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Human Rights Protection: The United Nations and the International System

The most significant international body protecting human rights is the United Nations (UN). The UN's mandate is to promote and protect universal human rights. The UN is large, complex, and its duties and activities sometimes overlap, which means there is no simple way of summarizing all it does to promote and protect human rights.

This chapter examines human rights at the UN in three areas. The first section will examine how its organs and programs and other non-specific human rights sections promote and protect human rights. The second section will look at the Human Rights Council, the main political body managing human rights at the UN. The third section will examine the treaty bodies, which are committees that manage individual human rights treaties.

Before looking at the UN, it is useful to consider its importance to Southeast Asian countries. Even though the UN is the predominant international organization managing relations between States, some people have claimed that it is weak and has little influence over State activities. This is true in the sense that it may be difficult for the UN to force States to act in a particular way; and it is especially true in the case of making States comply with their human rights obligations. However, States do take their participation in the UN very seriously. Some Southeast Asian countries have had a long and active role in many parts of the UN, especially the Philippines, Thailand, and Indonesia. The Philippines is the only Southeast Asian nation which is a founding member of the UN, although Thailand and Myanmar joined soon after. Southeast Asian countries have played an active role in many parts of the UN, whether this is by receiving assistance, undertaking diplomatic roles, being members of commissions or organs, or agreeing to UN treaties and resolutions. A summary of these can be seen in the table 7.1 below.

Membership of the United Nations is a State's first crucial step towards recognizing human rights because by signing the UN Charter, the State agrees to promote human rights, and abide by international law. Further, the UN is a venue where States can contribute to the development of human rights, as can be seen, for example, in the introduction of rights around sexuality. The UN is also a venue where Southeast Asian States must defend their human rights record. For these reasons, the argument that the UN has little power or influence is contestable.

Table 5-1: Southeast Asian Countries at the UN

Country	Joined	Interesting History
Philippines	1945	<ul style="list-style-type: none"> • Has been a member of the Commission on Human Rights. • Member of the UN Security Council 2004-2005
Thailand	1946	<ul style="list-style-type: none"> • Member of the UN Security Council (1985-86). • Hosts UNESCAP (a regional commission for the Asia Pacific) • Chair of the Human Rights Council (2010-2012).
Myanmar	1948	<ul style="list-style-type: none"> • The UN Secretary General from 1961-1971 was U Thant, a Burmese diplomat.
Indonesia	1950	<ul style="list-style-type: none"> • Withdrew briefly from UN in 1965 • Chair of the Commission on Human Rights (2005) • Member of the UN Security Council (2007-2008)
Cambodia	1955	<ul style="list-style-type: none"> • Was represented by the Khmer Rouge in the early 1980s • One of the largest UN peacekeeping programs (UNTAC) was carried out in Cambodia from 1992-1993 • The first presence of the OHCHR was an office in Cambodia in 1993.
Laos	1955	<ul style="list-style-type: none"> • Has around 11 UN programs resident in the country, including UNDP, UNFPA, UNICEF, UNODC • Active in the Land-Locked Developing Countries (LLDCs)
Malaysia	1957	<ul style="list-style-type: none"> • Chairperson to Commission on Human Rights (1995) • State member of the Commission on Human Rights (2005)
Singapore	1965	<ul style="list-style-type: none"> • Was a member of the UN Security Council from 2001-2002 • Is active in UN reform • Helped form the Global Governance Group (3G), comprising 30 small and medium-sized States, which ensures the voices of small States are heard at the UN
Vietnam	1977	<ul style="list-style-type: none"> • Joined UN after the American war • Member of the UN Security Council (2008-2009) • Has around 15 UN agencies working in the country
Brunei	1984	<ul style="list-style-type: none"> • Is a member of the OIC at the UN • Has not been on the UN Security Council or Human Rights Commission
Timor-Leste	2002	<ul style="list-style-type: none"> • Joined as the 192nd member (there are now 193 members) • Was managed by the UN through UNTAET (1999-2002)

5.1 Human Rights in the Broader United Nations System

Human rights are promoted and protected in many parts of the UN. While the UN structure is huge and complex, there is a hierarchy to the system. The most important bodies are the six 'organs.' Though none of these organs have a human rights specific mandate they all deal with human rights issues on a regular basis. Five UN organs will be addressed here, (since the last trusteeship territory became a country in the 1990s, the sixth organ, the Trusteeship Council, is no longer active):

- The Security Council (UNSC)
- The General Assembly (UNGA)
- The International Court of Justice (ICJ)
- The UN Secretariat led by the UN Secretary General (UNSG)
- The Economic and Social Council (ECOSOC)

The Security Council

The UNSC consists of fifteen Members: five permanent members (China, France, the Russian Federation, the United Kingdom, and the United States of America), and ten non-permanent members elected for a two-year term by the General Assembly. The UNSC's function is to ensure international peace and security, and it can only become involved in situations which are considered a "threat to international peace and security." It is a powerful organ because it can make legally binding resolutions, and it has powers to punish States which do not comply with its resolutions. These powers include putting sanctions on States, the use of peacekeepers, and the use of force. While most of these resolutions concern matters of peace and conflict, the UNSC does contribute to the promotion and protection of human rights. No other organ has this kind of power.

Given that conflict always involves threats to people's human rights, the UNSC has always been addressing human rights concerns. Early actions on human rights include sanctions on the white regimes of Rhodesia in 1966 and South Africa in the 1970s because of their use of apartheid laws which discriminated against the majority black population. The UNSC was active in peacekeeping (in countries like the Congo, Cyprus, and the India-Pakistan border) from the 1950-1970s, but it was not till after 1990 that the UNSC began to include addressing human rights violations in its decisions. It has done this by considering that any "gross and systematic human rights violations" are threats to international peace and security, thereby empowering it to act. This change in definition meant the UNSC could enter countries without their approval, if gross and systematic violations were occurring. Examples of this include actions on Iraq, Somalia, and the Former Yugoslavia (all in the early 1990s), where the UNSC authorized the use of military force. The change in UNSC activity came as a result of the end of the Cold War which lifted the paralysis in decision making because the Soviet Union or USA would veto initiatives of other countries. The change was so dramatic that the UNSC was more active in the five years after the Cold War (from 1991-1996), than in the entire 45 years of the Cold War itself. However, this increased activity has not always been successful, with missions to Yugoslavia and Somalia failing to create peace and protect civilians, and respond to the genocide in Rwanda was too late to save people's lives. Currently, the UNSC has been less active in permitting military responses to widespread human rights violations, as exemplified by the lack of response to the ongoing civil war in Syria.



DISCUSSION AND DEBATE

Do Politics Stop the Protection of Human Rights by the UNSC?

It is well known that the five permanent members have the right to veto any resolution. Resolutions on Israel are regularly vetoed by the USA, as are resolutions on Syria by Russia and China. A veto allows these countries to help their allies, or avoid difficult human rights questions themselves. In addition, the knowledge of a likely veto means that many issues such as Chechnya or Uyghurs will not even be discussed. There is much debate about the veto power. On the one hand it may seem unfair that the permanent members only gained the right to veto because they were the victors of World War II, and other powerful States do not have this privilege. On the other, the permanent members are strong regional powers and are involved in more conflict and peacekeeping than most States.

