/background.htm> (accessed September 1, 2012)

¹³ Some of these institutions are The Human Rights Committee established by ECOSOC in its resolution 5 (1) of 16 February 1946; The Sub-commission on the Protection and Promotion of Human Rights established by ECOSOC resolution 9 (ii) of June 21 1946; The Committee on Economic, Social and Cultural Rights (CESCR) established by ECOSOC in 1985; The Committee on the Elimination of Racial Discrimination (CERD); and The Committee on the Elimination of Discrimination against Women (CEDAW) established in 1981. For detail analysis of these institutions, see Ngozi F. Stewart, 'International Protection of Human Rights: The United Nations System', (2008) 12 (1) *International Journal of Human Rights*, 89.

¹⁴ See for example Makau Wa Mutua, 'Looking Past the Human Rights Committee: An Argument for Demarginalising Enforcement', (1998) 4 *Buffalo Human Rights Law Review* 211

achievement in human rights protection and promotion could be attributed to ECOSOC which is one of the major organs of United Nations.¹⁵ By its resolution, the ECOSOC established UNHRC as ECOSOC's functional commission under article 68 of the UN Charter.¹⁶ Its original task was to submit proposals, reports and recommendations to ECOSOC regarding certain fields of human rights.¹⁷ As a subsidiary body of ECOSOC, the UNHRC carries out studies and appoint ad hoc working groups of non-governmental experts.¹⁸ Its ad hoc arrangements for dealing with human rights situations in particular countries have been important. Thus, the Commission became the 'nerve centre' of the UN human rights apparatus. It later acted as the coordinator of the many existing UN human rights institutions and programmes as well as the principal UN forum for addressing charges of human rights violations.¹⁹

The UN Commission had a turbulent beginning as it was established immediately after the World War II amidst contending super powers trying to bury their past evils during and after the war. Their horrifying experiences of warfare and genocide during the course of the Second World War had convinced them that an intimate connection existed between individual human rights and international peace and security.²⁰ Nations that violated

¹⁵ These organs are: General Assembly, Security Council, Secretariat, International Court of Justice, Trusteeship Council (who's operation have been suspended), and Economic and Social Council

¹⁶ United Nations, *United Nations Actions in the Field of Human Rights* (NY: United Nations, 1983) 282, see also H. Lauterpacht, *International Law and Human Rights* (New York: Fredrick A. Preager, 1950) 22 and B. Sohn and Thomas Buergenthal, *International Protection of Human Rights* (New York: Bobbs Merrill Co., 1972) 46. Thomas Buergenthal 'The Normative and Institutional Evolution of International Human Rights,' (1997) 19 *Human Rights Quarterly* 703

¹⁷ Egon Shwelun and Alston Philip, 'The Principal Institutions and other Bodies Founded under the UN Charter' in Karel Vasak (ed.) *The International Dimensions of Human Rights*, Paris: UNESCO, 1982, 244.

¹⁸ A. Subbian, *Human Rights Complaints System*, New Delhi: Deep & Deep Publication, 2000, 20.

¹⁹ Chinedu E. Idike, *Deflectionist Institutions or Beacons of Hope? A Study of National Human Rights Commissions in Anglophone Africa* (Ph. D Dissertation), Canada: York University, 2006, 55

²⁰ P. G. Lauren, 'To Preserve and Build on its Achievement and to Redress its Shortcomings': The Journey from the Commission on Human Rights to the Human Rights Council (2007) 9 *Human Rights Quarterly*, 309.

the rights of their own people, they came to believe, endangered their neighbours and the international system as a whole. For this reason, many people called upon UN to create a viable system of peace and security after the war. This call spurred the UN to quickly establish the UN Commission via ECOSOC under the terms of the United Nations Charter.²¹ From the feelings of victory, some of the founders hoped that it would become the most important protector of victims of human rights abuses in the world. In fact, the then US Secretary of State, Edward Stettinius, was optimistic when he declared that “.... the creation of the Commission may well prove one of the most important and significant achievements of the San Francisco Conference.”²²

However, while trying to create and mould the Commission, the ECOSOC, responsible for this, knew too well that it would not be easy. It understood perfectly well that prejudices run deep, that traditions and prevailing practices inhibit innovation, and that those who enjoy the exercise of power rarely want to share or restrain it. Of all the obstacles that confronted it, and as noted by some people, was “the bogey of national sovereignty.”²³ This is expected as many observers had accurately predicted in advance that national sovereignty, which had inhibited so many efforts in the past, would persistently draw back the United Nations.²⁴ This doctrine of sovereignty enabled national leaders to declare that what they did to their own people was their own business, making them immune from any international effort that might try to hold them responsible for violations of human rights. They were able to hide under Article 2 (7) of the UN Charter.²⁵ This provision enabled the members to continue claiming the

²¹ Ibid

²² O. Frederick Nolde, ‘Possible Functions of the Commission on Human Rights’ (1964) 234 *Annals of American Academy of Politics & Social Science* 243, 144 as quoted by P. G. Lauren n. 20

²³ United Nations, National Archives, Commission to Study the Organisation of Peace, International Safeguard of Human Rights 11 (1944); US National Archives, RG 59, Alger Hiss Files, Box 2, memorandum written by Alice McDiarmid, Proposals for an International Bill of Rights (Aug. 1944).

²⁴ P. G. Lauren, *The Evolution of International Human Rights: Vision Seen*, (2nd ed. 2003) 166.

²⁵ The Article provides, “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require Members to submit such matters to settlement under the present charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.” U.N. Charter signed 26 June 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevens 1153 (entered into force 24 Oct. 1945).

special privilege of national sovereignty and immunity that would prevent the organisation from interfering in their internal affairs. This provided them with a means to shield themselves from outside interference into any domestic human rights abuses that they might commit within their own borders. Indeed, as expressed so directly by former US Secretary of State, Robert Lansing, “the essence of sovereignty is the absence of responsibility.”²⁶ The eminent historian at the Carnegie Endowment for International Peace, James Shotwell, similarly observed that “each state, jealous of its sovereignty, had regarded any expression of foreign interest in the welfare of its citizens at home, as interference in its own affairs and would continue to do so.”²⁷

This was the extremely challenging situation in which the founders of the Commission found themselves. They clearly understood the impact of politics and diplomacy upon the San Francisco Conference and the formulation of the UN Charter. From the very beginning, they were asked to achieve two mutually incompatible goals: serve as protector of the victims of human rights abuses and, at the same time, not threaten the shield of national sovereignty claimed by member Nations. Eleanor Roosevelt (the first chairman of the Commission) and her colleagues understood perfectly well that, given these factors, they could not please everyone and that not all people and governments would like the results. This, she declared publicly with a voice containing a mixture of hope and realism based upon her practical experience in politics.²⁸ With this thought very much in their minds, the members of the “nuclear” commission set out to do their best to advocate an ambitious programme for the Commission on Human Rights. One of their most daring recommendations was that the Commission be composed of individual experts genuinely interested and knowledgeable on issues of human rights rather than representatives of governments interested in maintaining national sovereignty. They hoped that by such means the Commission would acquire much greater independence and integrity, enabling it to challenge

