4 UN treaty bodies

The human rights treaty bodies run on a parallel track to the UN Charter-based mechanisms. Multilateral human rights treaties exist on a number of topics, from race discrimination to the rights of migrant workers. Instead of having one central oversight body for all of the treaties, each core human right treaty has its own compliance and oversight bodies embedded within its structure. Some of these treaty bodies allow individuals to raise concerns directly, while others grant access only to states. Human rights treaties have proliferated in recent years along with non-governmental organization involvement in treaty promotion and enforcement.

For human rights advocates, the advantage of a treaty setting forth obligations on a particular issue is that states will commit to specific obligations which directly address that issue. But treaties not only set standards for government conduct, they also educate the public and help create conditions for the voluntary compliance with standards.[1] States must also adopt internal legislation and policies to implement applicable human rights standards. In many countries, treaties form the foundation for national legal and policy changes. Where such treaty obligations are not met, human rights advocates have an important tool in the treaty with which to push for social and legal change on particular issues. For example, provisions of the Convention on the Rights of the Child highlight the practices of trafficking in children, economic exploitation and child labor, and forms of sexual exploitation and abuse.[2]

Critics of treaty bodies for human rights promotion and enforcement point to "treaty fatigue" and "treaty congestion." Treaty reporting and monitoring processes are often neither efficient nor effective. The national reporting mechanisms (requiring States Parties to report on their implementation of obligations) frequently receive reports that are inaccurate, incomplete, late, or not submitted at all. Even when

adequate reports are received, under-resourced treaty-monitoring bodies may be forced into hasty and superficial reviews of the reports. The increase in the number of treaties with reporting requirements in the human rights treaty context (and international environmental realm) has led to concerns about the increasingly burdensome proliferation of reporting requirements, hence the term "treaty fatigue."

Proponents of treaties nonetheless respond that adjustments can be made in the reporting procedures so that the benefits of reporting mechanisms are maintained, without placing undue burden upon States Parties. As the human rights movement has turned from standard-setting to enforcement, the treaty creation process has slowed, but it has not stopped altogether. Negotiations for a new convention on the human rights of persons with disabilities were recently initiated through the General Assembly after Mexico sponsored a 2001 resolution establishing an Ad Hoc Committee on the subject.

This chapter introduces readers to the work of the main human rights treaty bodies: The chapter begins with a general introduction to the work of human rights treaty bodies, outlining procedures and methodologies that tend to characterize all treaty processes. The chapter then turns to the seven specific treaties, outlining their composition and mandates, and notes in particular whether individual complaint mechanisms are available. Finally, the chapter concludes with a brief discussion of treaty-body reform.

Overview of the work of human rights committees

Human rights treaty bodies create their own mechanisms for holding states accountable for their treaty commitments. Treaty bodies, or "committees", are composed of persons of "high moral character" who are generally experts in the issues covered by the treaty. They work as independent individuals, rather than representing the interests of their own home countries. The exact nature of their work varies, but human rights committees are generally involved in some, if not all, of the following functions: review of state reports; state-to-state, individual and other forms of communications; the issuance of "General Comments"; thematic discussions and other open fora; and establishing "National Plans of Action."

State reporting

Under all human rights treaties, States Parties are required to submit periodic reports on their own behavior under the treaty.

Table 4.1 UN treaty bodies and their parent treaties

Treaty body	*Parent treaty*	*Date entered into force*
Human Rights Committee	International Covenant on Civil and Political Rights (ICCPR)	1976
Committee on Economic, Social and Cultural Rights	International Convention on Economic, Social and Cultural Rights (ICESCR)	1976
Committee on the Elimination of Racial Discrimination	Convention on the Elimination of All Forms of Racial Discrimination (CERD)	1969
Committee on the Elimination of Discrimination Against Women	Convention on the Elimination of Discrimination Against Women (CEDAW)	1981
Committee Against Torture	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1987
Committee on the Rights of the Child	Convention on the Rights of the Child (CRC)	1990
Committee on the Rights of All Migrant Workers and Members of their Families	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	1993

Whether or not they are complying with the obligations they willingly undertook, State Parties are required to submit these reports, in a manner similar to self-evaluation. For example, under Article 40 of the International Covenant on Civil and Political Rights (ICCPR), States Parties must submit reports every five years on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. The reports are subsequently examined by the Human Rights Committee (the body charged with overseeing the ICCPR) in public meetings, through a dialogue with representatives of each State Party whose report is under consideration. The manner in which dialogue is conducted before the Committee monitoring the Convention on the Rights of Children is outlined in the document excerpted below (see Box 4.1).

On the final day of the session, the Committee adopts "concluding observations," summarizing its main concerns and making appropriate suggestions and recommendations to the State Party. Some Committees also have "follow-up" procedures designed to encourage States Parties to comply with the Committee's findings and with the obligations they assumed when they ratified the treaty. The Office of the High Commissioner for Human Rights (OHCHR) provides assistance with treaty follow-up to the ICCPR, after the Committee on Human Rights has made its "concluding observations." As part of this effort, the OHCHR has begun hosting a series of regional meetings for each treaty body. For example, in 2003 the OHCHR co-hosted a meeting with UNICEF and UNDP in Syria on the follow-up of the concluding observations of the CRC for Syria, Jordan and Lebanon. So far, UN staff and NGOs alike view the holding of regional meetings as a successful innovation. Nonetheless, some of the treaty bodies still cannot undertake follow-up because of workload, and the effectiveness of the follow-up procedures remains an area of concern.[3]

Box 4.1: Illustration of dialogue process between Committee monitoring Children's Rights Convention and States Parties

[Excerpted from Overview of the Working Methods of the Committee on the Rights of the Child.[4]]

The State Party report will be discussed in open and public meetings of the Committee, during which both the State representatives and Committee members take the floor. Relevant United Nations bodies and agencies are represented. Summary records of the meetings are issued and the United Nations Department of Public Information is invited to cover the proceedings for the purpose of their Press Releases. Other journalists are free to attend, as are representatives of non-governmental organizations and any interested individuals.

With the factual situation largely clarified in writing, there should be room in the discussions to analyse "progress achieved" and "factors and difficulties encountered" in the implementation of the Convention. As the purpose of the whole process is constructive, sufficient time should be given to discussions about "implementation priorities" and "future goals." For these reasons

the Committee welcomes the representation of the State Party to be a delegation with concrete involvement in strategic decisions relating to the rights of the child. When delegations are headed by someone with governmental responsibility, the discussions are likely to be more fruitful and have more impact on policy-making and implementation activities.

The Committee appoints two of its members to act as "country rapporteurs" to lead the discussions with the concerned State Party's delegation.

After a brief introductory statement by the head of delegation the interactive dialogue starts. The Chairperson of the Committee will request the country rapporteur(s) to provide a brief overview of the state of child rights in the concerned State Party. Thereafter the Chairperson will invite the Committee members to ask questions or make comments on the first cluster of rights, and the delegation may respond. The discussion moves step by step through the next group of issues identified in the reporting guidelines.

Towards the end of the discussion, the country rapporteurs summarize their observations on the report and the discussion itself and may also make suggestions and recommendations. Lastly, the State delegation is invited to make a final statement.

Although only members of the Committee and representatives of the reporting State Party may take part in the official dialogue on the state reports, under some treaties (such as the Children's Convention) non-governmental organizations are encouraged to submit written information or reports to the Committee. Human rights advocates can review the state reports—which must be made public—and issue their own version of reality in a "shadow report" or "alternative report."

The general purpose of preparing a shadow report is to provide the Committee with an independent tool to assess and describe a government's accountability in fulfilling its obligations to promote and protect human rights, to monitor actions to honor commitments made in treaties or at world and regional conferences, and to put political pressure on States Parties through publicity and education. Shadow reports are particularly effective tools for

Committees because NGOs possess in-depth knowledge about their home countries that can be invaluable for busy Committee members. Shadow reports can also help NGOs to educate the public on particular issues, build coalitions, strengthen their own methods for holding governments accountable, and influence policy or law in their home countries. While NGO shadow reports cannot possibly focus on every theme covered by a particular treaty, they can focus on selected areas in order to provide Committees with specific information on certain practices or issues that may require extra attention.[5]

Box 4.2: Examples of state reports and NGO shadow reports

The following is an excerpt from Japan's State Party Report (Second Periodic Report, submitted November 2001):

Family trials

129. Article 1 of the Law for Determination of Family Affairs and Article 1 of the Rules for Determination of Family Affairs stipulate that the best interests of each child are to be considered. Determination of family affairs proceedings are conducted according to these provisions, thus it can be said that the child's best interests are taken into consideration.