Nevertheless, vetoes have been used very infrequently: only fourteen in the past ten years, and nine of these have either concerned Palestine or Syria. This compares to around 700 resolutions passed without a veto in that same time period, meaning vetoes only made up about 2% of all resolutions. Further, as a rule, States do not like to veto resolutions and try to avoid it, as it implies they are forced to do so as a last resort and without widespread support.

Do vetoes prevent the UNSC from having an impact on protecting human rights?

The UNSC can respond to human rights violations in conflict situations by providing peacekeepers, authorizing the use of force, or establishing transitional authorities to manage a country's passage from conflict to peace. The UNSC can also protect human rights by referring cases to the International Criminal Court (ICC) which can try people who have committed serious crimes such as genocide, war crimes, or crimes against humanity. As will be detailed in a later Chapter, the UNSC has the power to order the ICC to investigate serious crimes during a conflict. Ideally, this should limit how an individual, the military, or a State conducts armed conflict. The UNSC responds to violations by producing resolutions which recognize or improve the protection of vulnerable groups. Examples include resolutions on protecting women in conflict (detailed in the box below), on child soldiers (among the many resolutions on this topic are resolution 1261 on child soldiers and 1612 on reporting mechanisms), and civilians caught in a conflict situation (among the many resolutions on this topic are 1265 on protecting civilians and 1674 on preventing conflict through democracy).



FOCUS ON

The United Nation Security Council Resolution 1325 and the License to Rape Report

UNSC Resolution 1325 was adopted unanimously on 31 October 2000 and it calls upon “all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls, especially as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949.”

The four main issues addressed by 1325 are: (1) the increased participation and representation of women in decision-making; (2) attention to the specific protection needs of women; (3) the importance of having a gender perspective on post conflict negotiation; and (4) the importance of gender sensitivity training.

On the surface, it appears that the resolution has not been a success as women continue to face violence in conflict, and they remain marginalized in post-conflict development. Though, women’s security is now a central topic on the UNSC agenda. There is still a long way to go before women protected in conflict situations, but Resolution 1325 and its follow-up resolutions which address issues such as the use of rape as a weapon of war (Resolution 1820), shows there are developments in this area.

Example: Despite the fact that Burma is a member of the UN and signatory to the 1949 Geneva Conventions, the 2003 report “License to Rape,” by The Shan Human Rights Foundation and the Shan Women’s Action Network, has shown that the regime has not enforced these laws amongst its army. The report details systematic and widespread rapes perpetrated by the Burmese military between 1996 and 2001. These crimes remain unpunished even though the report claims they were committed to subjugate and terrorize the Shan State’s ethnic minority. The report clearly demonstrates that the protection of women (as outlined in Resolutions 1325 and 1820) has not been met by the Myanmar military.

General Assembly

The UNGA is the main representative organ of the UN and acts as a venue where all members of the UN (193 countries as of 2014) can meet. Members come together in September every year for a three to four month period of discussion on all issues relevant to the UN. The topics which can be discussed range from the environment, to the economy, education, and other UN activities. The UNGA can influence human rights in a number of ways. The UNGA may authorize resolutions on human rights, but because it does not have the same power as the UNSC to pass legally binding resolutions, they are regarded more as recommendations. These resolutions may propose how human rights will be promoted and protected by the UN, and can vary greatly from such topics as blood diamonds, and mercenaries, to ending capital punishment. Resolutions are passed more commonly by unanimous support, but some resolutions on sensitive issues go through a vote where two thirds of those present and voting need to approve the resolution. The UNGA can shame countries with bad human rights records by passing resolutions to criticize them. Similarly, it can call on the UNSC or other bodies in the UN to conduct more research or activities on those countries with poor human rights records. Finally, the UNGA is the arena where human rights treaties are approved and where they become open for signature by State members. Thus, while the UNGA may not appear as powerful as the UNSC, it is able to influence and direct human rights policy at the international level.

International Court of Justice

The ICJ, sometimes called the world court, has the duty of managing international law and is central in deciding how international law is understood and arbitrated. It mainly does this in two ways: Firstly by issuing advisory opinions, commonly in response to a question given to it by a body in the UN (for example, the General Assembly of the UNSC); and secondly by settling a dispute between countries. Over its long history of about 90 years (the ICJ was originally the Permanent Court of International Justice in the League of Nations), it has made few decisions on human rights. Since World War II, it has decided around 160 cases, and only somewhere around a third of these (depending on how they are counted) have looked at human rights issues. However, like the UNSC, it has recently become more active in this area. This is not to say it has been irrelevant, as many of its findings (for example, on the legality of reservations) have had direct implications on how human rights are understood and protected.

The ICJ has contributed to the understanding of human rights by its decisions on self-determination. In one such case which reached a decision in 1995, Portugal (the colonial administrator of Timor Leste), brought a case against Australia for entering into an agreement with Indonesia regarding its rights to gas fields in Timor Leste's territory. Portugal argued that the people of Timor Leste (and Portugal) should be the ones to benefit from the gas fields, not Australia. Another case relating to human rights concerned the legality of Israel's wall around the Palestinian territory. The ICJ found the wall a violation of various international obligations, including freedom of movement, among other rights. There have been important cases on genocide in Yugoslavia, war crimes in the Congo, and the legality of nuclear weapons. The ICJ has been active in Southeast Asia on territorial claims, such as the temple on the border of Thailand and Cambodia (Pravihan to Thailand, Preah Vihear to Cambodia), and on the disputed sovereignty over islands between Malaysia and Indonesia, and between Malaysia and Singapore.

The UN Secretariat

The UN Secretariat is the body which administers the UN; it enables the UN to function smoothly from overseeing basic duties such as the cleaning of rooms to the more challenging task of putting together peacekeeping forces. The UN Secretariat is managed by the UN Secretary General (UNSG), the person elected to head the UN. The current UNSG is Ban Ki Moon, a South Korean. One past UNSG has been from Southeast Asia; U Thant (Burma) who was the Secretary General from 1961-1971. The role of the UNSG in human rights issues can vary greatly. Some UNSGs have had a significant impact: for example, Kofi Annan undertook wide reforms in the UN which have had a positive impact on the role of human rights. He was instrumental in the change from the Human Rights Commission to the Human Rights Council (detailed in the next section). Annan was also a strong advocate of human rights to be a cross cutting issue within the UN leading to it now being mainstreamed in sectors such as humanitarian affairs, development, and peace and security. Previous UNSGs were more passive in their support for human rights.

One power possessed by the UN Secretariat relative to human rights is the appointment of special representatives, who are appointed to report to the UNSG on human rights concerns. These representatives can focus on thematic or geographic human rights issues, depending on their mandate and can facilitate negotiations and investigate human rights violations on behalf of the UN Secretariat. There has been a special representative appointed to report on Myanmar.