²⁶ See U.N National Archives, n. 23 above at 23

²⁷ Ibid, 16

²⁸ Herbert Evatt, Document 969 1/1/39, Amendment by the Australian Delegation to page 8 of Chapter II (Principles), 14 June 1945, U. N. Conference on International Organisation, Documents of the UN Conference on International Organisation, Vol. 436-38 (1945); 438

²⁹ P. G. Lauren, (The Journey), n. 20 above at 314

governments if necessary and actively serve as protector of the victims of human rights abuses.²⁹

This proposal met with immediate hostility by member states that feared that it was far too ambitious and too threatening to their own sovereignty and domestic jurisdiction. They had created the Commission as an intergovernmental organization for discussion, not enforcement, and wanted to keep it that way. Thus, the delegate from Britain received instructions to be very careful about the position about to be taken by members of the UNHRC.³⁰ The British need not have worried, for other nations quickly got irritated, including the Soviets, who insisted adamantly that they would never accept individual experts acting in their own capacity instead of state-appointed representatives. It was thus decided from the very beginning that the Commission on Human Rights would operate under the authority of the ECOSOC. It was also agreed that it would be composed of eighteen members serving as representatives of their respective governments following official “position papers” and “letters of instruction” on behalf of highly politicised agendas.³¹ Their meetings consequently became the focus not only of what the participants themselves called “fireworks,” but major “battles.”³²

One of the first of these battles emerged over the extremely sensitive issue of petitions. Even before it began to officially meet, the Commission on Human Rights found itself as the unexpected recipient of a veritable flood of thousands of written appeals from all over the world. The appeals were begging for help against the abuses of their own governments and pleading that the human rights provisions of the Charter be applied to them.³³ Many of these petitions were addressed personally to Eleanor Roosevelt.³⁴ Paul

³⁰ Britain, Public Record Office, Foreign Office, 371/5/57318, Telegram No. 599 from Ward to Cadogan (14 June 1946); Telegram No. 616 from Foreign Office to UN Delegates (15 June 1946)

³¹ See US National Archives, Department of State, Record Group 84, Records of the US Delegation to the United Nations, Box 103, File IO:ECOSOC: Human Rights, 1946-1949, Telegram No. 103 to Eleanor Roosevelt (25 May 1948)

³² Franklin Roosevelt Library, Eleanor Roosevelt Papers, Box 4561, Diary Entry (4 Feb. 1946); Britain, Public Record Office, Foreign Office, 371/59740, Human Rights Commission (Memorandum), filed (11 Sept. 1946)

³³ Edward Lawson, who served on the Division of Human Rights during these early years, used the expression, “thousands of appeal letter”; See Edward Lawson, *Encyclopedia of Human Rights*, (1991), United Nations, Department of Public Information, Background Paper No. 25, Commission on Human Rights 10 (18 Nov. 1947)

³⁴ See United Nations Archives/Geneva, SOA, Boxes 348, 349, 350

sympathetically observed that it is difficult to read these petitions without feeling the pain, sensing both the desperation and the hope, and being reminded of the very human face of human rights among those writing to her. They implored her and the other members of the Commission to be their protector.³⁵

Regardless of the turbulent beginning, enormous obstacles and constant manoeuvring by certain member states, those advocates of human rights who served on the Commission pushed hard to advance the international human rights of Article 1 against the national sovereignty and domestic jurisdiction of Article 2 in the UN Charter. In this process, they learned to appreciate the meaning of the observation that “diplomacy is the art of the possible.”³⁶ Their efforts received the gratitude and the praise of many. Human rights NGOs, in particular, who had followed the work of the Commission since its inception, paid tribute to what they described as its “remarkable achievements.”³⁷ Many accomplishments of the Commission over the course of sixty years are well documented despite the fact that the UNHRC has been recently replaced with Human Rights Council.³⁸ Its mechanism, procedure and achievements assisted in the establishment of some other human rights institutions.

2. Other Human Rights Institutions

In its second session in 1946, the ECOSOC resolved to invite member states to consider the desirability of setting up local bodies in the form of ‘information groups or local human rights committee’ to function as a medium for collaboration with the UN Commission in upholding human

³⁵ P. G. Lauren, (The Journey), n. 20 above at 316

³⁶ David P. Forsythe, ‘The United Nations and Human Rights: 1945 – 1985’ (1985) 100 Political Science Quarterly 250

³⁷ Ibid

³⁸ In principle, the UNHRC was replaced. However, its memory still lingers on. Firstly, it set the standards upon which all modern human rights commission build. Second, most of its framework and policies are being adopted and followed by the newly created Human Rights Council as the member states acknowledged the accomplishments of the UNHRC but expressed their determinations for the future (in their language) “to preserve and build on its achievements and to redress its shortcomings.” See UN Resolution 60/251, G. A. Resolution on the Human Rights Council, G. A. Res. 60/251, U. N. GAOR, 60th Session, U. N. Doc. A/RES/60/251 (2006)

rights.³⁹ The call yielded a positive result; as in the past 30 to 40 years, human rights institutions with an explicit mandate for the protection and promotion of human rights have emerged particularly in a number of Commonwealth member states.⁴⁰ Essentially, there are two types of human rights commission. They are the classical ombudsman and modern human rights commission.

(a) Ombudsman

The classical ombudsman who may be an individual or a group, originated from the Swedish Ombudsman for Justice in 1809 as well as other Scandinavian Ombudsman institutions.⁴¹ The introduction of the Danish ombudsman in 1955 however marked the beginning of worldwide interest in such scheme. The institution spread through other part of the world like Australia and New Zealand,⁴² the first set of countries outside Scandinavian to establish an ombudsman. The introduction of ombudsman in a common law country in 1962 sparked off a great deal of interest in the concept of ombudsman throughout the world.⁴³ By the 1970s, ombudsman had appeared in many parts of the continent, and by 1983, the ombudsman idea had been accepted by almost every country in Western Europe. In the recent years, there has been a widespread of ombudsman throughout the world, the major exception being the USA. The European Union also has embraced ombudsman which was established in 1995. The role of EU's ombudsman is to deal with complaints about maladministration by European Community institutions and bodies.⁴⁴

