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This book is dedicated to Janet, Lynne, and Daniel

THE United Nations
and Human Rights
A guide for
teachers

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Foreword

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readers—students (both undergraduate and postgraduate), interested negotiators, diplomats, practitioners from the non-governmental and intergovernmental communities, and interested parties alike—seeking information about these most prominent institutional aspects of global governance.

UN human rights machinery

Today, human rights are central to the discourse of international public policy and scholarship. And the mechanisms have evolved dramatically since the signing of the Universal Declaration of Human Rights in December 1948. We asked Julie Mertus—associate professor in the School of International Service at the American University in Washington, DC—to undertake the daunting task of making sense of what Eleanor Roosevelt once predicted: that human rights NGOs would serve as a “curious grapevine” that would spread information about human rights violations to the world community. Julie’s best work always mixes both micro and macro perspectives on the law and practice of human rights that reflect serious scholarship, practical exposure in the field to problems, and a passion for the issues. This concise volume reaches a broad audience with many useful descriptions, lists of resources, and numerous concrete examples that draw especially on the vital question of the human rights of children.

As always, we welcome comments and suggestions from readers.

Thomas G. Weiss, The CUNY Graduate Center, New York, USA
Rorden Wilkinson, University of Manchester, UK
October 2004

This volume is among the first in a new and dynamic series on “global institutions.” As the title of the first chapter indicates, it offers a comprehensive guide to the history, structure, and concrete activities of “the new UN human rights practice.” Remarkable as it may seem, there exist few individual works that offer in-depth treatments of prominent global bodies, much less an entire series of concise and complementary volumes. Those that do exist are either out of date, inaccessible to the non-academic reader, or seek to develop a better understanding of particular aspects of an institution rather than offer an account of its overall functioning. Similarly, existing works have often been written in highly technical or specialized language or have been crafted “in-house” and are notoriously self-serving and narrow in focus.

The advent of electronic media has complicated matters further. The growing reliance on the internet and other electronic methods of finding information about key international organizations has served, ironically, to limit the educational materials to which most readers have ready access, books. Public relations documents, raw data, and loosely refereed websites do not intelligent analysis make. Official publications compete with a vast amount of electronically available information, much of which is suspect because of its ideological slant. Paradoxically, the growing range of purportedly independent websites offering analyses of the activities of particular organizations have emerged, but one inadvertent consequence has been to frustrate access to basic, authoritative, critical, and well-researched texts. The market for such has actually been reduced by the ready availability of varying quality electronic materials.

We are delighted that Routledge asked us to edit a series that bucks this trend. They are betting that serious students and professionals will want serious analyses. We have assembled a first-rate line-up of authors. Our intention, then, is to provide a one-stop shopping experience for all

Acknowledgements

Many thanks to Thomas Weiss and Rorden Wilkinson for conceiving of this series of readily accessible texts on international organizations. I appreciate their comments and suggestions as well as those of Effie MacLachlan and other readers, and the fine editorial assistance at Taylor & Francis.

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Abbreviations

BiH	Bosnia and Herzegovina
CAT	Committee Against Torture
CEDAW	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CFA	Committee on Freedom of Association
CHR	Commission on Human Rights
CIS	Commonwealth of Independent States
CoE	Council of Europe
CRC	Committee on the Rights of the Child
CRMW	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
CSW	Commission on the Status of Women
DAW	Division for the Advancement of Women
DDR	Disarmament, Demobilization, and Rehabilitation
DPnet	Development Policy Network
ECCHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FFCC	Fact-Finding and Conciliation Commission on Freedom of Association
FRY	Federal Republic of Yugoslavia
GA	General Assembly
GATT	General Agreement on Tariffs and Trade
GC	Global Compact
GDP	Gross domestic product

HRC	Human Rights Committee, also known as the Committee on Civil and Political Rights
HRFOR	Human Rights Field Operation in Rwanda
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IE	Independent Expert
ILA	International Law Association
ILO	International Labour Organization
IMF	International Monetary Fund
IPEC	International Programme on the Elimination of Child Labour
LMG	Like-Minded Group
NAFTA	North American Free Trade Agreement
NGO	Non-governmental organization
NHRI	National human rights institution
OAS	Organization of American States
OAU	Organization of African Unity
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OIOS	Office of Internal Oversight Services of the United Nations Secretariat
OSCE	Organization for Security and Co-operation in Europe
P-5	Permanent Five Members of the Security Council
PRSP	Poverty Reduction Strategy Paper
RMAP	Rights-based Municipal Assessment Project
RTD	Right to Development
SC	Security Council
SG	Secretary-General
SIDA	Swedish International Development Agency
SR	Special rapporteur
SRep	Special representative
TBP	Time-Bound Program