The Economic and Social Council

While its main area of ECOSOC's concerns is economic and social development, it can establish institutions to manage human rights, the most important of which is the Human Rights Commission. Alongside this commission are the Commission on Women, and the Permanent Forum on Indigenous Issues, which also work on human rights. The Human Rights Commission (replaced by the Human Rights Council in 2006) will be discussed in the next section.

Other Bodies

The UN has many funds and programs which work on human rights issues. The list is too large to give here, but some of the more important include:

- UNICEF: The United Nations International Children's Emergency Fund (UNICEF) is a UN agency founded in 1946 and is based in New York. Initially aimed to help children in the aftermath of World War II, its activities have diversified to health, education, and child rights.
- UN-Women: The UN-Women (United Nations Entity for Gender Equality and the Empowerment of Women) is a new organization that emerged from a number of UN women's organizations such as UNIFEM (UN Development Fund for Women) and DAW (the Division for the Advancement of Women). It promotes women's empowerment through areas of action such as violence against women, peace, leadership, and economic empowerment.
- UNHCR: The Office of the High Commissioner for Refugees was founded in 1950 by the UNGA to protect and safeguard refugees' rights worldwide. The UNHCR has many activities in the promotion and protection of refugee rights.

FOCUS ON

Keeping up with UN Activities

As this chapter will make obvious, the machinery around human rights at the UN is constantly evolving and updating. The information in this chapter looks at the UN up to 2015, but even around that time there were significant developments with the establishment of new communication and complaints procedures for children, elections at the Human Right Council, the Migrant Workers treaty body hearing its first complaint, and arguments on religion, traditional culture, sexuality, and commercial sex work being debated by UN human rights bodies.

The task of protecting human rights internationally has only occurred recently, and much development is still going on. This chapter highlights some of what has occurred so far, but students must be aware that information changes quickly and to keep up with UN activities, they are advised to keep in touch through organizations reporting on events at the UN whether through the UN media, NGOs reporting on human rights at the UN (such as ISHR), or regularly monitoring the OHCHR website for updated information.



5.2 The UN Human Rights Bodies

UN bodies are most commonly categorized into two groups: (1) charter bodies (those bodies set up by the UN Charter), and (2) treaty bodies (those bodies attached to human rights treaties). The distinction is necessary because these two categories have very different compositions and purposes. An important difference is that charter bodies receive their power from the UN Charter, and thus have relevance to all State members of the UN who must follow the Charter. Treaty bodies are only relevant to those States which have ratified the treaty. Each treaty has its own body, and these work separately. This chapter will first look at the main charter bodies, before turning to treaty bodies.

Table 5-2: Major Differences between Charter Bodies and Treaty Bodies

	Charter Body	Treaty Bodies
Established by	UN Charter	Human rights treaty
Scope	Human rights according to the UN Charter	Human rights as outlined in the treaty
States in compliance	Members of the UN	States which have ratified the treaty
Mechanisms to examine States	Special procedures: special rapporteurs, universal periodic reviews, complaints procedures	State party reports, individual complaints, site visits
Composed of	Representatives from State members of the UN	Individual experts nominated by State parties

5.2.1 Charter Bodies: The Human Rights Council

The UN organs detailed above are, in a sense, charter bodies. However, the organs have a wide variety of activities and do not deal only with human rights. The main charter body dealing specifically with human rights is the HRC. Originally founded as the Human Rights Commission in 1946, it became the Council in 2006. At this venue, States meet and discuss human rights, pass resolutions, and initiate a number of activities to protect human rights. Currently, they meet at least three times a year. There are usually many issues on the agenda, including: discussing the protection of human rights (covered below); special human rights concerns (such as older persons or genocide); and listening to reports from experts appointed by the HRC.

The HRC is a political body because the 47 people who sit in it represent their State, and do not make personal assessments. This differs from the individuals on expert bodies as they make decisions based on their expertise and not because of the State they represent. Since the HRC is political, there will be both limitations and benefits. It is important for States to give their views on human rights as they are duty-bound by the treaties they have ratified, and are the principle group with obligations towards people's rights. Ideally, States will gather to discuss how to promote human rights, to engage with States that have violated human rights, and to enforce human rights standards. However, some States can be skilled at avoiding human rights concerns and can let politics influence their attitude to human rights. For example, States often avoid criticizing each other on their human rights record, knowing if they do so, they may also be criticized in turn. Similarly, a State's politics may often influence decisions on human rights, especially around politically sensitive concerns, such as the issue of Palestine, or the rights of lesbians and gays.

Many of these problems occurred in the Human Rights Commission, which was replaced by the Council. The previous UNSG, Kofi Annan, said that the Commission was dysfunctional and highly politicized, as evidenced by Libya's role as chair of the Commission, and its subsequent lack of response to violations in Zimbabwe, Chechnya, and Sudan. These situations all had gross and systematic human rights violations, but none were responded to seriously by the Commission. Senior experts at the UN, including Kofi Annan suggested replacing it with a new body which would have a different structure and activities. The reformed Council attempts to avoid the failures of the Commission by introducing the following changes:

1. **Voting:** Members must be voted into the Council by the General Assembly by secret ballot. A secret ballot was necessary to enable other countries from the same region to not vote for countries with poor human rights records despite being regional 'friends.' Secret ballots have been successful in preventing countries with poor human rights records (such as Sudan, Syria, Iran, Belarus, Sri Lanka, and Azerbaijan) from being elected due to insufficient support from their regions.
2. **Review of human rights record:** The Council has started the process of reviewing the human rights records of all its members called the Universal Periodic Review (detailed below). Previously, States could avoid any criticism on their human rights record, but this is now impossible.
3. **Number of members:** There were different models and strategies proposed for the new Council. Some wanted a universal council, containing all members of the UN. Others wanted a much smaller (and some say higher quality) of membership of as little as 15 members. In the end, the size was reduced from 53 to 47; a slight reduction which in reality has made little difference.
4. **Status of the Council:** It was argued that the Council should have a higher position in the UN structure. Rather than being under the ECOSOC organ, the Council now directly reports to the UNGA making it more accountable as the UNGA represents all members of the UN, rather than ECOSOC which only includes 54 members.

Membership of the Council

The HRC is made up of 47 countries, appointed for three year terms, with about one third (16 countries) being elected each year. Each region is given a set number of places to fill:

- Asia and Africa: 13 each
- Latin America: 9
- Western Europe: 8
- Eastern Europe: 7

Many Southeast Asian countries have taken turns on the HRC.



CONCEPT

United Nations Regional Blocks

Political bodies at the UN often appoint countries based on regional quotas. For this purpose, the world is divided into five geographic regions of differing sizes: Africa (54 countries), Asia Pacific (53 countries), Latin America and the Caribbean (33 countries), Western Europe (28 countries), and Eastern Europe (23 countries). The Western Europe group includes Australia, Canada, USA, and New Zealand.