Juvenile trials

130. Article 1 of the Juvenile Law and Article 1 of the Rules of Juvenile Proceedings stipulate that the best interests of each child are to be considered. Juvenile proceedings are conducted according to these provisions, thus it can be said that the child's best interests are taken into consideration.

Correctional institutions

131. As stated above, Article 1 of the Juvenile Law stipulates that the child's best interests are to be considered. Treatment of juveniles in correctional institutions is as follows:

(a) In juvenile classification homes, it is prescribed in Article 2 of the Juvenile Classification Homes Treatment Regulations that

juveniles shall be placed in a nice quiet environment so that they can attend their hearings, feeling secure. Article 1 of the Juvenile Training School Treatment Regulations stipulates that in juvenile training schools, juveniles shall be treated with due consideration for the state of their mental and physical development, in a lively environment, aiming at their sound development;

(b) In juvenile prisons, school education and vocational training are provided according to the mental and physical condition of the detained juveniles, paying attention to their sound development. Juveniles are treated with due consideration for their best interests.

The following is an excerpt from an NGO shadow report from Japan that roughly corresponds, and also responds, to the State Report from Japan:

Little progress has been achieved in strengthening the right of the child to express their views freely in all matters concerning them and to have them taken into consideration. There are still many areas where this right is not provided in legislation; the Government Report mostly refers to guidance of desirable practices, which are neither legal entitlements nor what is actually practiced. Even when the need to allow children to express their views is recognized, there is no requirement to give "due weight" to their views and no guidelines have been offered for this purpose.[6]

The reporting process is a core part of the human rights treaty review system. The reporting process can be an important impetus for review and action at the domestic level as well as at the international level. At its best, the process creates opportunities for governments, NGOs and other members of civil society, including, for example, the media, to have a constructive dialogue regarding national priorities, successes, best practices, and challenges in meeting convention obligations. The lively nature of the dialogue is illustrated by the excerpt from a press report on the presentation of Guyana before the CRC, in Box 4.3.

Box 4.3: Illustration of how treaty reporting works

[Excerpt from Press Report, *Committee on Rights of Child Reviews Initial Report of Guyana*, 14 January 2004.[7]]

The Committee on the Rights of the Child today considered the initial report of Guyana on how that country was giving effect to the provisions of the Convention on the Rights of the Child.

[Presentation of Country Report.]

Discussion

GHALIA MOHD BIN HAMID AL-THANI, the Committee Expert who served as country rapporteur to the report of Guyana, said that the State Party had not yet ratified either of the two Optional Protocols to the Convention or The Hague conventions relating to the rights of the child. Although the report was submitted after a nine-year delay, it dealt with many of the problems frankly. She wanted to know how the report had been prepared, and if non-governmental organizations and children themselves had been involved in its preparation.

Ms. Al-Thani asked the delegation how the provisions of the Convention were disseminated. Was it translated into various vernaculars, and were training sessions and seminars provided? She asked if appropriate measures had been taken in the field of data collection on children, which was lacking in the report.

Another Expert asked about the roles of the various institutions dealing with children and if their work was overlapping. She also asked about the functions of the forthcoming constitutional commission on the rights of the child. Had the Government evaluated the achievements made following the implementation of the five-year national plan of action for children? What measures had been taken to harmonize the provisions of the Convention and children's bills?

An Expert said that the State Party did not have a general rule on attainment of majority age. The end of compulsory schooling was fixed at 15 but children under 14 were employed. The age for

sexual consent for girls was maintained at 13 years; what would happen if such an act took place with a girl under 13?

Turning to indigenous children, another Expert asked if Amerindians and other indigenous children were discriminated against in terms of access to health services, education and other basic needs.

Referring to the burden of the external debt of the State Party, an Expert asked if the Government had, within its national plan of action, made attempts to reform its budget structure in order to guarantee adequate allocation to health and education.

[...]

An Expert said that Guyana's rule of law had been weakened because of the prevailing problems the country was facing. The administration of justice was also on the verge of being dysfunctional, resulting in negative consequences on the juvenile justice system. The delegation was asked to provide further information on those issues.

Responding, the delegation said that the Ministry of Foreign Affairs, in consultation with other ministries, was actually preparing the ground for the ratification of a number of treaties. The country, since it became independent, had been carrying out legislative reforms on various issues.

[...]

The Committee Experts continued raising further questions on such issues as the situation of disabled children; the non-distribution of anti-retroviral medication to child victims of HIV/AIDS; the rate of illiteracy among the population; the situation of breastfeeding; the quality of education and the rate of dropouts; the training of teachers and upgrading their capacity to teach; the low school enrolment of boys in some areas; violence among the youth; the situation of street children and placement institutions, among other things.

Responding, the delegation of Guyana said that the HIV/AIDS pandemic was not a problem among the Amerindian indigenous peoples. It was rare to find an Amerindian who was HIV-positive.

Communications

In addition to reporting, procedures allowing for interstate communications, individual and group communications, and procedures of inquiry are likewise important and highly significant additional components of an effective implementation system.

- *Interstate communications:* A standard procedure allows treaty bodies to receive communications from a State Party regarding violations of convention obligations by another State Party. Interstate complaints procedures are not presently invoked as a matter of practice in the international context, however, because states are reluctant to use the procedure.
- *Individual communications:* Treaty bodies are sometimes given the authority to receive communications (also known as "complaints") from individuals and groups (NGOs) regarding States Parties violations of the convention. A number of international human rights treaties now allow for such a procedure, either within the framework of the convention, or as a result of an additional agreement establishing such a procedure (through an "optional protocol," that is a separately negotiated treaty adding to the enforcement component of the original treaty). A model complaint form is reproduced in Box 4.4.

One important requirement for the consideration of a communication by a treaty body is known as the "exhaustion requirement." This provides that the Committee shall not consider any communication unless all available domestic remedies have been exhausted, provided that the application of such remedies is not unreasonably prolonged or is unlikely to bring effective relief. Communications also cannot be under consideration by another international procedure. Another common procedural requirement is that communications must not be anonymous. Communications cannot be considered unless they come from a person or persons subject to the jurisdiction of a state that is a party to the Optional Protocol.

In most cases, the treaty bodies require that communications should be sent by the individual who claims that his or her rights have been violated by the state. However, when it appears that the alleged victim is unable to submit the communication, the Committee may consider a communication from another person who must prove that he or she is acting on behalf of the alleged victim. It is also common for the Committee considering the case to ask the alleged victim or the state concerned for additional information or comments and to set a time

limit for a response. The individual complainant generally will be provided with an opportunity to respond to state submissions. A large percentage of individual communications are dismissed at earlier stages, based on failures to exhaust state remedies and on failure to provide adequate information.[8]

Box 4.4: Model complaint form[9]

For communications under:

- Optional Protocol to the International Covenant on Civil and Political Rights
- Convention against Torture, or
- International Convention on the Elimination of Racial Discrimination

Please indicate which of the above procedures you are invoking:
.....

Date:.....

I. Information on the complainant:
Name: ..... First name(s): .....
Nationality:..... Date and place of birth: .....
Address for correspondence on this complaint: .....

Submitting the communication:
on the author's own behalf: .....
on behalf of another person:.....

[If the complaint is being submitted on behalf of another person:]
Please provide the following personal details of that other person
Name: ..... First name(s): .....
Nationality: ..... Date and place of birth: .....
Address or current whereabouts: .....

If you are acting with the knowledge and consent of that person, please provide that person's authorization for you to bring this complaint .....
Or

If you are not so authorized, please explain the nature of your relationship with that person and detail why you consider it appropriate to bring this complaint on his or her behalf:
.....

II. State concerned/Articles violated

Name of the State that is either a party to the Optional Protocol (in the case of a complaint to the Human Rights Committee) or has made the relevant declaration (in the case of complaints to the Committee against Torture or the Committee on the Elimination of Racial Discrimination):
.....

Articles of the Covenant or Convention alleged to have been violated:
.....

III. *Exhaustion of domestic remedies/Application to other international procedures*

Steps taken by or on behalf of the alleged victims to obtain redress within the State concerned for the alleged violation – detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims you have made, at which times, and with which outcomes:
.....