³⁹ See ECOSOC Resolution 2/9 (21 June 1946). The analysis of this resolution is comprehensively discussed by Birgit Lindsnaes & Lone Lindholt, 'National Human Rights Institutions – Standard Setting and Achievement' in Lindsnaes, et al. (eds.), *National Human Rights Institutions – Articles and Working Papers* Copenhagen, 2001, 5

⁴⁰ Jeong-Woo Koo & Francisco O. Ramirez, 'National Incorporation of Global Human Rights: Worldwide Expansion of National Human Rights Institution, 1966 - 2004', (2009) 87 (3) *Social Forces* 1325

⁴¹ Finland Ombudsman was founded in 1919; Denmark's Ombudsman was founded in 1955; and Norway's Ombudsman was founded in 1962

⁴² Jeong-Woo Koo & Francisco O. Ramirez, n. 40 above at 1324

⁴³ Mary Seneviratne, 'Ombudsman 2000', (2000) 13 *Nottingham Law Journal*

⁴⁴ Mary Seneviratne, 'The European Ombudsman' (1999) 21 (3) *Journal of Social Welfare and Family Law* 270

The original idea of the classical ombudsman was far from the ideals of human rights. It simply focused on ensuring the rule of law in public administration. But the contemporary ombudsman offices, despite their continuous emphasis on general fairness and legality in public administration, increasingly incorporate human rights values in several important ways. This is done by empowering individuals with the right to petition grievances regarding public maladministration. Contemporary ombudsman offices also emphasise a choice of collaboration with other human rights institutions, including the human rights commission.⁴⁵ Due to the fact that Ombudsman is a creation of statute, its function can be regarded as purely public function.

However, today Ombudsman has private functions.⁴⁶ The first Ombudsman incursion into the private sector in United Kingdom was in 1981, with the establishment of the Insurance Ombudsman's Bureau.⁴⁷ The banking industry followed suit in 1986 with the establishment of the Office of Banking Ombudsman.⁴⁸ Between 1990 and 1994, estate agents, pension administrators, investment managers, funeral undertakers and rented housing providers established their Ombudsman with a view to resolving disputes between customers and these institutions.⁴⁹

(b) Modern Commissions

The modern human rights commissions, on the other hand, refer to government sponsored organs whose functions are specifically defined in terms of the promotion and protection of human rights. The jurisdiction of a national human rights commission is

⁴⁵ Hill B. Larry, 'Institutionalisation, the Ombudsman, and Bureaucracy' (1974) 68(3) American Political Science Review 1075

⁴⁶ Mary Seneviratne, n. 43 above at 14

⁴⁷ Morris, P. E 'The Insurance Ombudsman Bureau and Judicial Review' [1994] LMCLQ 358

⁴⁸ Morris, P., 'The Banking Ombudsman: Five Years On' [1992] LMCLQ 227

⁴⁹ Mary Seneviratne, n. 43 at 14. See generally, C. Graham, M Seneviratne & R. James, 'Publishing the Bank and Building Societies Ombudsman Schemes', [1993] Consumer Policy Review 85

typically protected by either the constitution or national statutory law. Its responsibilities generally include receiving complaints from individuals, investigating potential cases of human rights abuses or administrative faults, and recommending corrective measures to relevant organisations or individuals.⁵⁰ The number of complaints a commission receives ranges from hundreds to ten of thousand annually. This variation reflects not only the demographic scale of the country, but also the extent of the general public awareness in each country.⁵¹

Today, National Human Rights Commissions are spread across the globe. The earliest were established in France 1947, Canada 1962, New Zealand 1978, Australia 1981, Guatemala 1984, Denmark 1987, Philippines 1987 and Mexico 1990.⁵² The 1960s and 1970s saw the high level of promotion of international bill of human rights by NGOs and many United Nations bodies. They called for development and empowerment of Commissions that will implement new standards at both local and international level. In accord with this clarion call, the ECOSOC in a subsequent resolution agreed with the suggestions that a national framework is inevitable for human rights protection and promotion.⁵³ The resolution was a precursor to the late 1970s international seminar where proposed guidelines for the effective functions of National Human Rights emanated. The first Human Rights Commission is the HRC established by the United Nations through one of its main organs - ECOSOC.

II. Institutional Structure of Un Human Rights Commission

The achievements recorded by the UN Human Rights Commission were not made on a platter of gold. It achieved so much because of its structures and various mechanisms put in place. One of the precedents that have

⁵⁰ Morten Kjaerum, 'National Human Rights Institutions: Implementing Human Rights,' in *Human Rights and Criminal Justice for the Downtrodden* (Klaus Slavensky: Martinus Nijhoff Publisher, 2003) at 640. See also Linda Reif, 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection' *Harvard Human Rights Journal* 13 (Spring 2000)

⁵¹ Morten Kjaerum & Danish Institute of Human Rights, *National Human Rights Institutions: Implementing Human Rights* (Denmark: Martinus Nijhoff Publisher, 2003) 22

⁵² *Ibid*

⁵³ ECOSOC Resolution 772B (XXX) (25th July 1960)

been adopted by the Human Rights Council (HRC) is the institutional structure of the UN Commission. The achievement of the Commission in this regard prompted the HRC to adopt the existing structure with minor modifications. The Commission consisted of the President and other members. The Commission, an intergovernmental body, initially consisted of 43 (and later 53 due to increase in the number of member states) government representatives elected by ECOSOC for three years on the basis of an equitable geographical distribution:⁵⁴ it then had 11 members from Africa, 9 from Asia, 8 from Latin America, 10 from Western Europe and 5 from the Socialist states of Europe.⁵⁵

The Commission had only one session a year which lasted for five or six weeks but later changed to meeting regularly throughout the year and to schedule not fewer than three sessions for a total duration of not less than ten weeks and was able to hold special session for urgent situations when needed or requested with the support of one-third of its members.⁵⁶ Observers from other Member states of UN, Non-member states and representatives of specialised agencies have access to its public sessions. Its public session was also open to other UN bodies, National Liberation Movements, Regional Inter-Governmental Organisations and Non-governmental Organisations (NGOs). The Commission also worked closely with other UN bodies to enjoy their maximum cooperation in order to have greater achievements.

The Commission had its own subsidiary body known as Sub-Commission on Prevention of Discrimination and Protection of Minorities.⁵⁷ The Sub-Commission was renamed Human Rights Consultative Commission (HRCC) with the replacement of the Commission. The Sub-Commission is mandated to undertake studies, particularly in the light of the Universal Declaration of Human Rights. It is also mandated to make

⁵⁴ A Subbian, n. 18 above at 20

⁵⁵ P. G. Lauren, n. 20 above at 335; see also Hurst Hannum, 'Human Rights and the United Nations Progress at the 1980 session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities' (1981) 3(1) Human Rights Quarters 12.