TCNs	Troop-Contributing Nations
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Emergency Force
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNEPA	United Nations Population Fund
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNMIBH	United Nations Mission in Bosnia and Herzegovina
WG	Working Group
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

1 A guide to the new UN human rights practice

This book owes a great debt to human rights scholars and practitioners who have written earlier guides to the UN human rights system. Without their contributions to the field this book could not have been written. This account, however, departs considerably from traditional approaches to the study of the UN human rights system, both in content and in methodology. It includes many topics and actors not often considered in an introductory guide, and offers familiar topics under a new organizational structure. This book proceeds from a new orientation to the UN to human rights practice more generally. Why the difference? The evolving content of human rights, the growing diversity of actors in the UN human rights system and the changing nature of human rights practice reflect a shift in the way in which the UN human rights system has tended to address human rights challenges.

What is the new UN human rights practice?

Nearly all guides to UN human rights practice focus on the work of UN treaty and Charter-based bodies and procedures. According to these models, monitoring and reporting of violations of civil and political rights occupy the central field of advocacy practice for the international human rights movement. New issue areas do arise, but they "are either ushered into the methodological fold of the mainstream movement, or face obstacles to their integration."¹

This book presents a much more varied and expansive view of UN human rights practice that more accurately reflects the reality of post-Cold War activity. Human rights complaint procedures and reporting under the treaty and Charter-based bodies remain important for human rights enforcement. Marginalized groups seeking the imprimatur of legitimacy within the mainstream human rights community

continue to push for new treaties reflecting their concerns. In many respects, UN standard-setting remains a crucial concern, especially for those who have not yet had input into the process. To a large extent, however, the UN human rights system has in fact moved from standard-setting to implementation of human rights policies through institutionalization and enforcement. Many of these new measures are controversial and will continue to be contested as the precise content of UN human rights practice evolves over time.

In addition to making treaties more effective, UN human rights practice today is taking on a broader mandate. Human rights practice is likely to address human rights education programs for police officers and soldiers, projects to combat trafficking in women, efforts to limit the use of child soldiers, electoral assistance, and other field-oriented, in-country endeavors. Contemporary UN human rights practice speaks to concerns once deemed to be the province of other fields, such as development, humanitarian and refugee affairs, trade, labor or security. In exceptional cases, the UN also has indicated a willingness to sanction the use of military force to address human rights violations. Vigorous human rights enforcement would not have been possible during the Cold War.

Efforts to promote human rights-based advancement of economic and social development have also received particular attention in the post-September 11 climate. In the past, development organizations often sacrificed human rights in the name of development, in an "instrumentalist *quid-pro-quo* that saw human rights as a deferrable luxury of rich countries."² Today, however, many development organizations—including the United Nations Development Programme (UNDP)—have publicly embraced the integration of human rights in their work, often with the explicit goal of addressing the underlying tensions that provide fertile ground for terrorist acts.³ At the same time, some states have reacted to September 11 by retrenching and regressing on human rights, violating the civil liberties of their citizens of Middle Eastern ancestry, torturing Afghan and Iraqi prisoners under the purported cloak of human rights, and threatening journalists with arrest should they reveal their sources in cases that would ordinarily attract little attention.

These developments have been accompanied by new attempts to hold non-state actors, including paramilitary troops, NATO forces and transnational corporations, accountable for human rights abuses. The foundational international instruments of the international human rights framework, namely the Universal Declaration of Human Rights,⁴ the International Covenant on Civil and Political Rights,⁵ and

the International Covenant on Economic, Social and Cultural Rights,⁶ focus on the need to protect individuals from abuse by state authorities. Moreover, although these documents ostensibly place all civil and political rights (such as the right to a fair trial and freedom from torture) on an equal footing with economic, social and cultural rights (such as the right to education or health care), greater attention has been paid by most Western governments and NGOs to civil and political rights. This orientation has been reconsidered in recent years with an increasing realization that non-state actors, groups and organizations can also be responsible for atrocities and that economic wrongs may be as grave and as in need of redress as civil and political abuses committed by state actors.