If you have not exhausted these remedies on the basis that their application would be unduly prolonged, that they would not be effective, that they are not available to you, or for any other reason, please explain your reasons in detail:
.....

Have you submitted the same matter for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples' Rights)? If so, detail which procedure(s)

have been, or are being, pursued, which claims you have made, at which times, and with which outcomes:

.....

IV. Facts of the complaint

Detail, in chronological order, the facts and circumstances of the alleged violations. Include all matters which may be relevant to the assessment and consideration of your particular case. Please explain how you consider that the facts and circumstances described violate your rights.

.....

Author's signature: .....

V. Checklist of supporting documentation (copies, not originals, to be enclosed with your complaint):

– Written authorization to act (if you are bringing the complaint on behalf of another person and are not otherwise justifying the absence of specific authorization): .....
– Decisions of domestic courts and authorities on your claim (a copy of the relevant national legislation is also helpful): .....
– Complaints to and decisions by any other procedure of international investigation or settlement: .....
– Any documentation or other corroborating evidence you possess that substantiates your description in Part IV of the facts of your claim and/or your argument that the facts described amount to a violation of your rights: .....

Procedure of inquiry

A procedure of inquiry is an additional mechanism allowing treaty bodies to initiate investigations into treaty violations. The procedure is triggered in cases where a particular human rights committee receives information relating to "grave and systematic violations" of the convention. The Committee is empowered to invite the cooperation of the State Party in question to submit its observations. Thereafter, the Committee reviews the information submitted by the State Party and

other reliable information submitted by other parties. The Committee may choose to authorize one or more of its members to conduct an inquiry and report "urgently" to the Committee. Such an inquiry may include a visit to the territory of the State Party, subject to that state's consent. The findings of any such inquiry are sent to the State Party, along with Committee views, recommendations and comments. The State Party is given an opportunity to respond within six months. The procedure is confidential; accordingly, the proceedings are entirely closed and the written findings are not made public. Follow-up procedures in relation to communications or inquiry mechanisms enhance compliance with recommendations and other measures.

General comments

In developing the meaning of specific human rights norms, many Committees also rely heavily on procedures known as general recommendations or general comments. These are published interpretations of the content of human rights provisions. Often, NGOs have input into the creation of these important documents, both through invited participation in thematic discussions and other meetings with Committees, and through writing their own parallel documents.

The general comments and recommendations of all human rights treaty bodies are compiled and published on the website of the OHCHR. Recommendations often provide guidance to states on the content of their reports. While some recommendations interpret existing provisions of a treaty, others, such as the example from the CRC reproduced in Box 4.5 below, address new topics. The main value of recommendations is that they contribute to the interpretation of the human rights conventions and in so doing influence the progressive development of human rights treaty obligations.

Box 4.5: Sample general comment[10]

Thirty-second session (2003)
General comment No. 3: HIV/AIDS and the rights of the child

I. Introduction

1. The HIV/AIDS epidemics have drastically changed the world in which children live. Millions of children have been infected and

have died and many more are gravely affected as HIV spreads through their families and communities. The epidemics impact on the daily life [of] younger children, and increase the victimization and marginalization of children especially on those living in particularly difficult circumstances. HIV/AIDS is not a problem of some countries but of the entire world. To truly bring its impact on children under control will require concerted and well-targeted efforts from all countries at all stages of development.

[The next section explains the objectives of the general comment.]

III. The Convention's perspectives to HIV/AIDS – the holistic child rights-based approach

[This section examines how specific rights in the Children's Convention are implicated by HIV/AIDs.]

(a) The right to non-discrimination (art. 2)

5. Discrimination is responsible for heightening the vulnerability of children to HIV and AIDS, as well as seriously impacting the lives of children who are affected by HIV/AIDS, or are themselves HIV infected. Girls and boys of parents living with HIV/AIDS are often the victims of stigma and discrimination as they too are often assumed to be infected. As a result of discrimination children are denied access to information, education (reference to general comment No. 1 on the aims of education), health or social care services or from community life. At its extreme, discrimination against HIV-infected children has resulted in their abandonment by their family, community and/or society ...

[...]

(b) Best interests of the child (art. 3)

8. Policies and programmes for prevention, care and treatment of HIV/AIDS have generally been designed for adults with scarce attention to the principle of the best interest of the child as a primary consideration. Article 3 of the CRC states: "In all actions concerning children, whether undertaken by public or private

social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."...

(c) The right to survival, life and development (art. 6)

9. Children have the right not to have their lives arbitrarily taken, as well as to benefit from economic and social policies which will allow them to survive into adulthood and develop in the broadest sense of the word. State obligation to realize the right to survival, life and development also highlights the need to give careful attention to sexuality as well as to the behaviours and lifestyle of children, even if they do not conform to the society's determination of what is acceptable under prevailing cultural norms for a particular age group ...

(d) The right to express views and have them taken into account (art. 12)

10. Children are rights holders and have a right to participate, in accordance with their evolving capacities, in raising awareness by speaking out about the impact of HIV/AIDS on their lives ...

[The text continues for several pages, addressing such issues as mother/child HIV transmission, sexual exploitation and HIV, the role of education in prevention, the use and misuse of children in research, and the responsibility of states to provide treatment.]

VI. Recommendations

1. Adopt and implement national and local HIV/AIDS-related policies, including effective Plans of Action, strategies, and programmes that are child-centred rights-based and incorporating the rights of the child under the Convention ...
2. Allocate financial, technical and human resources to the maximum extent available to support national and community-based action (art. 4), and when appropriate within the context of international cooperation ...
3. Review existing laws or enact new legislation with the view to implement fully article 2 of the Convention ...

4. Include HIV/AIDS Plans of Action, strategies, policies and programmes in the work of national mechanisms ...

[The document concludes with several additional recommendations.]

Thematic discussions

Treaty bodies typically offer several additional avenues for NGOs, UN specialized agencies and other organizations to have influence on the development and implementation of human rights norms. These may take the form of thematic discussions, held on a regular basis or called to address a particular concern. In the case of the Committee on the Rights of the Child, a theme is chosen for "Days of Discussion," an event which occurs annually coinciding with the annual meeting of the Committee. The CRC's Days of Discussion on Children with Disabilities provides a good illustration as to the link between the treaty system and activism and coalition-building, and the crucial role of fora like the Days of Discussion in this process.[11]

Held in 1997, the aim of the Days of Discussion on Children with Disabilities was to raise awareness and understanding of the situation of disabled children and the nature of rights violations they experience, and to identify strategies for more effective protection of their rights. The meeting led to a decision to establish a working group, Rights for Disabled Children, to follow up the commitments made by various states. Chaired by Bengt Lindqvist, the former UN Special Rapporteur for Disability, the group's membership includes several prominent NGOs, including Disabled People's International, World Blind Union, World Federation of the Deaf, Inclusion International and Save the Children Alliance. A member of the Committee on the Rights of the Child is nominated to attend the meetings as an observer. The NGO Disability Awareness in Action acts as the administrator for the group, and funding has been provided by the Swedish International Development Cooperation Agency (SIDA).[12]

Rights for Disabled Children undertook a series of country studies in different regions of the world in order to do the following:

- identify the extent of continuing violations of their rights;
- examine the impact of the Convention on the Rights of the Child in addressing the situation of disabled children;
- examine strategies being developed to address those violations;

- examine the extent to which the voices of disabled children are being heard;
- explore the role being played by disabled people's organizations and their effectiveness in promoting change;
- highlight and disseminate examples of positive practice in respect of legislation, policy and implementation of the rights of disabled children.[13]

The study was highly participatory and NGOs within each country were given the opportunity to comment on and correct draft reports which were then published and available for use as a tool for advocacy.

National plans of action

States Parties to a multilateral treaty often are encouraged by treaty bodies to develop national plans of action for the implementation of treaty commitments. National plans of action can be effective instruments for assessing the degree of compliance with convention obligations according to defined indicators that address the full set of convention obligations. In some instances, however, national plans of action in a particular context have had little or only minor connection to a convention. Accordingly, treaty bodies have found it important to provide explicit guidance to states. An excerpt from Canada's National Plan of Action for implementation of the Children's Convention appears in Box 4.6.