Political cohesion of the groups varies. African countries frequently vote the same way, and may form a powerful regional block. Asia, on the other hand, is less cohesive. The Pacific Islands, which forms about 20% of the group, frequently disagrees with other Asian countries. South, Central, and East Asia also often take different positions on issues. Other voting blocks, such as the OIC (Organization of Islamic Cooperation) are more cohesive than regional groups.

5.2.2 Human Rights Council Actions to Promote and Protect Human Rights

The HRC has a number of tools it can use for the promotion and protection of human rights. For example, 'special procedures,' or people who can report on human rights concerns, are often used to monitor human rights. Other mechanisms include the Universal Periodic Review, and a complaints procedure against States which systematically violate human rights. These activities are detailed below.

Universal Periodic Review

The Universal Periodic Review (UPR), is perhaps the largest review mechanism in terms of scope (it examines every country), and in terms of mandate (it reviews all core areas of human rights). The UPR is a mandatory review process in which each UN member State must have their human rights record examined every four years. The review covers human rights as outlined in the Universal Declaration of Human Rights, human rights treaties agreed to by the State, and other voluntary pledges and commitments. The UPR began in April 2008, with the second cycle starting in 2012. To date, every country has had at least one review, and as of 2014, over 100 countries have been reviewed twice. During the review, the State publicly discusses the status of human rights in its country, and responds to comments and criticisms from other States. The review process begins with the submission of three documents:

1. UN information: A ten page compilation of UN information, prepared by the OHCHR, which outlines the country's human rights situation from the UN's perspective. This may include information from special rapporteurs, human rights treaty bodies, and other UN entities such as UNICEF or UN-Women.
2. Stakeholder report: A ten page report from civil society (and in some cases NHRIs) which is mainly done by NGOs and other similar bodies. Often, NGOs will meet to plan the content of the report and decide the key issues to be included in the ten page summary. This will then be sent to the OHCHR which will put together the final report. Smaller countries may not have too much difficulty organizing civil society to submit the report, large and diverse countries (such as India) may find it extremely challenging to condense the views of thousands of NGOs into one ten page document.
3. State report: A twenty page report prepared by the State under review, which can take the form of a 'national report'.

The actual review process takes place at the Human Rights Council in Geneva. The State under review first sends a delegation to Geneva, where the national report is presented. The State will give a presentation on its human rights situation as discussed in the report, and will also receive a number of questions and statements from other States in a three hour session called an ‘interactive dialogue.’ This term implies the review is not meant to criticize or punish States, but rather constructively discuss how to improve human rights. It is not uncommon for up to 50 countries to request to question some countries. After the dialogue, an outcome document is written which gives recommendations to the State. The recommendations are not binding, but may carry political weight. The State may also choose to either accept or reject (called ‘noting’) the recommendation. Though civil society members may attend, they are not permitted to ask questions. However, they may participate by advocating with sympathetic States to take on their ideas and requests.

FOCUS ON

The UPR in Action – A Study of Indonesia’s First Review in April 2008

Indonesia was one of the first countries to be reviewed. In its ‘national report’ Indonesia said it considered religious freedom an important and protected human right under the ICCPR (which they were a party to) and whose constitution guarantees the promotion and protection of this right. Yet, in the report from the UN bodies, including the special rapporteur on the freedom of religion or belief, a number of concerns was noted, such as:

- banning adoptions between religions;
- having a law that places of worship could be established only with the permission of the government;
- the difficulties faced by men and women of different religions in registering marriages;
- children of inter-religious marriages are not provided with birth certificates; and
- attacks and threats against Ahmadiyyah families.

Further, the NGO report, which was written by 17 groups including NGOs from Indonesia, international NGOs, and the NHRI of Indonesia, noted preferential treatment given to official religions, the Blaspheme law (which criminalized some religious activity), and attacks on the Ahmadiyahs. Thus, there were clear differences on the status of religious rights between the three reports. During questioning from States, this disparity was picked up by Italy who asked whether Indonesia would be willing to change its laws on religions to bring it in line with ICCPR standards. In addition, the United Kingdom asked Indonesia to comment on the attacks against the Ahmadiyahs.

In the outcome document there was no specific recommendation on religious freedom. Instead, one recommendation said in brief: “While acknowledging the efforts made by the Government of Indonesia, it was recommended that such efforts continue to ensure the promotion and protection of all the components of the Indonesian people.”



From this brief outline of the process, it can be seen that the UPR does allow for the identification and discussion of human rights issues, and it does provide an incentive for governments to address these concerns. But the response can be weak and does not require direct action because the process is non-binding. However, during the second country review (2012), Indonesia had to return to this issue and demonstrate its progress towards achieving freedom of religion.

The effectiveness of the UPR process has been much debated. There are some obvious strengths: (1) every State is reviewed and they cannot hide their human rights record; (2) the process includes the views of civil society organizations, ensuring issues cannot get buried; (3) the process covers a very broad area of human rights and is not made irrelevant by only looking at a small number of rights. However, there are also weaknesses: (1) the process is a review of States by States, which means the level of criticism is often soft, polite, and not particularly challenging; and (2) the process is not binding in any way, so even if a review is highly critical, States can ignore or reject the responses. For example, Myanmar received 190 recommendations when it was reviewed in 2011, and rejected 46 of these, claiming they infringed upon their sovereign rights. Examples of rejected recommendations included permitting special rapporteurs to visit (as suggested by Argentina), releasing political prisoners (as suggested by Belgium), and finding a solution to the number of Myanmar refugees in the region (as suggested by Malaysia).

There are advantages and developments outside of this process. The UPR provides an excellent tool to help civil society organizations meet and coordinate human rights promotion and protection. It is a forum where a strategy can be developed on priorities, and advocacy coordinated. Furthermore, many civil society organizations use the UPR as a platform to organize their views on human rights, thus giving them legitimacy at the UN. Even if prevented from speaking, they can at least talk to sympathetic States or the media on these issues.

Special Procedures

Special Procedures is a name given to a set of protection mechanisms used for monitoring and reporting on human rights. Special Procedures can take a number of forms, but they all involve the appointment of a person, or group of people to investigate specific human rights concerns. This can occur as an investigation of a specific country, or an investigation of a specific type of right violation. The investigation may be done by a single person (an individual expert or special rapporteur), or it may involve a group of people (a working group).



FOCUS ON Special Procedures

Special Rapporteurs

Special Rapporteurs are individuals with a mandate to investigate a specific human rights concern, either a theme or a country. There are around 40 rapporteurs, including:

Thematic rapporteurs who investigate: adequate housing; the right to education; extrajudicial, summary or arbitrary executions; the right to food; freedom of opinion and expression; freedom of religion or belief; health; the rights of indigenous people.

Countries with their own rapporteur or expert include: Belarus, Cambodia, Eritrea, Haiti, Iran, Myanmar, North Korea, Palestinian Territories, Somalia, Sudan, and Syria.