⁵⁶ UN Resolution 60/251, G. A. Resolution on the Human Rights Council, G. A. Res. 60/251, U. N. GAOR, 60th Session, U. N. Doc. A/RES/60/251 (2006)

⁵⁷ The ECOSOC established Sub-Commission by ECOSOC Resolution 2/9 of 21st June, 1946

recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and fundamental freedom. The Sub-Commission prepares the work of the Commission on Human Rights which then reports to ECOSOC. The Sub-Commission is an expert body with twenty-six members elected by the Commission. The selection is based on the nomination of experts by member states. The equitable geographical distribution is taken into consideration for the election of members. The tenure of expert members of the Sub-Commission is four years.

III. Modus Operandi of The Un Commission

1. The UN Commission's Mechanisms

To enable the Commission to perform optimally, certain mechanisms were put in place. First among these were a creation of a wide range of advisory services, technical assistance, and field operations. Human rights experts were sent to various countries to help develop the capacity for building national and regional human rights infrastructures, strengthening democratic institutions, drafting new constitutions, explaining international obligations and reporting procedures, creating confidence-building measures in often fragile societies, reforming penal and correctional institutions, training officials and security forces, conducting seminars for judges and lawyers, developing educational strategies and materials, and assisting the media in covering human rights issues.⁵⁸

Similarly, in response to the shocking slaughter and extensive carnage inflicted by the Hutus against the Tutsis in Rwanda, the Commission on Human Rights and the High Commissioner for Human Rights established the Human Rights Field Operation in Rwanda. Each of these field operations was staffed with specialists mandated to investigate breaches of international human rights and humanitarian law, assist refugees and internally displaced persons, help NGOs, offer expertise on reforming law enforcement, and provide public information and education on

⁵⁸ Helena Cook, 'International Human Rights Mechanisms: The Role of Special Procedure in the Protection of Human Rights' (1993) 50 *International Commission Jurists Review* 9.

behalf of democratization initiatives and human rights. Indeed, the extraordinary range, geographical scope, and complexity of these activities became so extensive that great effort was needed to coordinate them all.⁵⁹

To achieve this feat, the Commission on Human Rights (CHR) also worked closely with the Secretariat: the Division of Human Rights (the then Centre for Human Rights). It also sought and obtained the support of the High Commissioner for Human Rights to promote human rights around the world. In realising this important factor, the Under Secretary-General Jan Martenson, observed that “A key element in the realization of human rights is the knowledge by each person of his or her inalienable rights, and the means that exist to protect them.”⁶⁰

It is in this regard that the Commission sponsored numerous publications, public events, seminars, workshops, educational programs, and special studies on human rights. It actively supported the World Conference on Human Rights in 1993, attracting over two thousand delegates and nearly four thousand representatives of NGOs, and resulting in the Vienna Declaration and Program of Action. The Vienna Declaration boldly rejected the old claims of domestic jurisdiction by asserting that all human rights represented a legitimate international concern. Further promotion occurred when the United Nations produced its first CD-ROM, under the title of Human Rights: Bibliographical Data and International Instruments, revealing a total of seventeen thousand references to documents and publications dealing with international human rights.⁶¹

To move forward in its activities, the HRC took another dimension to work; it held the principle of promotion, transparency, and

⁵⁹ P. G. Lauren, (The Journey), n. 20 above at 324

⁶⁰ Helena Cook, n.58 above at 10

⁶¹ This paper has benefitted immensely from a copy of the CD-ROM provided by the Nigerian NHRC

breadth. That is, the Commission opened its deliberations to and invited comments from human rights NGOs. Although the Charter spoke in glowing terms about “we the peoples,” it often appeared as though only the Commission on Human Rights took the charge seriously. Over times, the majority of members came to view NGOs as effective partners in promoting human rights and thus gave them access and recognized status to constructively engage in presenting evidence of violations by governments against their own people, representing elements of larger civil society, speaking truth to power, and giving voice to voiceless victims.⁶²

When conducting all these activities in public, the Commission on Human Rights increasingly began to be the most important global forum in the world for discussion about international human rights.⁶³ Its annual sessions uniquely brought together perhaps as many as 800 people into Geneva. Participants included delegations from the states members of the Commission, representatives from most other countries of the world (including many high-ranking and senior government officials), staff from the Secretariat and specialized agencies of the United Nations; victims of abuses, and those representatives from civil society and many human rights NGOs.

The Commission developed different complaint procedures via its resolutions⁶⁴ and ECOSOC resolutions.⁶⁵ These resolutions gave the Commission the authority to examine information, and take action independently on human rights violations. These and other procedures and machinery developed by the Commission in the 1970s and 1980s created an extremely important means to deal with gross human rights violations that up to this point in

⁶² Statement to the Final Session of the Commission on Human Rights by 265 Non-Governmental Organisations (Mar. 2006) <http://www.centroprodh.org.mx/english/declarations/statement.html> (accessed October 19, 2012)

⁶³ Ibid

⁶⁴ Commission Resolution 8 (XXVIII), 42 UN ECOSOC, Res Supp. (No. 16) 131 (1968)

⁶⁵ ECOSOC Resolution 235 (XLII) 42 U. N ECOSOC Supp. (No. 1) 17 U. N. Doc E/4393 (1967)

history had always remained beyond the reach of the international community. Indeed, they still provide the only means available that many victims of human rights may invoke to have their situation heard by the world at large. They were recently revised in year 2000 and mechanisms were created to utilize the Internet and modern communication technology in order to make them even more effective.⁶⁶

Today, only few governments can get away with claims that national sovereignty somehow renders them unaccountable or completely immune them from scrutiny under international human rights standards. None wished to be forced to go through an elaborate and highly embarrassing process that shames them before other governments that might decide to launch a formal investigation against them. For this reason, considerable effort was expended by governments in preparing official responses to charges of violations, often sending ministers of foreign affairs or justice, prime ministers, or even presidents to actually address the Commission on Human Rights rather than dismissing it. In fact, it was the importance of the Commission in this regard, rather than its presumed impotence, that made dictatorial and authoritarian regimes campaign within their respective regional blocs to actually seek membership on the Commission itself.