Box 4.6: Illustration of national plan of action

[Excerpt from *A Canada Fit for Children*, April 2004[14]]

B. Goals, Strategies and Actions for Canada

1. Supporting Families and Strengthening Communities

[...]

Priorities for action

(a) Child- and family-friendly policies

66. Policies within the workplace, the community and the larger social environment structure our daily lives as citizens.

Understanding the way in which children and families are affected by the policies we design and implement is crucial. Policies that are child- and family-friendly are defined by their ability to support children and families where they live, learn, play and work. Such policies provide opportunities for social inclusion and participation in community life.

[...]

(c) Poverty

[...]

71. While significant efforts have been made to address poverty in Canada, we need to continue to work to ensure that all children have a good start in life. Income security and the health and well-being of children are central to the kind of society we want. We must never lose sight of the goals of supporting families in their efforts to secure work, find affordable housing, access health care and pursue learning opportunities ...

(d) Separation and divorce

73. Families that are breaking up require special supports. Separation and divorce are stressful transitions that can have a profound effect on the health and well-being of children ...

(e) Social inclusion and diversity: Building community

77. Respect for diversity and active civic participation are core Canadian values. Yet some children, young people and adults, such as members of ethnic and racialized groups and various religious faiths, those with disabilities, immigrants and refugee children, Aboriginal peoples, children who are living on the streets, members of official language minority communities, or people living in the North or other remote areas, may experience barriers to full participation in society. Barriers may also exist based on gender or sexual orientation. These barriers can prevent parents, families and legal guardians from providing a balanced, integrated life for their children. Barriers may also prevent children and young people from sharing their opinions

and fully participating in the creation of a Canada that responds equitably to all ...

(f) Aboriginal children

80. Although there have been improvements in the health and well-being of Aboriginal children in Canada over the years, it is clear that significant challenges remain. Improving the situation of Aboriginal children consistently ranked among the highest priorities Canadians identified as this national plan of action was being prepared. Many Aboriginal children live in poverty and have poor physical and mental health. As a group, they are over-represented in the child welfare and youth justice systems. Far too many Aboriginal children living on reserve are in substandard and crowded housing and have difficulties accessing health, social and educational services; and their parents have higher unemployment rates. Inuit children living in Canada's northern communities experience many problems including high suicide rates ...

(g) Inclusion and support of children with disabilities

83. Canadians believe that children with disabilities should have equity of access to programs and services that allow them to reach their full potential and participate as they wish in society, along with other Canadian children and young people. Canadians also recognize the particular challenges faced by parents of children with disabilities and the extra supports they may require.

84. To reach this goal we in Canada must ensure that children with disabilities are presented with a wide range of opportunities for participation in society. We will support measures that allow for the inclusion of children with disabilities so they can interact alongside their peers and increase access to integrated, quality learning and recreational programs ...

[The remaining provisions concern promoting healthy lives, protection from harm, promoting education and learning, and building momentum.]

Overview of specific treaty bodies

Human Rights Committee

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the General Assembly on 16 December 1966 and entered into force on 23 March 1976. The Human Rights Committee ("the Committee") was established pursuant to Article 28 of the Convention in order to oversee the implementation of the ICCPR. The 18-member Committee convenes three times a year for sessions of three weeks' duration, typically in March at United Nations headquarters in New York and in July and November at the United Nations office in Geneva. After submitting an initial report, States Parties to the ICCPR must submit reports on their compliance with treaty obligations every five years.

Each session of the Committee is preceded by two simultaneous pre-session working groups. One working group is entrusted with the task of making recommendations to the Committee regarding communications received under the Optional Protocol (see below). The other working group is mandated to prepare concise lists of issues concerning state reports due for examination by the Committee at the next session. The Committee operates independently of ECOSOC oversight, although it is required to submit to the General Assembly an annual report on its activities.

The substantive rights protected within the ICCPR include: self-determination; legal redress; equality; life; liberty; freedom of movement; fair, public, and speedy trial of criminal charges; privacy; freedom of expression, thought, conscience, and religion; peaceful assembly; freedom of association (including trade union rights and political parties); family; and participation in public affairs.

Are individual communications permitted?

Yes. The first Optional Protocol to the Convention established a mechanism to review individual complaints regarding violations of the treaty. (The second Optional Protocol, which entered into force on 11 July 1991, legally abolishes the death penalty.)

The first Optional Protocol allows the Committee to consider any alleged violation of any of the rights set forth in the Convention against an individual—provided that the state in question has agreed separately to the Optional Protocol. The Committee seeks to place individuals who complain and states that are alleged to have violated

their rights on an equal footing throughout its proceedings and to provide each with an opportunity to comment on the other's arguments. The findings of the Committee, namely its views on communications that have been declared admissible and examined on their merits and its decisions declaring other communications inadmissible, are always made public immediately after the session at which the findings are adopted. They are reproduced in the Committee's annual report to the General Assembly and are available online. The Committee works by consensus, but individual members can append their opinions to the views it expresses on the merits of a case or to its decisions to declare communications inadmissible. In urgent cases requiring immediate action, for example, a threatened expulsion or imposition of the death penalty, the Committee may address urgent requests to the states involved without prejudging the merits of complaints.

Individuals have used the complaints procedure under the Optional Protocol extensively, and the findings of the Committee have proven to be influential. Over 104 different states have been named in communications to the Committee.[15] Several countries have changed their laws as a result of decisions by the Committee on individual complaints under the Optional Protocol. In a number of cases, prisoners have been released and compensation paid to victims of human rights violations. Although Committee decisions are not binding on other jurisdictions, other human rights juridical and fact-finding bodies (such as the European Court of Human Rights) have looked to Committee decisions for guidance in making their own judgments.

Committee on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) entered into force in 1976. Unique amongst the treaties, the enforcement body of the ICESCR was established through a resolution of the Economic and Social Council (ECOSOC), rather than through the treaty itself. Unlike the ICCPR, the ICESCR does not operate independently of UN oversight; rather, it is required to assist ECOSOC in fulfilling its role.[16] When the treaty first entered into force, ECOSOC established a working group for implementation, in particular to assist with the consideration of state reports. In 1985, ECOSOC renamed the working group the Committee on Economic, Social and Cultural Rights, to be comprised of 18 independent experts. The Committee on Economic, Social and Cultural Rights meets three times a year in Geneva.

Some of the specific rights included in the ICESCR include the right to gain a living by work, to enjoy trade union rights, to receive social security, to have protection for the family, to possess adequate housing and clothing, to be free from hunger, to receive health care and to obtain free public education, and to participate in cultural life, creative activity, and scientific research.

Are individual communications permitted?

No. There is no individual complaint procedure under ICESCR. A draft optional protocol which would allow such complaints was adopted at the 15th session of the Committee on Economic, Social and Cultural Rights, held in Geneva in 1996, but it has yet to attract sufficiently broad support for its adoption.[17] A newly convened working group of the UN Commission on Human Rights met in early 2004 to debate the feasibility of an optional protocol to the ICESCR that would provide for the adjudication of individual and group complaints against states under that Covenant. Proponents of a complaints mechanism argued that the absence of strong enforcement mechanisms in the ICESCR has marginalized economic, social, and cultural rights and stymied their full realization. Opponents contend that, given their aspirational nature,[18] economic, social, and cultural rights are not "justiciable," that is not subject to the possibility of formal third-party adjudication, with remedies for findings of non-compliance. Participating states were in sharp disagreement over the viability of the proposal, however, and the session ended with the issue still open.[19]

The Committee on the Elimination of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination ("the Race Discrimination Convention") entered into force in 1969. It established a Committee on the Elimination of All Forms of Racial Discrimination (CERD) of 18 experts, selected by States Parties. CERD meets in two-week sessions, twice a year in Geneva.

The Race Discrimination Convention defines discrimination in Article 1.1 as:

> Any distinction, exclusion, restriction or preference based on race, colour, descent, national or ethnic origin with the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights in any field of public life, including political, economic, social or cultural life.

The rights enshrined in Article 5 of the Race Discrimination Convention include:

> [the] right to equality before the law without distinction as to race, color, or national or ethnic origin and to equality in the enjoyment of ... the right to equal treatment before tribunals and all other organs administering justice; the right to security of the person and the protection by the states against violence or bodily harm, whether inflicted by government officials or others; the right to vote and stand for election; and the right of access to any place or service intended for use by the general public.

Other civil, political, economic, social and cultural rights are also specifically enumerated by the treaty.