Independent Experts

An independent expert is similar to a special rapporteur, but they tend to focus on research rather than monitoring and site visits. These include experts on: the question of human rights and extreme poverty; minority issues; human rights and international solidarity; the effects of economic reform policies and foreign debt on the full enjoyment of human rights; the promotion of a democratic and equitable international order.

Working Groups

Working groups are made up of five experts, one for each region, and they report on global human rights concerns, such as: enforced or involuntary disappearances; arbitrary detention; the use of mercenaries; discrimination against women in law and in practice; transnational corporations.

Note: Special representatives represent the UNSG. They may also be special experts or high representatives. Many of their mandates are similar to special rapporteurs but not all work in human rights, nor report to a human rights body.

Special rapporteurs, experts, and working groups of the HRC, are independent and do not represent any country, an autonomy which brings both credibility and challenges. Their reports are considered highly because the experts are known to be independent and free from political considerations. However, this very independence of special procedure holders can make it difficult for them to obtain invitations to visit countries they wish to investigate. Typically, a written request is made to the State, and if the State agrees, an invitation is issued. The drawbacks of this procedure can be viewed in the cases of North Korea and Myanmar whose rapporteurs were granted few (or no) chances to visit the country in the previous decade. On the other hand, nearly 100 countries have issued 'standing invitations,' showing their openness to receive a visit from any thematic special procedure mandate holders.

Like reporters or researchers, special rapporteurs collect information and develop reports by visiting countries for further investigation. In addition, they may assess and offer advice on the status of human rights. Their mandate allows for the examination, monitoring, advising, and public reporting of the situation in question. They may respond to individual complaints, conduct studies, start promotion and awareness activities, and provide any technical assistance which may be needed.

In practice, special procedures are usually used for responding to urgent appeals as they are the quickest way to respond to urgent rights issues such as a disappeared person or threats to someone's life. Special procedures are often considered the global authority on a human rights situation or theme, and as such, their statements receive attention. These special procedures are relatively new, with the first one, the Working Group on Disappearances, starting in 1980 and growing steadily from less than ten in the early 1990s to about forty currently.

In Southeast Asian a special representative exists for Cambodia, although this is not strictly a special procedure but a representative of the UNSG but in reality both positions are quite similar. Myanmar has both a special rapporteur (since 1993), and a Special Adviser to the Secretary-General (since 2000). Special rapporteur selection is based on regional balance, so a certain number come from Asia. Experts from Thailand, Indonesia, Malaysia and the Philippines have all been special rapporteurs.

Some thematic special rapporteurs have made assessments of Southeast Asian countries which have gained interest in the media. When the Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions, Philip Alston, visited the Philippines in 2007, his report gained much attention in the region. In it, he noted that "the military is in a state of denial concerning the numerous extrajudicial executions in which its soldiers are implicated;" a comment which was very critical of the Philippines military and which caused much debate.

FOCUS ON

Alston's Visit to the Philippines as the Special Rapporteur on Extrajudicial Killings

Philip Alston has been the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions since 2004. In 2007, he conducted a mission to the Philippines. In his report a year later, he noted that since 2001 around 800 people, mainly leftist activists, have been killed including land reform advocates and human rights defenders. Many of these deaths can be attributed to military figures.

The government responded that most of these deaths were done by the Communists as part of a 'purge' or an elimination of spies, which Alston called "a cynical attempt [by the government] to displace responsibility." Alston also noted that the courts were "focused on prosecuting civil society leaders rather than their killers." As a result there was a high level of impunity. After the report appeared in 2008, the number of extra-judicial killings dropped from over 200 to 68. Though 68 killings is still high, the drastic reduction does show the ability of special procedures to change the standard of human rights in some situations.



Complaints Procedure

The HRC can also use other procedures to investigate countries with poor human rights records. Since 2007, in cases where it is considered that there are “gross and reliably attested violations of human rights and fundamental freedoms”, the HRC will take individual complaints and then may make a confidential investigation. This procedure has been around for decades as it was previously known as the 1503 procedure. In the transition from the Commission to the Council it was reviewed and slightly restructured and renamed as the Complaints Procedure. This investigation only applies to ‘gross’ violations, which means the violation must be severe. The HRC will not investigate individual violations, or situations where it is unclear the State has played a role in them. Further, this process is confidential, meaning the HRC is required to investigate behind closed doors and the discussion is not released to the public. There has been no investigation of a Southeast Asian country by this mechanism, though the Maldives from neighboring South Asia was investigated in 2008. Under the previous mechanism, known as the 1503 procedure (because it was formed by the ECOSOC’s Resolution 1503), many Southeast Asian Countries have been investigated as the table below shows:

Table 5-3: Investigation of States by the Human Rights Commission Complaint Procedure

Country	When Examined Under Resolution 1503
Brunei DS	Never
Cambodia	1979 (as Kampuchea)
Laos PDR	1995
Indonesia	1978-1981 1983-1985
Malaysia	1984
Myanmar	1979-1980 1990-1992
Philippines	1984-1986
Singapore	Never
Thailand	1995, 1996
Vietnam	1994
East Timor	Not as an independent country, but as part of Indonesia

The HRC plays a vital role in promoting and protecting human rights within the UN system. While a body composing only of States monitoring the human rights standards of other States will doubtless be cautious and limited politically, the activities the HRC can undertake, such as special procedures, the UPR, and the complaints procedure, have started to show a difference in human rights standards. Human rights obligations cannot now be avoided by States. The special rapporteurs continue to do an important job in responding to violations around the world, and acting quickly on claims of gross violations of human rights.

5.3 The Office of the High Commissioner for Human Rights

The task of managing human rights activities at the UN, and of assisting States to comply with their obligations at the UN, is undertaken by the OHCHR. Originally called the Human Rights Centre, the OHCHR was formed after various groups in the early 1990s lobbied for a more senior body to manage human rights at the UN. The idea was accepted at the World Conference on Human Rights in 1993, and a resolution passed to establish the OHCHR.

Many ongoing activities take place at the OHCHR including movements to mainstream human rights within the UN system and to provide a strong voice to protect human rights. In addition, it provides assistance to governments, such as expertise and technical training, to enable them to meet their human rights obligations. It also coordinates human rights activities within the UN, and supports human rights bodies, for example, by coordinating the UPR. The OHCHR also carries out education activities, public information, and advocacy on behalf of the UN. Unlike the HRC, it is not comprised of State representatives, but is rather made up of individuals with expertise in human rights.

The OHCHR is notable for its field presence, with 25 country and regional offices around the world. In Southeast Asia, the regional office is based in Bangkok at the ESCAP headquarters. In the early 1990s, the OHCHR struggled to gain acceptance as infighting and UN bureaucracy resulted in a weak and ineffectual OHCHR. However, with a mixture of strong commissioners and an acceptance of the broader mandate of human rights throughout the UN, the OHCHR has since gained prominence in its work. The OHCHR is headed by the High Commissioner who is appointed by the Secretary General. Initiated in 1994, the position requires commissioners to take up four year terms. As of 2014, there have been seven commissioners coming from Europe, Latin America, and Africa, but not Asia.