Drawing on these developments, the organization and composition of this book reflect a broader and deeper human rights practice than guides to the UN have traditionally offered. It begins its discussion of the UN human rights system with a review of the work of the Office of the High Commissioner for Human Rights (OHCHR), the focal point for all UN human rights activities since its establishment in 1993. The High Commissioner's extensive involvement in technical assistance projects in country and field offices reflects a shift in UN human rights practice from monitoring of violations to the building of institutions and capacities to facilitate compliance. This book does contain separate chapters on contemporary practices of the OHCHR Charter and treaty-based bodies, but, breaking with tradition, the text begins with an extended treatment of the OHCHR. This reflects OHCHR's central and ever-expanding coordinating and operational role in the UN system. Unlike many introductory guides to the UN human rights system, this book also includes information on UN affiliated and associated organizations (such as the UNDP, and the United Nations High Commissioner for Human Rights (UNHCHR)) and separate chapters on the human rights practice of the Security Council and the International Labour Organization (ILO). While this text does not aim to address every new human rights practice area, it provides a more comprehensive overview of the field for practitioners and students wishing to assess the human rights system today.

Where does UN human rights work happen?

The answer to this question used to be easy. Simply put, UN human rights practice used to happen where the name plate on the door said "human rights." So, human rights were almost entirely contained within a limited set of specific human rights bodies. This is no longer

the case. Today, virtually all United Nations bodies and specialized agencies, including the World Bank and the International Monetary Fund, are undertaking efforts to incorporate the promotion or protection of human rights into their programs and activities. To be sure, these endeavors invite criticism. For starters, many of the employees of these organizations that are confronting new human rights mandates have limited training on human rights. Nonetheless, one could argue, by bringing their own experiences and perspectives to bear on human rights problems, they offer the possibility for new solutions. This book provides examples of how human rights are currently becoming diffused throughout the UN system. Pockets still exist in which human rights can be ignored, but progress has been made nonetheless.

Even as it focuses on the international system, this book recognizes that the international human rights system addresses behavior that occurs at the national level. As human rights activist Scott Long observes:

Some people speak of "international human rights" as though it were a single word, as though the rights cannot be talked about separately from the international framework. But rights do not begin at the international level. They begin with local problems and local lives, with individuals who realize their dignity has been injured, and strive to imagine remedies and solutions.⁷

Not only are violations experienced locally, but durable solutions to long-term human rights abuses can only be found at the local level as well. The international human rights system would fail without domestic implementation of human rights.⁸ As Secretary-General Kofi Annan observed, "Since respect for human rights is central to the legitimacy of the State order, human rights should be nurtured locally by branches of government, national human rights institutions and civil society." In light of the increased attention devoted to human rights at local levels, this book includes information on the involvement of UN human rights bodies in the establishment and strengthening of national human rights institutions, the creation of national action plans, and civil society capacity-building.

Who are the actors?

The variety of actors involved in UN human rights practice has expanded tremendously. States still remain central to the human rights system. Without state commitment to the domestic implementation of

human rights, the system will fail. Today more than ever, states both invoke human rights concerns to justify foreign policy decisions and defend their own domestic policies on human rights grounds. However, public authority on human rights practice has now shifted beyond the state to intergovernmental and non-governmental organizations. This book captures this trend by incorporating information on NGOs (a heterogeneous group) throughout the text (instead of pushing it into a separate chapter as in many books) and by including more information on the diversity of UN actors addressing human rights concerns.

The strategies and tactics of human rights NGOs have changed dramatically in recent years. Mainstream western human rights organizations have tended to work through a particular methodology according to which human rights violations are named and perpetrators publicly identified, so as to become shamed into compliance. This methodology employs public campaigning involving such techniques as letter writing and public acts of condemnation. The efficacy of this approach has developed as the technical expertise of the "watchers" has improved and as communication technology has advanced. Additionally, NGOs have adopted new techniques that have proven to be extremely effective at influencing government leaders and UN officials. In contrast to the technique of public shaming, these new efforts often involve private meetings and cooperative information sharing, the provision of concrete policy proposals, and offers of technical assistance.