Are individual communications permitted?

Yes. Article 14 of the Race Discrimination Convention establishes a procedure that makes it possible for individual complaints to be brought to CERD, provided that the State Party in question has made a declaration recognizing the competence of CERD to receive such complaints. States that have made the declaration may also, pursuant to the Race Discrimination Convention, establish or indicate a national body competent to receive petitions from individuals or groups who claim to be victims of violations of their rights and who have exhausted other local remedies. In this case, only if petitioners fail to obtain satisfaction from the body indicated may they bring the matter to CERD's attention.

The complaint procedure is largely secretive. CERD brings individual communications about alleged violations to the attention of the State Party in question, but does not—without its consent—reveal the identity of the individual or group claiming a violation. Should CERD consider the case, it transmits its conclusions and recommendations to the individual or group concerned and to the State Party.

Committee on the Elimination of Discrimination Against Women

The Convention on the Elimination of Discrimination Against Women ("the Women's Convention") entered into force in 1981. Article 17 of the Women's Convention establishes the Committee on the Elimination of Discrimination Against Women (CEDAW) to oversee the implementation of its provisions. CEDAW is composed

of 23 experts who are elected by secret ballot from a list of persons "of high moral standing and competence in the field covered by the Convention" nominated by States Parties. In the election of persons to CEDAW, consideration is given to equitable geographical distribution and to the representation of different civilizations and legal systems. The members of CEDAW serve four-year terms. Although nominated by their own governments, members serve in their personal capacity and not as delegates or representatives of their countries of origin.

Under Article 20 of the Convention, CEDAW is to meet once a year for "a period of not more than two weeks." Under pressure from NGOs, this period has been expanded so that it now includes two sessions which are each two weeks long. CEDAW is serviced by the United Nations Division for the Advancement of Women, which moved from Vienna to New York in 1993. Although the only requirement is that they be "experts of high moral standing and competence in the field of women's rights," to date, all CEDAW members have been women.

Article 1 of the Women's Convention defines discrimination against women as:

> Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Among all the human rights treaties, CEDAW is second only to the Convention on the Rights of the Child in the number of nations that have ratified it, yet it is also the treaty with the greatest number of substantive reservations. In particular, states have made reservations to Articles 2, 5, 9, 15, and 16, which deal with eliminating discrimination, culture and tradition, nationality, legal capacity, and marriage and family relations.

Are individual communications permitted?

Yes. The Optional Protocol of the Women's Convention, which was opened for signature in 1999 and entered into force one year later, creates new communications and inquiry procedures for individuals and groups alleging discrimination.

- *The communications procedure* allows individual women or groups of individuals to submit individual complaints to CEDAW.
- *The inquiry procedure* enables CEDAW to initiate inquiries into situations of grave or systemic violations of women's rights in countries that have become States Parties to the Optional Protocol. CEDAW may only conduct inquiries in countries which are States Parties to both CEDAW and the Optional Protocol. Article 10 of the Optional Protocol provides an "opt-out clause" allowing states, upon ratification or accession to the Protocol, to declare that they do not accept the inquiry procedure.

Committee Against Torture

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Torture Convention") entered into force on 26 June 1987. The Torture Convention created the Committee Against Torture (CAT), a panel of 10 experts who are elected by the States Parties to the Torture Convention. CAT meets twice annually in Geneva.

Article 1(1) of the Torture Convention defines torture as:

> Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act that he or a third person has committed or is suspected of having committed, or intimidation of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The Torture Convention requires that States Parties incorporate the crime of torture in their domestic legal codes and punish accordingly any acts of torture committed by their own citizens. The Torture Convention makes no allowances for any exceptional circumstances, such as a state of war or political unrest, and requires States Parties to establish compensation and rehabilitation programs for victims of torture.

The Optional Protocol of the Torture Convention, adopted in 2002, aims specifically to prevent torture, as opposed to investigating incidences of torture after they have already occurred. The Protocol mandates that States Parties must establish "independent national preventative mechanisms for the prevention of torture at the domestic level." These preventative mechanisms, which must adequately represent

all ethnic, cultural, and religious groups within the state (and which must have an equitable gender balance), have the power to investigate claims of torture, make recommendations to the relevant state authorities, and submit proposals concerning relevant domestic legislation. The Torture Convention Protocol grants these independent bodies the right to full access to information regarding torture, as well as protection from harassment by the state. To support the preventative mechanisms, the Protocol establishes a Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a subsidiary body of the Convention Against Torture. The Sub-Committee is charged with visiting States Parties to CAT, assisting them with the establishment of independent preventative mechanisms, and offering continuous training and technical assistance to the mechanisms.

Are individual communications permitted?

Yes. Individual complaints are permitted under the Torture Convention Article 22. Article 22 of the Torture Convention contains an individual complaints procedure which enables individuals to submit a complaint to CAT if the State Party they believe violated their rights has made a declaration that it recognizes the competence of CAT to receive and consider such complaints. Over one-third of States Parties have done so, and the procedure has been used quite frequently by individuals, although not to the same extent as the Optional Protocol to the ICCPR.

The Committee on the Rights of the Child

The Convention on the Rights of the Child ("the Children's Convention") was adopted by the General Assembly in 1989 and was immediately signed by more nations in a shorter period of time than any other UN convention. It entered into force in 1990.[20] Pursuant to Article 43 of the Children's Convention, the Committee on the Rights of the Child (CRC) was formed to review States Parties' reports, which are due two years after entry into force, and every five years thereafter. The CRC meets in Geneva three times a year for three weeks each session, and consists of 18 experts of "high moral character."

Children's rights have proven to be highly controversial. Although states are willing to ratify the Children's Convention, they do so with reservations. The Children's Convention has more reservations per signatory country than any other UN human rights convention. Sample reservations are given in Box 4.7.

Box 4.7: Illustration of treaty reservations

The following are some examples of reservations to the Children's Convention by a variety of States Parties:

- Afghanistan: "The Government of the Republic of Afghanistan reserves the right to express, upon ratifying the Convention, reservations on all provisions of the Convention that are incompatible with the laws of Islamic Shari'a and the local legislation in effect."
- Australia: "Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c)."
- China: "The People's Republic of China shall fulfill its obligations provided by article 6 of the Convention under the prerequisite that the Convention accords with the provisions of article 25 concerning family planning of the Constitution of the People's Republic of China and in conformity with the provisions of article 2 of the Law of Minor Children of the People's Republic of China."
- Uruguay: "The Government of Uruguay declares that, in the exercise of its sovereign will, it will not authorize any persons under its jurisdiction who have not attained the age of 18 years to take a direct part in hostilities and will not under any circumstances recruit persons who have not attained the age of 18 years."

Article 45 of the Children's Convention specifically provides for the participation of UN specialized agencies and other specialist organizations in the treaty-monitoring process. This highly unconventional provision states:

(a) The specialized agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities.
(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications.
(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child.
(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention.

The CRC has a record of strong cooperation with UN agencies and bodies for the reporting process, organization of general discussion days, input in general comments, and assistance to informal field visits. The CRC often invites the specialized agencies, the United Nations Children's Fund and other competent bodies to provide it with expert advice. The CRC similarly encourages NGOs and national human rights institutions (NHRIs) to submit reports, documentation or other information in order to provide it with a comprehensive picture and expertise as to how the Children's Convention is being implemented in a particular country. The CRC issues written invitations to selected NGOs to participate in the pre-session working group tasked with making the agenda for the meeting. The pre-session working group is a meeting closed to the public, so no observers are allowed. NGOs, NHRIs and other competent bodies may request a private meeting with the CRC.

There are two Optional Protocols that were adopted after the wider adoption of the Children's Convention to supplement the rights protected therein. The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which entered into force on 18 January 2002, addresses the growing problem of sex trafficking, sexual exploitation and abuse, and outlines steps for the protection of child victims' rights during all phases of the criminal justice process. The Optional Protocol on the Involvement of Children in Armed Conflict, which entered into force on 12 February 2002, sets the minimum age limit for direct participation in conflict at 18, and limits recruitment to age 16.

Are individual communications permitted?

No. The CRC suggests that advocates bring complaints about children's human rights under other available individual complaint procedures as appropriate. For example, allegations of abuse of children in custody may be brought under the Torture Convention and allegations of discrimination against girls in schooling could possibly be heard under the Optional Protocol to the Women's Convention.