5.4 Treaty Bodies

As compared to charter bodies, treaty bodies are an entirely separate type of human rights body. Treaty bodies are created from human rights treaties, and their formation, mandate, and rules are detailed within the treaties themselves. Each human rights treaty (and the optional protocol to Torture) has its own treaty body, making for ten bodies as of 2014. When the treaty comes into force, one of the main results is the creation of a committee, made up of around 10-23 people (depending on the treaty) whose job it is to oversee State party compliance. Whereas Charter bodies are often composed of State representatives, treaty bodies are made up of more independent individual experts. Normally, members of a treaty body are human rights experts, whether they be lawyers, diplomats, or NGO workers. They are nominated by State parties to the treaty, but their position is independent of the State (thus ensuring governments cannot control them). These bodies meet 3-4 times a year in Geneva. Treaty bodies carry out a number of activities which vary from treaty to treaty and is summarized in the table below.

Table 5-4: Summary of Treaty Bodies

Treaty Body	No on Committee	State Party Report	Individual Complaint	Report Period*	Inquiries and/or Missions
CCPR	18	Yes	Yes, OP	2 and request	No
CESCR	18	Yes	Yes, OP	2 and 5	Yes, OP**
CEDAW	23	Yes	Yes, OP	1 and 4	Yes, OP
CRC***	18	Yes	Yes, OP	2 and 5	Yes, OP**
ICERD	18	Yes	Yes, Art 14	1 and 2	No
CAT+	10	Yes	Yes, Art 22	1 and 4	Yes, Art 20
CMW	14	Yes	Yes, Art 77	1 and 5 request	No
CRPD	18	Yes	Yes, OP	2 and 4	Yes, OP
ICED	10	Yes	Yes, Art 31	2 ++	Yes, Art 33

OP = Optional Protocol

* Number of years till initial report/number of years between subsequent reports

** Upon OP coming into force

***The two optional protocols to CRC also need State party reports, initially in two years, then every 5 years after that

+ Under CAT, there is also the *Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)*

++ Not yet decided

Each treaty body varies slightly in its mandate and powers. The rest of this section will detail treaty body activities and discuss how they protect human rights.

State Party Report

When a State agrees to a treaty, it also commits to writing a periodic report (the exact time depends on the treaty, but around four to five years is normal), in which the State details how it is meeting its treaty obligations. States must describe the steps, such as legislative, judicial, policy and other measures, which they have taken to ensure the rights from the treaty are protected. The State party report is usually a large document, sometimes nearly two hundred pages long, which responds to the treaty, article by article. The report should explain how rights in the treaty have been put into domestic law, how many people enjoy the right in that country, and other activities it has done to ensure the protection of the right.

Typically, States are expected to submit an initial report one or two years after ratification, after which the reporting becomes periodic (usually every four or five years). However, this is a laborious task, and unsurprisingly, many States are reluctant to do the research and admit their lack of compliance to the treaties. The result is that many States are overdue in their reports. Within Southeast Asia, there are many overdue reports. Most States have at least one overdue report, and many States, two or more. Brunei has never submitted a report to CEDAW since its ratification in 2007, Indonesia has three overdue reports to CERD, and Laos DPR has overdue reports to five treaty bodies. This does not mean Southeast Asia is especially bad at reporting as most countries have overdue reports; at some estimates, there are over 1,000 overdue reports to all the treaty bodies.



DISCUSSION AND DEBATE

Are State Party Reports a Useful Way to Determine the Status of Human Rights in a Country?

Many criticisms are aimed at the State reporting system. The only Southeast Asia country that does not have an overdue report is Singapore (though it has only ratified two treaties). In addition, the process is useless for States who don't ratify treaties. For those owing overdue reports, treaty bodies can only offer encouragement, but given their size and scope, and the demand on government resources, there is little treaty bodies can do ensure compliance. Even when submitted, many reports give only the State view and omit more important human rights issues.

Because of these concerns a consultation process was initiated by the OHCHR called the 'Treaty body strengthening process.' It highlighted the "significant backlog of State reports and individual communications, chronic under-resourcing of the treaty bodies, and insufficient compliance by States parties with their reporting obligations." The consultation also gave a number of possible solutions, including a single report covering all treaties, or only requesting reports for States with a poor record.

What can be done to fix this problem? Is it realistic to expect States to report objectively on their human rights situation or is this best left to civil society organizations?

Is there a need to report every 4-5 years for each treaty which means some countries must produce nearly two reports a year? The obligations for this are significant as they must research and write these reports, fly the delegation to Geneva, and then follow up on the outcomes.

Isn't it better to use the UPR process? (but the UPR does not cover as many rights as are outlined in the various treaties)

Once a report is submitted, it is read by the treaty body members who will meet with the State to discuss its progress. Given that reports are a form of self-assessment, States often omit information of human rights violations or make claims about high standards which may not reflect the situation on the ground. Because of this, treaty bodies allow independent bodies, such as NGOs, to submit their own reports (called 'shadow reports') to give an independent view. The actual review will occur as a session in which the treaty body will meet representatives from the State party at the OHCHR office in Geneva, and the State delegation will answer questions from the treaty body in a 'constructive dialogue.' Often the treaty body will raise issues arising from the shadow reports, and the State may be requested to give further information on violations occurring in its country. A typical procedure is (importantly, each step of this procedure is documented and publicly available):

1. Submission of 'State Report' (a large document of over 100 pages);
2. The treaty body puts together a 'List of Issues' which it wants the State to discuss, some of which may have been raised by shadow reports (normally around 10-20 issues);
3. The State party replies to this list of issues;

4. The treaty body releases a ‘Summary Record’ which details the meeting);
5. The treaty body releases its “Concluding Observations’ which may also include recommendations to the State.



DISCUSSION AND DEBATE

Do Countries Change Because of the State Report Procedure?

It may appear that State reports have a limited effect on compliance to human rights. However, they may be used in a number of ways to improve human rights, and many such examples can be found within the region itself. For example, Thailand changed its divorce laws for women as a result of its compliance to both the ICCPR and the CEDAW. The CEDAW treaty body noted that Thailand’s divorce laws discriminated against women: it was harder for women to divorce men as they had to prove either adultery or that the male had disappeared for two years; while men had the option of a no-fault divorce. Further, women had to change their surnames to that of their husband. In 2005 Thailand changed these laws.

Individual Communications

In addition to receiving State reports, some treaty bodies may also accept complaints from individuals and State parties. While four of the treaty bodies accept inter-State complaints, there has never been a single case of such a complaint, and so this procedure will not be discussed. It is enough to note that like the HRC, States are often politically reluctant to initiate direct complaints against other States for fear of repercussions, which means it is usually left to individuals and civil society to take on the task of complaining about specific human rights violations. On the other hand, individual complaints are used far more often with around 2,500 complaints being made to the treaty bodies so far. All treaties have a mechanism for complaints, however:

- CMW: The Migrant Workers Convention needs ten States to ratify Art 77 of the convention for a complaint process to start. As of 2014, only two States have ratified this.
- CRC: The complaints procedure for the CRC was initiated in early 2014 when the third optional protocol received its ten necessary ratifications. As of 2014, no complaints have been entered.
- ICESCR: The complaints procedure for ICESCR was initiated in May 2013 when the optional protocol received its ten necessary ratifications. As yet, no individual communications have been heard.
- ICED: The enforced disappearances treaty requires States to declare under Art 31 that they allow complaints. So far, sixteen State parties have made this declaration. There is not a minimum number necessary for the treaty body to take individual complaints, no complaints have been entered as of 2014.