The establishment of the Working Group on Enforced or Involuntary Disappearances in 1980, mainly as a response to the situation in Argentina, heralded the beginning of the era of thematic procedures.⁶⁷ The issue-oriented or thematic approach offered a less polarised method for monitoring major human rights phenomena worldwide and, therefore, became an attractive and

⁶⁶ For more discussion of the 1503 Procedure, see Commission on Human Rights-The Revised 1503 Procedure, <http://www.ohchr.org/english/bodies/chr/1503.html> (accessed October 19, 2012); Report of the Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, U.N. ESCOR, Commission on Human Rights, 56th Sess., Agenda Item 20, U.N. Doc. E/CN.4/2000/112 (2000)

⁶⁷ Established by Comm. Res. 20 (XXXVI), 29 February 1980, E/CN.4/RES/1980/20. See Nigel Rodley, 'Opinion: The Evolution of United Nations' Charter-based Machinery for the Protection of Human Rights'[1997] *European Human Rights Law Review* 6

politically feasible option for the Commission to pursue. Human rights organisations welcomed the approach for opening up new possibilities for exposing human rights violations committed by influential or otherwise untouchable governments. More importantly, the flexible and open-ended formulations used in the resolutions establishing thematic procedures gave them considerable freedom of action to incrementally build up innovative methods of work. Today, the techniques of routine transmissions, urgent appeals, on-site visits and annual reports originally developed by the Working Group on Enforced or Involuntary Disappearances and later followed by other thematic procedures have become generally accepted.⁶⁸

In addition, in close cooperation with the Office of the High Commissioner, a number of bureaucratic measures aimed at better servicing the different special procedures have been taken, particularly since 2000. Those worthy of mention include: the establishment of the Quick Response Desk;⁶⁹ centralising and coordinating special procedures communications with governments, particularly urgent appeals; the creation of a Special Procedures Branch in an effort to further increase coordination and to avoid duplication of work;⁷⁰ and a thematic database within the Special Procedures Branch to coordinate. Again, mention should be made of the efforts to promote and institutionalise cooperation between the treaty monitoring bodies of the major UN rights treaties and special procedures that have been initiated in particular since the mid-1990s.

⁶⁸ Jeroen Gutter, 'Special Procedures and the Human Rights Council: Achievements and Challenges Ahead' (2007) 7 (1) Human Rights Law Review 99

⁶⁹ Report of the meeting of the special rapporteurs/representatives/experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme 5-9 June 2000, 11 July 2000, E/CN.4/2001/6 at para. 18.

⁷⁰ Report of the meeting of the special rapporteurs/representatives/experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme 23-27 June 2003, 4 August 2003, E/CN.4/2004/4 at para. 11

These mechanisms put in place by HRC began to provide an influential deterrent value - few nations relished the prospect of standing before this huge and potentially hostile assemblage and being called upon to publicly defend their record on human rights in light of internationally established norms before the eyes of the world. Invariably, they became weapon to compel most governments to expend considerable energy trying to avoid being placed in this position in the first place and thereby comply with at least some of the standards in advance. Whatever the shortcomings identified, the Commission became the world's premier political forum where dialogue about the direction of human rights took place, where governments were confronted over reports of serious violations, and where attention was drawn to the needs of the victims of human rights abuses.⁷¹ Apart from these mechanisms, the HRC has its procedure for accepting, examining and treating complaints.

2. Procedure for Lodging Complaints

Generally, the UN has devised various methods of bringing complaints to its various bodies. Principally, these methods are the judicial mechanisms and complaint procedures. The judicial mechanisms are employed by UN judicial bodies. The judicial bodies are the International Court of Justice (ICJ);⁷² the International Criminal Court (ICC);⁷³ the International Criminal

⁷¹ Lawrence Moss, 'Will the Human Rights Council Have Better Membership Than the Commission on Human Rights?' in Human Rights Watch Background Paper (New York: Human Rights Watch, 2006) 23

⁷² UN Charter, June 1945, Article 92 establishes the ICJ as the principal judicial organ of the U.N. It is not a specialised human rights court but its jurisdiction enables it to hear and determine cases of human rights when such issues arise in contentious cases and advisory opinion. See ICJ statute, Articles 34-37 and Article 93 (1) of the UN Charter (they deal with jurisdiction of ICJ in contentious cases)

⁷³ The U.N established the ICC in 1998 by treaty to ensure that gravest international crimes are punished. See UN General Assembly Resolution on the Establishment of an International Criminal Court, G.A. Res. A/RES/53/105 (1999), para 11. The jurisdiction of ICC is limited to crimes of genocides, crimes against humanity, war crimes, and the war of aggression. This jurisdiction is created under Rome Statute of the ICC, UN Doc. 218 U.N.T.S. 90 adopted in 1998 and entered into force in 2002

Tribunal for Rwanda (ICTR);⁷⁴ and International Criminal Tribunal for the former Yugoslavia (ICTY).⁷⁵ Their decisions are binding on the state parties and individuals found guilty of gross violation of international human rights provisions. On the other hand, the complaint procedures are resolution 1503 procedure, special procedure through rapporteurs or independent experts and the lodging of complaints with UN treaty committees when the conditions for the petition are satisfied. Although, the resolution procedures and special procedures were mainly used by the UNHRC yet they are non-judicial in nature, hence, there are no decisions legally binding on the states accused of gross violations.

The procedures of the Commission and its Sub-Commission for dealing with the complaints are the outcome of a long development. Although they have a rather fragile basis, yet they are essentially based on ECOSOC resolutions.⁷⁶ The Commission, through extra efforts and assistance of other bodies, was able to receive complaints contrary to its position at the initial stage that it has no power to receive complaints. However, before a complaint is considered, it must pass the litmus test referred to as 'grounds of admissibility' laid down by the Sub-Commission's resolution.⁷⁷ The grounds are that the object of the communication must be consistent with the relevant principles of the UN Charter, the Universal Declaration on Human Rights and other instruments relating to human rights, And there has to be a consistent pattern of gross and reliable attested violations of human rights and fundamental freedom. Also, the source of communication has to be a person or a group of persons who are victims of the alleged violations, a person or group of persons who have direct and

⁷⁴ The tribunal was established by UN Security Council Resolution No. 955, S/RES/955, 3453 1994 and adopted in November 1994

⁷⁵ The tribunal was established by UN Security Council Resolution No. 827, S/RES/872, 3217, 1993 and adopted in May 1993

⁷⁶ Such resolution includes 2 (XXII) of 1966, Resolution 8 (XXIII) of 1967; Resolution 1235 (XLII) of 1967 and Resolution 1503 (XLVII)

⁷⁷ Sub-Commission Resolution 1 (XXIV) of August 1971

reliable knowledge of the violations or a Non-Governmental Organisation acting in good faith and having direct and reliable knowledge of such violation.

With respect to the petition or Communication, it must not be anonymous and must not be based on second hand information or knowledge when it is accompanied by clear evidence. It must not contain abusive and insulting language about the state concerned. However, it may be considered after deletion of the abusive or insulting language. The petition must not be politically motivated neither must it be based solely on reports from the mass-media. Also, any petition or communication that related to cases already settled by the state concerned in accordance with the principles of human rights is inadmissible. Before a petition is considered admissible, it must not seek to impinge upon the rights and freedom of others and exhaustion of all domestic remedies is necessary, unless they are ineffective or would unreasonably prolong the procedure.