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

On 1 July 2003, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ("the Migrant Workers Convention") entered into force. The Convention is monitored by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW). The CRMW consists of 10 experts of high moral standing and acknowledged impartiality, serving in their personal capacity, elected by the States Parties in accordance with the procedure set forth in the Migrant Workers Convention. The first meeting of States Parties for the election of the members of the CRMW was held on 11 December 2003. The membership of the CRMW will increase from 10 to 14 experts once 41 ratifications of the treaty are registered.

The Migrant Workers Convention constitutes a comprehensive international treaty regarding the protection of migrant workers' rights. The Migrant Workers Convention aims to guarantee equality of treatment and the same working conditions for migrants and nationals. The Migrant Workers Convention addresses:

- preventing inhumane living and working conditions, physical and sexual abuse and degrading treatments;

- guaranteeing migrants' rights to freedom of thought, expression and religion;
- guaranteeing migrants' access to information on their rights;
- ensuring their right to legal equality, which implies that migrant workers are subject to correct procedures, have access to interpreting services and are not sentenced to disproportionate penalties such as expulsion;
- guaranteeing migrants' equal access to educational and social services; and
- ensuring that migrants have the right to participate in trade unions.

Are individual communications permitted?

Potentially. Under Article 77, a State Party may recognize the competence of the CRMW to receive and consider communications from or on behalf of individuals within that state's jurisdiction who claim that their rights under the Migrant Workers Convention have been violated. Such communications may be received only if they concern a State Party which has explicitly recognized the competence of the CRMW. This procedure requires 10 declarations by States Parties to enter into force. To date, no State Party has made the necessary declaration.

Pressures for reform

A report of the International Law Association identifies numerous factors for evaluating human rights treaties:

> The extent to which states comply with their reporting obligations and submit reports; the amount of time the treaty bodies have to question state representatives; the amount of independent information on a state's human rights record available to the treaty body members; the accessibility of many aspects of the process to non-governmental organizations (NGOs) and individuals; the drafting of state reports, the dialogue, information flow to the treaty bodies; the ability of treaty bodies to follow up inadequate reports or oral replies; the quality of the treaty body's concluding observations; the extent to which the questioning and conclusions of the treaty bodies is followed by the media.[21]

The first factor, state compliance with reporting requirements, has proven to be most troublesome. Up to 80 percent of states which are party to the human rights treaties have overdue reports. Eighty-one states, or an average of 60 percent of States Parties to all the treaties, have five or more overdue reports. Many treaty bodies have taken steps to address delinquency in state reporting (see suggestions of CRC, below), but the problem continues. Additionally, the entire reporting system is burdened by a lack of time and resources. Committees meet for a limited amount of time each year, and thus have little time to spend on reviewing each report. The quality of state reporting is also jeopardized by resource constraints.[22]

No consensus has emerged, either among NGOs or states, on how to reform treaty processes. Reform is further complicated by procedural challenges and logistical difficulties. Every committee has its own rules of procedures and priorities, and there are further constraints imposed by the actual wording of the treaties which they are monitoring. All of these factors combine to make treaty reform highly complex. The following summarizes some of the main suggestions put forward:

- to ease duplication, the General Assembly should consolidate the reporting system so that each State Party submits only one comprehensive report, which should be disseminated to all committees;
- financial and technical support should be provided for NGO involvement in the preparation of reporting documents;
- governments should create their own permanent treaty mechanism, that is one that would exist at all times, not just during the treaty-monitoring season;
- treaty bodies should visit States Parties on fact-finding missions, paying special attention to those States Parties which have overdue reports;
- treaty bodies should publish a document on overdue reports, highlighting state by state the worst human rights abusers (some treaty bodies are already doing this and are proceeding to consider States Parties based on NGO reporting and other information, even in the absence of a state report);
- treaty bodies should be encouraged to offer "direct and forceful criticism" of the accuracy of state reports;
- treaty bodies should also set guidelines that indicate standards required both for state reports and for state representatives; and
- states should be required to resubmit unresponsive and unsatisfactory reports.[23]

Box 4.8: Illustration of strategies devised to encourage reporting by States Parties

[The following is excerpted from *Overview of the Working Methods of the Committee on the Rights of the Child.*[24]]

Convention makes reporting in time an obligation in itself. The Committee emphasizes the importance of timely reports. State parties encountering difficulties in preparing the reports, may request technical assistance from OHCHR or UNICEF.

At its twenty-ninth session (see CRC/C/114, paragraph 561), the Committee decided to send a letter to all States parties whose initial reports were due in 1992 and 1993, requesting them to submit that report within one year. In June 2003, similar letters were sent to three States parties whose initial reports were due in 1994 and never submitted. The Committee further decided to inform those States parties in the same letter that should they not report within one year, the Committee would consider the situation of child rights in the State in the absence of the initial report, as foreseen in the Committee's "Overview of the reporting procedures" (CRC/C/33, paras. 29–32) and in light of rule 67 of the Committee's provisional rules of procedure (CRC/C/4).

In addition to its guidelines for reporting (CRC/C/5 and CRC/C/58), the Committee also adopted recommendations that are relevant to States parties' reporting obligations. They provide guidance to States parties that [are] encountering problems in complying with the strict time frame for submission of reports established by the Convention in article 44, paragraph 1, or the consideration of whose reports has been delayed. These recommendations apply as an exceptional measure taken for one time only (see CRC/C/139).

The OHCHR became active on the subject of reforming the existing human rights treaty bodies following initiatives on the subject undertaken by the UN Secretary-General. The Secretary-General's second report on the subject, *Strengthening of the United Nations: An Agenda for Further Change*, proposed, among other things, that the treaty bodies "should craft a more coordinated approach to their

activities and standardize their varied reporting requirements" and that "each State should be allowed to produce a single report summarizing its adherence to the full range of international human rights treaties to which it is a party."[25] The Secretary-General requested that the OHCHR consult with the committees on new streamlined reporting procedures. One of the more controversial aspects of the various proposals concerned the concept of "summarizing" reporting, and the implication that a state could comply with reporting on its human rights obligations under all the treaties to which it was a party in a condensed, less detailed format. In order to address these concerns about watering down reporting obligations by proposing a summary or consolidated report, the OHCHR has produced draft guidelines on reporting, suggesting an expanded "core document" that could, in part, satisfy some core reporting obligations common to all human rights treaties, while maintaining the quality and content of reporting on issues particular to individual treaties.[26]

For the most part, NGOs are wary of any attempts to tamper with the reporting process, especially suggestions involving consolidated reports. They fear that their own issues will be lost in a consolidated report and that their state responsibility will be sacrificed in the name of alleviating state burdens. The "test" case on consolidated reporting will be East Timor (Timor Leste), which has signed and ratified all seven treaties and has agreed to submit a consolidated report.

Concluding thoughts

The treaty bodies serve different functions: doing justice in individual cases, creating a deterrent and encouraging behavior modification, and interpreting and explaining human rights law beyond the individual case or particular set of state actors.[27] The effectiveness of the treaty bodies can ultimately be measured in relation to the different purposes they set out to achieve.[28] As a mechanism to protect human rights and establish universal standards and norms, human rights treaties have achieved much success. They have brought recognition to numerous human rights issues and serve as promises of "good behavior" from States Parties, creating mutual obligations and responsibilities. Individual wrongs have been remedied and national legislation changed as the result of the work of the treaty bodies. The treaty bodies also have produced a substantial amount of work which clarifies and elaborates the human rights laws of the treaties, which has served to broaden the scope and the application of the human rights treaties. As such, the treaty bodies play essential roles in implementing

and following through on the commitments States Parties make upon ratifying human rights treaties.

Yet there remain a number of problems with the UN human rights treaty system. Such problems are particularly relevant for the treaty bodies who are tasked with ensuring the continued relevance of the treaty. A central dilemma concerns the trade-offs inherent in pushing for universal acceptance and ratification of human rights treaties versus effective implementation. While it is a positive sign that more countries are ratifying human rights treaties, the legitimacy of human rights law is called into question when compliance remains patchy. The treaty bodies are also severely hampered in their effective operation because of the reticence of states to turn in their reports. As long as states fail to meet their reporting obligations, the legitimacy of the entire UN human rights system will be compromised.[29]

5 The Security Council

The United Nations Security Council has evolved considerably over time in relation to human rights. One of the six "principal organs" of the United Nations, the Security Council consists of five permanent members (China, France, Russia (formerly the Soviet Union), the United Kingdom and the United States ("P-5")) and 10 other members elected by the General Assembly for revolving two-year terms. The mandate of the Council has always been to safeguard international peace and security, but its interpretation of the nature of this mandate and the means necessary to carry it out have changed over the decades.