Individual Communication

When an individual considers their human rights have been violated, in some circumstances they can complain to the UN. There are many conditions: (1) the State must have ratified the treaty, (2) allowed individuals to complain, and (3) the person must have gone through the State’s legal system or equivalent.

The remaining five treaty bodies have complaints procedures in use, though an individual complaint must be voluntarily agreed to by the State. Examining the record of Southeast Asian countries, few allow individual complaints: Thailand and the Philippines allow individuals to complain to two treaty bodies; and Timor Leste allows complaints to the CEDAW. In some ways, this is not a bad record, as generally most countries do not allow individual complaints, although it does mean the procedure is rarely, if ever, used in the region. The exception has been cases brought to the ICCPR treaty body against the Philippines (16 cases), and a single case of an individual complaint to the CEDAW from the Philippines. Thailand and Timor Leste have never faced an individual complaint.

Table 5-5: Southeast Asian Countries Allowing Individual Complaints

Treaty	Allows Complaint	Signed But Not Ratified
ICERD	None	
ICESCR	None	Timor-Leste
ICCPR	Philippines	Cambodia
CEDAW	Philippines Thailand Timor Leste	Indonesia
CAT	None	Laos PDR
CRC	Thailand	None
CMW	None	Cambodia
ICED	None	Indonesia Laos Thailand
CRPD	None	Cambodia

The procedure for making a complaint

The individual complaints procedure is a quasi-legal process in which the treaty body gathers information from a person who considers their rights have been violated. A detailed and technical process needs to be followed to make the complaint. The process may vary slightly between treaty bodies but basically follows this process:

1. The author (or someone representing him/her) submits the facts of the event, other relevant information, and outlines the reasons why they could not get justice in their own country, in writing to the treaty body. The rights violated and the failure to get justice must be detailed in the first submission.
2. The committee decides if it has the authority to accept this complaint; this is called the admissibility decision. In order for a treaty body to consider a complaint (that is, in order for the complaint to be admissible), a number of criteria must be reached:
 - a. The treaty needs to be ratified, and the State party must have agreed to allow complaints.
 - b. The complaint is not anonymous, so the person whose rights are violated must be clearly identified.

- c. There is a violation of an article of the treaty, and this must be stated.
 - d. The person has complained to the State without result. This is known as 'exhausting domestic remedies.' In other words, there is no other way the person can seek justice from the State. The treaty bodies will only consider a complaint if all other processes have been exhausted.
3. The treaty body sends the complaint to the State party
 4. The State party responds to the allegations
 5. The State response is sent to the authors to allow them to respond. In some cases, this may be done twice.
 6. Once all this information has been gathered, the committee then meets to examine the merits of the case, to decide if there is a violation, and what should be the outcome. If they find that a violation has occurred, they may ask the State to deal with the problem, compensate the person, and change laws or practices to prevent it happening again.



CONCEPT

Exhausting Domestic Remedies

The exhaustion rule gives States (in particular, courts) the possibility to address alleged violations and solve the problem thus avoiding treaty body involvement. Specifically, this means the victim is obliged to first claim his/her rights in the national justice system (civil, criminal, and/or administrative national courts). If the person cannot access the system, or if it is the judicial system itself which is violating their rights, or if the remedies provided are insufficient, the person may then be able to use the treaty body mechanism. Exhausting domestic remedies ensures individuals do not resort to the UN as a first response to violations.

The process itself is rather slow, and it may take over a year before a conclusion is reached. Emergency complaints are often channeled through other procedures (such as special rapporteurs), where an action may be taken in days rather than years. The process is slow because sometimes States do not respond which may result in complaints being made without its input. Also, the treaty body only meets for a limited time each year (somewhere between six to ten weeks a year). Because the committee has no binding power, it cannot enforce the outcome of its findings. In many cases, treaty bodies may find a violation has occurred and ask a State to offer compensation, only to have the State ignore its suggestion.

While these limitations may imply that the complaints procedure is weak and ineffectual, it has some important contributions to offer. Treaty body findings can lead to amendments in the law to ensure human rights are protected (for example, one body found that laws criminalizing homosexuality were a violation of rights in *Toonen v. Australia* (1992)). It can halt the process to execute someone on death row until a proper investigation has been completed (for example, *Piandiong v. Philippines*

1999, and other cases in Jamaica, Belarus, and Kyrgyzstan). Moreover, treaty bodies can introduce a new human rights standard to assist States in the understanding and interpretation of human rights (for example, a recent case clarified situations where access to an abortion was considered a right under *Llantoy Huaman v. Peru* 2003-5).

Overall, most complaints have been made to ICCPR because it is the most ratified, oldest, and broadest treaty allowing for complaints. The small number of complaints made to CEDAW is surprising given its almost universal ratification, and no country has reached full equality for women. However, the lack of cases may be due to the fact that other mechanisms are seen to be more effective. Many complaints are made to CAT because it can be used by individuals claiming refugee status, as the treaty will not allow individuals to be deported if they may face torture; hence most cases originate in countries with a refugee population. Such is not the case in countries like Sweden and Switzerland where torture is unlikely to occur.

Table 5-6: Commitment to Complaint Procedures

	ICCPR	ICERD	CAT	CEDAW
State parties	113	58	64	106
No of cases	2034	45	462	27
Cases showing violations	718	10	60	6
Country with most complaints	Jamaica (177) Canada (158) Spain (117) Korea (125)		Sweden (108) Switzerland (118) Canada (73) Australia (30)	

General Comments

Another activity of treaty bodies is to assist States in their understanding of the treaty. This is done by written comments, mostly on specific rights in the treaty. Every treaty has released a number of general comments, with the newer treaties only having one or two comments, the ICCPR having 32 and the ICESCR having 21. General comments allow for clarification on the exact nature of a State's obligation to the treaty. As an example, the treaty body for the ICESCR has made very useful general comments on the standard of livelihood rights such as food, water, and housing (detailed in Chapter 3 on the ESCR). General comments have also provided specific elements to livelihood rights such as availability, accessibility, and acceptability. Further, as regards the right to housing, additional elements such as security of tenure, affordability, and location have been added. Some general comments about specific articles, such as comments on Art 19 (freedom of expression) of the ICCPR or Art 24 on children's health in the CRC have been made. Other comments have also been made about thematic issues such as children in juvenile justice, disabled children, the role of NHRIs, and legal obligations of the State.