Furthermore, petition or communications have to be submitted within a reasonable time after exhaustion of domestic remedies. A communication is inadmissible, if it relates to a matter which is being dealt with under other procedures prescribed in the constituent instruments of convention adopted by the UN, its specialised agencies or in regional conventions. In this context, the author of the communication should bear in mind when choosing the procedure that the UN procedure is basically a political one. It aims at determining the existence of a consistent pattern of gross violations.⁷⁸

One of the early important resolutions on the receivability of complaints is resolution 728.⁷⁹ The resolution established a system

⁷⁸ The analysis of these grounds is made by Shelton. See Dinah H. Shelton, 'Individual Complaints Machinery Under the UN 1503 Procedure and the Optional Protocol to the International Covenants on Civil and Political Rights; in Guide to International Human Rights Practice, Philadelphia, 1984, 62. See also Glenda Da Fonseca, How to File Complaints of Human Rights Violation, (Geneva, 1975) 21

⁷⁹ ECOSOC Resolution 728 (XVIII) adopted on 30th July 1959

of non-confidential list and confidential list of communications.⁸⁰ The system was established with the sole purpose of bringing to the attention of the sub-commission complaints or communications (with replies from Government if provided) which reveal a consistent pattern of gross violation of rights and freedoms within the terms of reference of the Commission. The Secretary-General worked closely with the Commission in this regard by compiling the lists of communications and distributing them to the Commission which in turn send them to the member state concerned. The member state concerned is expected to reply or defend the allegation.

The possibility of dealing with complaints of gross violation emerged in 1967 with the ECOSOC Resolution 1235⁸¹ and Commission Resolution 8.⁸² These resolutions gave the Commission and Sub-Commission the authority to examine information relevant to the gross violation of human rights even if not filed by anybody. The resolutions empowered the commission to take actions concerning complaints in certain situations. The possibility of the Commission making a thorough study of situations which reveal a consistent pattern of gross violation of human rights and make report and recommendations to the ECOSOC was created.⁸³ The adoption of these resolutions has been regarded as a landmark because they set the scene for the annual debate on human rights at the Commission. Before this resolution, the UN had never accepted the consideration of well documented communications alleging violation of human rights and taken action.⁸⁴

⁸⁰ M. J. Bossuyt, 'The Development of Special Procedures of the United Nations Commission on Human Rights,' (1985) 6 Human Rights Law Journal 185

⁸¹ ECOSOC Resolution 1235 (XLII) 42 U. N. ECOSOC Supp. (No. 1) 17 U. N. Doc E/ 4393 (1967)

⁸² Commission Resolution 8 (XXVIII), 42 UN ECOSOC, Res Supp. (No. 16) 131 (1968)

⁸³ Andrew Clapham, 'United Nations Charter-Based Protection of Human Rights,' in R. Hauski, M. Sheinin & M. Suskileda, *An Introduction to the International Protection of Human Rights*, 3rd ed., Institute for Human Rights: Abo Akademi University, 2009, 42

⁸⁴ A Subbian, n. 18 above at 24

Another procedure sprang up in 1970 with the adoption of Resolution 1503 (XLVIII).⁸⁵ Under this new procedure, the Sub-Commission was authorised to appoint a working committee or group to consider communications and other relevant information with a view to screening the communications. Thereafter, the Sub-Commission referred some of these to the Commission. Based on this, from 1974, the Commission further established a working group of 5 members to meet one week before the session to examine the documents transmitted to it by the Sub-Commission. The working group has to refer particular situations to the Commission.⁸⁶

The Commission decides on whether or not to instigate a thorough study by itself. It either sends recommendations to ECOSOC in line with resolution 1503 or refers the matter to an appointed ad hoc committee with the express consent of the concerned state. If referred to the ad hoc committee, the committee have the power to receive communications and hear witnesses. However, the procedure of the committee was confidential and its meetings held in camera. While conducting a thorough study, the consent of the state concerned is not required. Resolution 1503 encourages friendly resolution that may be sought before, during and even after the investigation.⁸⁷ This procedure has been in practice since 1972 and, in practice, has been carried out by a special rapporteur; a case in point is that of Equatorial Guinea where the report of the special rapporteur was even made public.⁸⁸ When the procedure (the complaints system) was first used in 1972, over

⁸⁵ ECOSOC Resolution 1503 (XLVII) 48 U.N. ECOSOC Res. Supp. (No. 1A) 8 U. N. Doc. E/4832/Add. 1. (1970). See United Nations Centre Human Rights, Complaint Procedure Fact Sheet No. 7 (New York: Office of the United Nations High Commissioner for Human Rights, 2002) 26

⁸⁶ Howard Tolley, 'The Conceal Crack in the Citadel: The United Nations on Human Rights,' (1984) 6 (4) Human Rights Quarterly 420

⁸⁷ Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Thirty-Second session, Res. 1 B (XXXII) U. N Doc. E/CN.4/1350(1979)

⁸⁸ Suzanna Cronje, *Equatorial Guinea: The Forgotten Dictatorship*, (London, 1976) 9; Fernando V. Jimenez, *Study of the Human Rights Situation in Equatorial Guinea*, (NY: United Nations, 1980) 489

2,000 complaints were received. In 1973, over 7,000 new complaints were received while between 1974 and 1984 an average of 30,000 communications was received annually.⁸⁹ Some have however suggested that the screening of these complaints have been too rigorous.⁹⁰

Apart from the two resolutions, the Commission developed a series of 'special procedures' for monitoring violations in selected countries, through individuals acting either as country or thematic experts. These experts submit reports to the relevant UN bodies. They undertake country visits, which are the subject of separate reports, and, in addition, they correspond with governments through 'urgent appeals' and 'letters of allegation'. This correspondence often points to human rights violations and generates responses from governments about a third of the time.⁹¹ Even where the faxes and letters are ignored or dismissed, it is clear that the process of putting governments on notice that the UN's watchdogs have been alerted has led to, in some cases, releases from detention and changes in policy.

It should be noted again that the Working Group on Arbitrary Detention receives complaints and issues 'opinions' on individual cases and 'deliberations' on general matters. But where a case has been simultaneously submitted to the Working Group and the Human Rights Committee (the conventional body that monitors the International Covenant on Civil and Political Rights), the Working Group will have to defer the case for the Committee.⁹² Moreover, one should note that the Working Group delivers its

⁸⁹ United Nations, 'Analysis and Evaluation of Existing UN Procedures for Dealing with Communications Concerning Violations of Human Rights' (1993) 15 (1) Human Rights Quarters 1

⁹⁰ A Subbian, n. 18 above at 36

⁹¹ In 2007, 1,003 such letters were sent to 128 countries concerning the cases of 2,294 individuals. Governments replied to 32 per cent of these letters. UNCHR 2007 Report: Activities and Results (2008) 27

⁹² Sir Nigel Rodley, 'United Nations Human Rights Treaty Bodies and Special Procedures of the Commission of Human Rights: Complementarity or Competition?' (2003) 25 *Human Rights Quarterly* 907

opinion based, not only on a consideration of conformity with the conventions that the state is a party to, but also with regard to non-conventional standards such as those found in the Universal Declaration on Human Rights. The special procedure received applause from Secretary-General (Kofi Annan) when he urged the new Human Rights Council to “preserve and strengthen the system of Special Procedures”, calling them the “crown jewel of the system.”⁹³ However, the effectiveness of the special procedures depended largely on the quality and independence of mandate holders.