While other UN organs such as the General Assembly and the Economic and Social Council were expressly empowered in their original mandates to deal with human rights and fundamental freedoms, the Security Council was not. Rather, the Security Council was left free to interpret what it meant to promote international peace and security. In the early years and throughout much of the Cold War, the Security Council sought to isolate itself from human rights concerns and to close its decision-making processes to non-governmental organizations that might push human rights and humanitarian matters into international attention. The Security Council did its best to sidestep the few human rights issues that fell under its purview. Cloistered within intergovernmental machinery and Secretariat bureaucracy, the human rights agenda was designed to remain at a safe distance from the Council from the start.[1] Over time, however, this distance proved to be both impossible and unwise as the connection between ongoing human rights abuses and threats to international peace and security became increasingly clear.

The demands for UN involvement in peacekeeping and peacebuilding efforts in states torn by civil strife increased, and this work was intrinsically linked with human rights. To fulfill its mandate of

safeguarding peace and security, the Security Council found it necessary to address the human rights issues at all stages of conflict. In the pre-conflict stage, human rights abuses are part of the root cause of conflicts turning violent. In the hot conflict stage, human rights abuses are integral to the strategy of warring factions or where they occur as a by-product of violence. In efforts to reach peace agreements, the Security Council found that it is essential that human rights are addressed so as to pacify and stabilize conflict areas, and in the post-agreement stages, human rights abuses must be incorporated so as to bring perpetrators to justice and to build institutions capable of handling conflict civilly. The agenda of the Council was suddenly full of human rights concerns.

This chapter is divided into five parts. First, it begins with the historical debate on the authority and political will of the Security Council to address human rights, with special attention given to the role of the Secretary-General. The second section turns to an exploration of Security Council measures to promote human rights, examining in particular humanitarian intervention and the concept of a "responsibility to protect." The third section discusses the responsibility of the UN for its own human rights violations. The fourth section introduces the most relevant debates over Security Council reform, and finally, the last section concludes with a review of the role of NGOs in human rights advocacy.

Human rights before the Security Council

Authority and will to address human rights

The authority of the Security Council to address human rights derives from its central role in maintaining international peace and security. The UN Charter endows the Security Council with primary responsibility for the maintenance of international peace and security. The Security Council has the responsibility to weigh the evidence in individual circumstances and identify threats to the peace, breaches of the peace, and acts of aggression.[2] Upon finding a threat to the peace, the Security Council is authorized to consider what kind of response is warranted under the circumstances. Under what is known as its "Chapter VI powers" (named after the relevant chapter in the UN Charter), the Council may recommend non-coercive measures to maintain the peace. Alternatively, under its "Chapter VII powers," the Council may make recommendations for

the maintenance of international peace and security or take direct action under Articles 41 and 42, involving economic and military force.

In discharging its duties, the Security Council is to act on behalf of the membership "in accordance with the Purposes and Principles of the United Nations." The purposes and principles of the United Nations Charter, as delineated in the Charter itself,[3] include not only the maintenance of international peace and security, but also "respect for the principle of equal rights and self-determination of peoples,"[4] and "promoting and encouraging respect for human rights and for fundamental freedoms for all."[5] The Charter does contain a strong affirmation of the concepts of territorial integrity and non-interference with sovereign states. However, the Charter also notes that these principles "shall not prejudice the application of enforcement measures under Chapter VII."[6] Moreover, a strong argument can be made that statehood is predicated upon respect for basic human rights. According to this line of thought, UN-sanctioned actions designed to address grave abuses and restore respect for human rights *advance* statehood and *restore* sovereignty.

In its early years and throughout the Cold War, the Council could have interpreted its authority to embrace human rights concerns, but it did not have the political will to do so. Rather, it read the phrase "threats to the peace" narrowly and gave priority to the principle of non-interference in sovereign states over the principle of promotion of international human rights.[7] Since the 1990s, however, the Council has been increasingly concerned with the promotion of internal standards within states, including the advancement of human rights norms. At the same time, it has been increasingly willing to identify human rights violations as threats to international peace and security and to use its enforcement authority to respond to these situations, especially in extremely grave circumstances.[8]

The orientation of the UN toward human rights throughout this period has been greatly influenced by the respective roles played by individual Secretaries-General of the United Nations. The emergence of human rights on the Security Council agenda in the 1990s began with Secretary-General Pérez de Cuéllar's historic report to the General Assembly in 1991. He accused the Member States of being "callous" and having an "overly bureaucratic attitude" and warned that "[t]he encouragement of respect for human rights becomes a vacuous claim if human wrongs committed on a major scale are met with lack of timely and commensurate action by the United Nations."[9]

He went on to add:

> I believe that the protection of human rights has now become one of the keystones in the arch of peace. I am also convinced that it now involves a more concerted exertion of international influence and pressure, through timely appeal, admonition, remonstration, condemnation and, in the last resort, a United Nations presence, than what was regarded as permissible under traditional international law.[10]

He cautioned against the selective application of the principle of protection of human rights and warned against unilateral actions and actions undertaken without UN authorization. Secretary-General de Cuéllar challenged the UN to find ways to stop states from using the shield of state sovereignty "as a protective barrier behind which human rights could be massively or systematically violated with impunity."[11]

This challenge was taken up by the UN under the leadership of Secretary-General Boutros Boutros-Ghali. Almost immediately upon assuming the office in early 1992, Boutros-Ghali proved himself a well-reasoned advocate of a stronger UN role in conflict resolution and post-conflict peace-building. His seminal *An Agenda for Peace*, published in mid-1992, called for cooperation amongst states in the post-Cold War era, along with a commitment to human rights.[12] Boutros-Ghali identified the following as the most important goals for the United Nations:

- To seek to identify at the earliest possible stage situations that could produce conflict, and to try through diplomacy to remove the sources of danger before violence results;
- Where conflict erupts, to engage in peacemaking aimed at resolving the issues that have led to conflict;
- Through peace-keeping, to work to preserve peace, however fragile, where fighting has been halted and to assist in implementing agreements achieved by the peacemakers;
- To stand ready to assist in peace-building in its differing contexts: rebuilding the institutions and infrastructures of nations torn by civil war and strife; and building bonds of peaceful mutual benefit among nations formerly at war;
- And in the largest sense, to address the deepest causes of conflict: economic despair, social injustice and political oppression. It is possible to discern an increasingly common moral perception that spans the world's nations and peoples, and which is finding expression in international laws, many owing their genesis to the work of this Organization.[13]

Despite his strong stance on peace-building and his attention to human rights, the legacy of Boutros Boutros-Ghali was damaged by the widely reported failures of the UN in the former Yugoslavia, Rwanda and Somalia. These supported popular opinion that the UN would only dither while warring factions unleashed genocidal campaigns against their enemies and that, in the rare cases the UN did intervene, it would not result in any great benefit to civilians. The United States clashed with Boutros Boutros-Ghali on several issues and ultimately vetoed his re-election in 1996. Despite the importance of the Secretary-General's role in upholding human rights, this veto provided another reminder that state influence still plays a weighty role in terms of the UN's human rights activities.

The next UN Secretary-General, Kofi Annan, advocated for the expansion of the UN's commitment to conflict resolution and peace-building. From the beginning, Annan was particularly forceful in linking human rights with security issues and repeatedly emphasized the imperative to address human rights issues when addressing conflict situations. In 1999, the Secretary-General electrified and angered much of the UN General Assembly by highlighting the inconsistencies in the international response to humanitarian emergencies and articulating a powerful moral imperative to "do something." In what has come to be known as the "Annan Doctrine," he repeatedly stated that state sovereignty must not shield states in the face of crimes against humanity.[14] In April 2000, Annan issued a Millennium Report entitled *"We the Peoples": The Role of the United Nations in the 21st Century*, calling on Member States to commit themselves to an action plan for ending poverty and inequality, improving education, reducing HIV/AIDS, safeguarding the environment, and protecting people from deadly conflict and violence.[15] In 2001, Annan was awarded the Millennial Nobel Peace Prize and was re-elected as Secretary-General without opposition.