Significantly, general comments can expand the scope of a right. For example, water as a human right was included in a general comment as it was not written explicitly in the treaty. General comments also include the internet within freedom of expression treaties. However, these modifications to rights in a treaty can lead to arguments among State parties. In particular, the question most asked is: is the general comment legally binding? A main objective of the general comment is to assist the State in understanding rights, and hence its duties and obligations, when it comes time to reporting to the treaty body.



DISCUSSION AND DEBATE

Are General Comments Legally Binding?

When a State ratifies a treaty, it agrees to be duty-bound by the rights in the treaty. If the treaty body then expands those rights to include a new element such as the right to water, must States be legally bound to that duty as well? The State did not agree to the general comment when it ratified the treaty, and shouldn't it be able to interpret its understanding of the treaty?

On the other hand, general comments do not invent new rights, but simply clarify the scope of particular rights, so that water is considered a part of food, and wouldn't it therefore be illogical to consider rights to food without including rights to water? Treaty bodies ensure State parties have the same (or at least very similar) interpretations of what particular rights mean.

General comments are halfway between a binding document and an opinion. Some States do not regard comments as binding and treat them differently to the treaties themselves, believing they are only bound by the treaty they ratified. Yet most bodies do give general comments considerable legal weight because they define what the treaty means, and what is legally binding in it. So while they are not binding as such, they comprise the authoritative interpretation of the treaty, and hence determine what the State is duty-bound to.

Other Procedures

A small number of other activities can be undertaken by treaty bodies to promote and protect human rights. Four treaty bodies (the CAT, the CRPD, the CEDAW, and the ICED when the protocol is in force) can initiate inquiries into gross and widespread human rights violations in a country. This process is confidential and requires State acceptance, which will obviously limit its powers to investigate. The chapter on women gives details of some inquiries made under CEDAW. The CAT has undertaken eight confidential inquiries (including two Asian countries; Nepal in 2012 and Sri Lanka in 2002), while CRPD and CED are yet to undertake an inquiry. The only States in Southeast Asia which permits this process is the Philippines and Singapore for CEDAW, and Cambodia for the People with Disabilities Treaty (although it has only signed but not ratified the protocol to this process).

It is important to note treaty bodies will only investigate situations of serious or systematic rights violations. It will not investigate single events. Further, high levels of proof are required. This is mostly fulfilled by reviewing reports and accounts at a treaty body session. If invited, they may visit the country. Outcomes of the process in the form of a report will be given to the State party, and eventually published on the treaty body web site.

Other mechanisms include 'early warning and urgent action' procedures. Early warnings and urgent actions are used by treaty bodies to eliminate racial discrimination. The objective is to intervene to stop serious violations which may occur as a result of increased racial tension (such as genocide, communal violence, or ethnic cleansing). There have been around 18 reports through this procedure, and around 40 countries have received letters as an early warning. From Southeast Asia, Thailand has received a letter concerning the treatment of a Karen minority group; Indonesia has received letters about indigenous groups in West Papua; Laos PDR on the Hmong; and the Philippines on the Subanon indigenous group.

A. Chapter Summary and Key Points

The United Nations and Human Rights

The UN is the most significant body at the international level which protects human rights. It has formalized a system of promotion and protection of universal human rights. States commit to human rights upon becoming a UN member, though the protection of rights in some cases are difficult to enforce.

Human Rights in the Broader UN System

As an international political body, the UN can be highly technical and multilayered. Human rights are protected by the UN organs, which are the most important parts of the UN. The UNSC plays an important enforcement role, particularly related to “gross and systematic human rights violations.”

The UNGA gives equal voice to all UN member States on human rights issues, and it is where human rights treaties are adopted and signed by member States. The ICJ gives opinions and interpretations on international law, including human rights law, and it also makes State to State rulings on issues of international law. The UN Secretary General plays an administrative role relative to human rights, and can appoint special representatives. The Economic and Social Council promotes human rights through the UN Charter, primarily by creating human rights bodies. All Southeast Asian countries have been active in the UN and taken roles in many of the organs.

UN Human Rights Charter bodies

The Charter Bodies gain their legitimacy through the UN Charter. One body is the Human Rights Council, which replaced the Human Rights Commission in 2006 because it was considered to have become incompetent and controversial. The HRC is comprised of 47 States who meet regularly to discuss human rights concerns, and implement special procedures. This includes mechanisms to report on human rights issues, such as special rapporteurs and working groups. Another very important mechanism is the Universal Periodic Review, where every State in the UN has its human rights record reviewed by the Council.

The other main charter body is The Office of the High Commissioner for Human Rights, which works on the promotion of human rights through education, human rights research, awareness raising, advocacy, and technical support and expertise to governments.

UN Human Rights Treaty bodies

The treaty bodies are established when the treaty comes into force. The body is made up of around 10-23 people, depending on the treaty, who give expert advice to the State on how to comply with the treaty. It does this in a number of ways, including reviewing reports made by the State party on implementation of the treaty, clarifying the meaning and function of the treaty by writing general recommendations, and in some cases hearing complaints from individuals or conducting investigations.

B. Typical exam or essay questions

- Have there been significant changes in how a specific UN organ has responded to human rights violations? Why has this change taken place and what were the consequences for the promotion and protection of human rights?
- Why was the Human Rights Commission replaced by the Council? What does this say about some States attitude towards protection of human rights at the UN level?
- Is the Universal Periodic Review a strong mechanism for the promotion and protection of human rights? Will it be stronger than the reporting procedure at a treaty body? Can you give any recommendations to make the UPR process stronger?
- What are the main differences between charter bodies and treaty bodies?
- When an individual complains to a treaty body, what must they show in order for their complaint to be accepted?
- If a treaty body expands or changes a definition of the right in a treaty, for example including the right to water, do you think the States should be legally bound by this interpretation? Or should States have the full freedom to interpret the treaty as they see fit?

C. Further Reading:

There is a massive amount of information on the UN system. The key websites are:

- The OHCHR has a number of simple guides on the process which are very useful.
- The OHCHR website also has information and reports on the Council, Special Procedures, and treaty bodies.
- For treaty body material look for the “treaty body database” which documents all the reports from the treaty body. Every document can be searched by country and by type of document, for example State reports are listed, and individual complaints can be found under ‘jurisprudence.’
- Documents on the treaty body strengthening process are at a special page at the OHCHR which can be found by a simple internet search for ‘treaty body strengthening process.’
- For the UPR, use the “UPR info” site. All the documents, including the three reports (State, UN, and Stakeholder), and the list of recommendations, can be found here.
- It is more difficult to find UNGA, UNSC, and ICJ documents on human rights, as they are listed by their UN number and not categorized. Each of these organs has their own website listing the documents, but the student will need to know the specific document before they visit the site.

Regular updates on the UN can be found at the 'International Service for Human Rights' which has weekly and monthly accounts of all human rights activities including Council meetings, treaty body meetings, and human rights in the broader system.

Authors to consult who write on the politics of the UN system include:

- Julie Mertus
- Bertrand Ramcharan
- Philip Alston
- Thomas Weiss
- David Forsythe