Moreover, included on the agenda of many of the newer human rights organizations is a broader array of human rights issues, including economic, social and cultural rights. The traditional model of investigation and public exposure of misconduct that is effective in cases involving state responsibility for violation of civil and political rights will probably not be as effective in cases involving economic and social rights where there is unlikely to be "relative clarity about violation, violator and remedy."⁹ The violations of economic, social, and cultural rights are difficult to address, both because of their often diffuse nature, and because affected populations often experience communal violations, rather than individual abuses of rights.

The new human rights advocacy reaches beyond the state as duty-bearer and violator of human rights, targeting also international financial institutions (IFIs), transnational corporations, trade regimes and other institutions. Among other methods, "new rights advocates" tackle issues of social justice and call into question the international practices that weaken states' capacity to meet social and economic rights. As Paul Nelson and Ellen Dorsey have explained, "this approach often seeks to weaken, not draw on, the influence of international

organizations and powerful governments, and tends to involve NGOs in more complex relationships with poor country governments, relations that are sometimes adversarial, sometimes supportive."¹⁰ Not all of these new efforts concern the UN human rights machinery and thus, while acknowledged, are not explored in this book.

Another development in human rights practice concerns the extensive involvement of human rights organizations in technical assistance projects in country and field offices. This trend reflects a general shift in international human rights practice from the monitoring of violations to the building of institutions and capacities to facilitate compliance. Especially in the post-September 11 climate, there is more urgency than ever to include victims in human rights program design and implementation. In traditional accounts of human rights, victims are passive recipients of the wisdom and good work of human rights NGOs and benevolent diplomats. The new focus on field-oriented, in-country human rights programs, however, must rely on human rights victims becoming active, empowered participants in human rights practice. National systems that are imported from outside, with little local input, are designed for failure. This book argues that a more participatory approach will necessarily be a more effective means of promoting and protecting human rights.

Organization and goals of this book

This book is part of a series on international organizations designed to be a resource for practitioner and student alike. All of the books in the series seek to provide comprehensive and current information, while also remaining clear and concise. From interviews with both international relations and law students and human rights practitioners in preparation for this book, the need to include specific, interesting examples of UN human rights practice became clear. However, given the space limitations, not every detail of every procedure could be reviewed, nor could every UN body or UN affiliate addressing human rights issues be covered. Students did not want to be bogged down in procedural detail, but at the same time they hoped for a book that could help them imagine a potential role for themselves in the UN human rights system.

To make the human rights process more tangible, this book includes primary documents, such as complaint forms and UN reports and the text provides specific illustrative case examples. Where possible, the text refers to children's rights, an issue chosen because it has received comparatively less attention by scholars yet remains a vibrant area of

great interest to students. Progress on children, in terms of human rights norms and activities, in this book thus is a microcosm for what happens in general with human rights in the UN system. This approach gives the reader a "flavor" of what happens as a result of efforts by various members of the machinery.

Ultimately, the book seeks to provide meaningful engagement with the UN human rights system as it operates in practice. Historical and political content is provided throughout, but readers seeking further information are advised to consult the readings listed in the selected bibliography, the timeline in Appendix B, and the directory of UN bodies and affiliated organizations in Appendix A. Having read the text, students and practitioners will be better prepared to use these resources.

In sum, the book is designed to do the following:

- provide a comprehensive and current overview of the UN human rights system, yet not overwhelm with detail;
- explore the role played by a greater diversity of actors and institutions in this system;
- address the role of NGOs in human rights promotion and protection;
- introduce the relevant debates on reform and funding issues; and
- include concise, user-friendly resources for further research and practice.

Never before has the UN human rights system offered so many access points for new advocacy and human rights activities. The system is now a dynamic space where an array of actors can use a range of tools to address human wrongs and advance human rights. To be sure, many aspects of the system are susceptible to political manipulation, ineffective, unresponsive or otherwise in need of reform. Yet the system has in fact worked well in many cases, offering protection for individuals and groups and redress for wrongs. The act of participating in the international human rights system has also proven to be an effective tool of conflict prevention and conflict transformation. Involvement in the UN system increases citizen participation in problem-solving and provides a civil mechanism for translating, reflecting, and challenging claims to power.¹¹ By addressing malfunctioning relationships and structural problems that lie at the root of conflict, participation in UN human rights structures helps to promote a more just and peaceful future.