A new phase in the development of the special procedures of the Commission came after the end of the Cold War. This new era in international relations seems to offer unprecedented opportunities for the implementation of the doctrine of human rights in an ideologically neutral environment.⁹⁴ Governments agreed to create the post of High Commissioner for Human Rights and to transform the relatively dormant United Nations Centre for Human Rights into the Office of the High Commissioner for Human Rights, a decision which greatly facilitated the emergence of special procedure and an independent international human rights bureaucracy.

After a careful start, the political profile of the post of High Commissioner for Human Rights increased significantly, particularly under the leadership of Mary Robinson, the former President of the Republic of Ireland. The special procedures of the Commission no doubt ended up on the positive side of its slate. Today, more than twenty-five different thematic mandates dealing with a wide range of human rights phenomena are covered. The thematic mandates covered issues classified as civil and political rights as well as issues belonging to the category of economic, social and

⁹³ Kofi Annan’s Message to the Human Rights Council, 29 November 2006

⁹⁴ M Ignatieff, ‘Whose Universal Values? The Crisis in Human Rights,’ [1999] *Praemium Erasmianum Essay* 12.

cultural rights on a worldwide basis.⁹⁵ In addition, thirteen different country situations are currently monitored by country-specific procedures.⁹⁶ It could be concluded that these procedures have been successful in protecting and promoting human rights and curbing state abuse of human rights.

IV. The New Human Rights Council

For about sixty years, the UNHRC served the United Nations and other intergovernmental community very well. It is not in doubt that over its sixty years of operation, it made a very important contribution to human rights standard setting. It assisted in the development of the United Nations institutional capacity to promote and protect human rights. And, in many national sanctions, it helped in the significant improvements in the protection of human rights.⁹⁷ Notwithstanding the colossal achievements of the Commission, the early years of the twenty-first century witnessed the most severe criticism of the Commission. Of course, it had its shortcomings and was criticised accordingly.⁹⁸ By the end of the first five years of the century the criticism began to take on visibility and bite in a

⁹⁵ As at 2008, the thematic special procedures were as follows (in order of their creation): Enforced or involuntary disappearances; extrajudicial, summary or arbitrary executions; torture and other cruel, inhuman or degrading treatment or punishment; freedom of religion or belief; mercenaries; sale of children, child prostitution and child pornography; arbitrary detention; internally displaced; racism and xenophobia; freedom of expression; violence against women; independence of judges and lawyers; economic reform policies and foreign debt; toxic and dangerous products and wastes; right to education; extreme poverty; migrants; right to food; adequate housing; human rights defenders; indigenous peoples; right to health; racial discrimination faced by people of African descent; human rights and counter-terrorism; minority issues; international solidarity; human rights and transnational corporations and other business enterprises; trafficking in persons, contemporary forms of slavery; and access to safe drinking water and sanitation.

⁹⁶ Jeroen Gutter, n. 68 above at 101

⁹⁷ Patrizia Scannella & Peter Splinter, 'The United Nations Human Rights Council: A Promise to be Fulfilled', (2007) 7(1) Human Rights Law Review 42

⁹⁸ For detailed criticism and weakness of the Commission, see Van Boven, *People Matter, View on International Human Rights Policy* (Amsterdam, 2000) 65; Amnesty International Press Release, UN Commission on Human Rights: Rights for All, Not Politics, Must Prevail 14 March 2002, IOR 41/002/2002; Amnesty International Press Release, UN Commission on Human Rights Fails Once Again to Protect Victims of Human Rights Violations, 25 April 2003, IOR 41/014/2003; Human Rights Watch, UN Human Rights Commission "In Crisis", 24 September 2002, Human Rights Watch Press Release, UN: Credibility at Stake for Rights Commission, 10 March 2004 <http://www.hrw.org/html> (accessed November 21, 2012); Secretary-General Kofi Annan's Report, In Larger Freedom: Towards Development, Security and Human Rights for All, 21 March 2005, A/59/2005, particularly para 182

way that it never had before. As expected, a High-level Panel was set up to look at the activities of the Commission with a view to strengthening its function of protection and promotion of human rights. After a thorough job of examining the activities of the Commission, the Panel recommended a reform of the Commission and not its replacement.

1. Innovations in the Human Rights Council

The recommendation went down well with the Secretary-General and the successive Presidents of the General Assembly.⁹⁹ It was not new then when the President submitted the report for consideration at the 2005 World Summit. The outcome of the World Summit¹⁰⁰ is the “Outcome Document” which decided to establish the Human Rights Council. The Outcome Document was eventually adopted by the General Assembly by Resolution 60/251 on 15 March 2006.¹⁰¹ The establishment of new Council (Human Rights Council) brings with it some innovations; the innovations that will enhance the effectiveness of the Council and at the same time guard against political gimmicks which ran down the old Commission.

The first innovation brought by the Council is the change in the membership and voting pattern. Unlike the 53 commissions’ members, the Council consists of 47 members-the first time when the members of a UN organ will be reduced. The 47 seats are distributed according to the five regions. Thus, African group take 13 seats; Asia Pacific 13 seats; Eastern Europe 6 seats; Latin American and Caribbean 8; and Western Europe and other groups 7 seats.¹⁰² Germane to this allocation is the election procedure of the members. New members of the Council are elected directly

⁹⁹ Kofi Annan, Ambassador Jean Ping and Ambassador Jan Eliasson

¹⁰⁰ 2005 World Summit Document, 15 September 2005, A/Res/60/1 paras. 157-160.

¹⁰¹ General Assembly Res. 60/251 was adopted by a vote of 170 in favour, 4 opposed (Israel, Marshall Island, Palau and United States) and 3 abstained (Belarus, Iran and Venezuela)

¹⁰² GA Res. 60/251 para 7. This allocation of seats on the Council is a significant redistribution of the proportion of seats attributed to the five regional groups, with the Africa and Asia having a clear majority. The reallocation was justified on the basis of proportional geographic distribution of the seats in order to reflect the population facts of international life in the twenty-first century and the membership in the United Nations itself.

and individually by a majority of the members of the General Assembly; that is, by a minimum of 97 individual votes out of 192.¹⁰³ In electing candidates to the Council, UN members are to take into account the contributions of the candidates to the promotion and protection of human rights and voluntary pledges and commitment made by the candidates. When elected, members of the Council shall serve for a period of three years and shall not be eligible for re-election after two consecutive terms.¹⁰⁴

The second feature of the HRC is its sittings. In the past, the Commission met only once for six weeks in a year to consider many seemingly increasing complaints. Now the Council meets throughout the year in short blocks; the Council meets at least three times a year for at least ten weeks.¹⁰⁵ The Council can convene special sessions at the request of sixteen members, thereby allowing it to react more quickly to both chronic and urgent situations. Thus, there is a deeper and more sustained scrutiny of country situations and thematic issues. By necessary implication, this means that the Council and its working group now meet more or less all year. Human rights negotiations are no more rushed issues over a condensed six week meeting.

Another unique innovation brought to the UN HRC is the new procedure called 'universal period review'. Under this procedure, the Council reviews every UN member State's compliance with its human rights obligations and commitments. The theory is that this procedure will avoid the Commission's previous selectivity by examining every State in the world with respect to the full range of its human rights obligations. The resolution establishing the Council provides that it is to be responsible for 'promoting universal respect for the protection of all human rights and fundamental freedoms for all'.¹⁰⁶ In other words, universal periodic review will look at all rights in all countries.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., Para 10

¹⁰⁶ Ibid, para 8

Lastly, the suspension of membership of the Council is worthy of consideration. Resolution 60/251 setting up the Council provides that the General Assembly may, by a two-thirds majority of members present and voting, suspend the rights of a Human Rights Council member where that State commits gross and systematic violations of human rights.¹⁰⁷ With this development, member States are compelled to watch their steps when it comes to protection of human rights or violation of same. The fear of losing their seats or being confronted with gross violation of human rights during elections is echoed to them in this paragraph.

All these innovations were lacking in the old Commission, hence it was easy for some states to play politics and turn the table when accused of gross abuse of human rights in their countries. With these measures in place, the new Human Rights Council sprang into action with two special sessions in 2006 and many more in the subsequent years. The Council is however warned that all of the carefully negotiated reforms would amount to very little unless members are able to muster sufficient political will to look beyond the pursuit of narrow national self-interest and regional factionalism, to act on principle, to make difficult choices, and to avoid empty declarative gestures by transforming words into deeds that will embrace the cause of human rights worldwide.¹⁰⁸

This is not all. The recent happenings in the Middle East pose a challenge to the Council regarding human rights abuses. Thus, the Council not only needs to be proactive, it also needs to be creative in its approach to tackling human rights abuses in the region. Militia and sectarian wars are ravaging the region with its attendant consequences – gross human rights violations. The war starts from Tunisia and is on the move, Egypt and Syria and several other Arabian states are on the verge of war. The gross

¹⁰⁷ Ibid, para 8 & 9

¹⁰⁸ Louise Arbour, 'Human Rights Council Renewal', *Washington Times* June 19, 2006, A16

abuse of human rights rose to its peak in August 2013 in Syria when chemical weapon of mass destruction was allegedly used by the Syrian government against the rebel group in Ghouta, a suburb of Damascus.¹⁰⁹ Such terrific attack is against the Chemical Weapon Convention.¹¹⁰ Thus, it is incumbent on the Council to immediately adopt thematic procedure and establish Working Group on the Use of Chemical Weapon during internal conflict. Interestingly, Syria has acceded to the Convention in September and it will come into force from October, 2013.¹¹¹ With this as a background, the Council is equipped with basis upon which it can begin to assess the level of human right abuses by Syrian government or whoever is responsible for such abuse. This can be done in various ways – it could be by invitation of comments from human rights NGOs or better still, complaints can be heard from the surviving victims or relatives of dead victims. Such invitation and complaints will trigger full-blow investigation into the extent of human rights abuses and expose the perpetrators whether individual or government.

V. Conclusion

The discussion above has been centred on the evolution, development and standard settings of UN Commission on Human Rights. Thus, this paper shows that the idea of establishing the Commission emerged as far back as mid-twentieth century in order to prevent similar atrocities committed by warring parties of the World War II. The concerned individuals and organisations thought it fit to have a body which will be saddled with the responsibility of protecting and promoting human rights worldwide in order to avert the nature of the terrific and gross violation of

¹⁰⁹ CBSNEWS, “Chemical Weapons Attack in Syria” available at http://www.cbsnews.com/2300-202_162-10018016-3.html (accessed October 5, 2013)

¹¹⁰ Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction, GA res A/RES/47/39 adopted on September 3, 1992 (enter into force April 29, 1997)

¹¹¹ Reference: C.N.592.2013.TREATIES-XXVI.3 (Depositary Notification) available at <http://treaties.un.org/doc/Publication/CN/2013/CN.592.2013-Eng.pdf> (accessed October 5, 2013)

¹¹² See Mario Gomez, ‘Social Economic Rights and Human Rights Commissions’, (1995) 17 *Human Rights Quarterly* 160

human rights witnessed during the Second World War. History further reveals that at the global level, the San Francisco Conference of 1945 brought about the formation of UN whose first article proclaimed the principle of human rights and freedom for all. Thus, it was very easy for the conveners of the conference to suggest a strong Human Rights Body to implement the objectives of human rights. At the end, the ECOSOC, an organ of the UN appointed the first Commission on Human Rights which is today known as the UN Commission on Human Rights.

The historical evolution also reveals that the UN Commission on Human Rights adopted many procedures and mechanisms (Special Procedure of the Commission on Human Rights) to monitor and report human rights situations in the various regions and countries. This study, again, shows that the Commission (through ECOSOC, its main body) advocated for similar human rights protective bodies in all UN member States. The clarion call received the blessing of many nations because in the last 30 or 40 years, many regional and national human rights commissions with mandate for the protection and promotion of human rights emerged in most parts of the globe.

It is not in doubt, therefore, that many of these procedures and mechanisms have been adopted by regional human rights bodies like the African Commission on Human and People's Rights. The guidelines as formulated by the Commission have also remained major factors in the formation of national human rights commissions in many countries of Africa, Asia and Europe. With this as the background, it is now easy to identify and monitor violators of human rights worldwide. It has also empowered these commissions to perform optimally. Hence, it is strongly believed that other human rights bodies that may be formed will benefit from the UN commission if its structure, mechanisms and procedures are strictly adopted. After all, Mario Gomez¹¹² has long advocated for a separate Commission to protect and promote social economic rights as he also envisioned that many other commissions will emerge in future as the body of international human rights develops.