The attention paid to human rights by the Secretary-General and, in turn, the Security Council has inspired not only an increased number of UN resolutions, but also the development and operation of peacekeeping missions, peacemaking (as with the Gulf War), and other peace-building initiatives, such as truth commissions and war crimes tribunals. The various ways in which the Security Council has responded to human rights concerns are discussed in Table 5.1.

Table 5.1 Security Council responses to human rights

Peacekeeping	*Peace enforcement*	*Peace operations*
Chapter VI, UN Charter	Chapter VII, UN Charter	Chapters V and VII
"Pacific Settlement of Disputes"	"Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression"	"Chapter VI½"
"The use of international military personnel, either in units or as individual observers, as part of an agreed peace settlement or truce, generally to verify and monitor cease-fire lines" [a]	"The coercive use of military power to impose a solution to a dispute, to punish aggression, or to reverse its consequences"	Blend of peacemaking, peacekeeping and peace enforcement
Consent of parties; impartiality of peacekeepers; non-use of force	Consent doctrine weakening; force used more commonly	
Original 13 peace operations	Vast expansion of activities	

Note
[a] Denis McLean, "Peace Operations and Common Sense," in Chester A. Crocker and Fen Osler Hampson, eds., *Managing Global Chaos* (Washington, DC: US Institute of Peace, 1996).

Measures to promote human rights

Non-coercive measures

The Security Council may react to gross human rights abuses through a number of non-coercive measures. First, it may issue non-binding resolutions under Chapter VI of the Charter expressing its opinion on the abuses and their resolution. Although technically non-binding, resolutions made under the Council's Chapter VI powers have a certain value through setting precedents as multilateral statements on human rights.[16] As one commentator has noted, "because non-binding resolutions need not involve the invasions of state sovereignty required by Chapter VII actions, the precedential value of non-binding resolutions for destabilization of the non-interference principle is less

threatening." States have a great incentive to take these resolutions seriously because of their potential influence on customary norms. Customary law develops from the consistent practice of states, coupled with the states' feeling of legal obligation to so act.[17] A pattern of state obedience to non-binding resolutions may provide such evidence of both consistent practice and an emerging feeling of obligation.

The second main category of non-coercive measures concerns Security Council-authorized peacekeeping operations. While many forms of peacekeeping today involve military force, traditional Chapter VI peacekeeping is not coercive in the sense that the Council predicates these actions based on the consent of the state subject to the operation.[18] The first classic UN military-observer group was the United Nations Truce Supervision Organization (UNTSO), established in 1948 in Palestine, and the first classic UN peacekeeping operation was the United Nations Emergency Force (UNEF), which ran from 1956 to 1967, first to supervise withdrawal of forces following the Suez Crisis, then to act as a buffer between Egyptian and Israeli forces.

Until 1987, the United Nations had carried out 13 peacekeeping operations. The traditional tasks of these operations included monitoring and enforcing ceasefires; observing frontier lines; and keeping conflicting parties separate. The operations were guided by three key principles: the consent of the parties involved, the impartiality of the peacekeepers, and the non-use of force in most circumstances.[19] While the operations during this time suffered from several weaknesses, including a lack of significant power and authority, they were also successful in many respects, freezing certain conflicts and reducing the risk of expansion of others.

Since 1988, the number of United Nations peacekeeping operations has expanded quickly and drastically. By 2004, the UN was either engaged in or had completed over 55 peace operations. The reason behind this is largely political—with the end of the Cold War, the major powers in the Security Council were less likely to use their veto powers to stop peacekeeping operations for politically motivated reasons. As the number of peacekeeping operations expanded, so too did the mandates of the operations. Peace operations were involved in such activities as monitoring and running elections in countries; protecting inhabitants of a region from the use of force, including protecting citizens from their own governments; protecting designated "safe havens"; assuring the delivery of humanitarian aid and other supplies; assisting in the reconstruction of governmental or police functions; and reporting violations of international humanitarian law.

Numerous successes have come with the expansion of peacekeeping operations. However, there have been numerous problems confronted as well. First, peacekeepers have often found it difficult to maintain impartiality. Second, the troops involved in peacekeeping operations have little experience with the intelligence-gathering and organizational skills needed to establish and enforce safe zones. Third, and most importantly, the expanded use of peacekeeping troops has led to a heated debate regarding the use of force. As soldiers are put into vulnerable situations, or find themselves in a position to protect civilians, questions regarding the degree of force appropriate for UN troops are continually surfacing. Solutions have been applied on a case-by-case basis, but currently there is no specific mandate outlining the degree of force which UN peacekeepers are authorized to use.[20]

The Security Council also engages in numerous consultative and fact-finding missions, often utilizing the Secretary-General's office or its own independent observers. Although not exclusively focused on human rights, these missions often do involve investigation into human rights concerns and contact with both local and international human rights advocates. Other activities of the Council that may be considered non-coercive while being intrusive in state affairs include the establishment of truth commissions and tribunals. These tribunals can be considered a radical innovation in international criminal law. The *ad hoc* International Criminal Tribunal for the former Yugoslavia was established by a Security Council resolution in 1993, the International Criminal Tribunal for Rwanda in 1994, and the Special Court for Sierra Leone in 2000.[21] The three courts were established in order to bring to justice those responsible for war crimes, crimes against humanity, and genocide in each country. These courts aim not only to bring past perpetrators of human rights abuses to justice; also, their presence conveys a broader message that trials in an international arena will help prevent future abuses from occurring.

Coercive measures

The coercive measures available to the Security Council for enforcement of human rights are governed by Chapter VII of the UN Charter.[22] Article 41 authorizes the Security Council to order economic sanctions against states, while Article 42 permits it to order military action including "demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations." Under Article 48(1) of Chapter VII, the Security Council may determine whether the action required to carry out its decisions is to be taken by all or only some of the UN Member States. Article 53 of the UN Charter specifically allows for "regional arrangements or agencies" to take enforcement action, including military action, with the authorization of the Security Council. In practice, states and collective regional security arrangements (i.e. NATO) have sought Security Council approval for their use of force on human rights and humanitarian grounds.[23]

The UN's ability to take enforcement action under Chapter VII is limited by design. Member States are not required to assist the Security Council in taking action, unless an agreement negotiated between the Security Council and the member so specifies. Additionally, the threshold for abuses triggering enforcement action has been set quite high. In order for the UN to take forceful measures, the situation must constitute a "threat to the peace, breach of the peace, or act of aggression," and the Security Council must determine that the relevant parties cannot peacefully resolve the situation. Although the threshold is couched in terms of "the peace" rather than "international peace," it is generally understood that international rather than domestic peace must be threatened or breached in order to spark forceful action by the UN.[24]

Moreover, the willingness and ability of the Security Council to exercise its Chapter VII powers against states that have engaged in gross and persistent violations of their citizens' human rights have been tempered by the ability of the Council's five permanent members to veto any such measures.[25] There have been some exceptions, however. The first case in which the Security Council found a state's violations of human rights to constitute a threat to the peace warranting economic sanctions occurred in 1966, when the Council imposed mandatory economic sanctions against Southern Rhodesia.[26] Intense international outrage against human rights abuses under South African apartheid also led the Council to invoke the "threat to the peace" rationale in order to impose a mandatory arms embargo against South Africa.[27] Yet these cases did not start a trend, and the Security Council remained silent as long as human rights violations took place primarily or exclusively within state borders.

The turning point did not come until the end of the Cold War. After Iraq invaded and occupied Kuwait, in 1990 the Council sanctioned an enforcement action by Member States. Security Council resolution 678 reaffirmed that Iraq had committed a breach of the peace and authorized Member States "to use all necessary means to uphold and implement [the Council's resolutions concerning the invasion] and to restore international peace and security in the area."[28]

The key words here were "all necessary means"—United Nations language for permitting the use of force. This resolution was followed by resolution 688, which sanctioned the creation of "safe havens" in Iraq at the conclusion of the "first Gulf War." This measure was announced as a method of protecting Kurds from further repression by Saddam Hussein.[29] Recognizing the connection between humanitarian crises and violent conflict, resolution 688 expressed concern that Iraq's actions had "led to a massive flow of refugees towards and across international frontiers and to cross-border incursions, which threaten international peace and security in the region." In agreeing to this resolution, the allies in the first Gulf War committed themselves to protecting the Kurds, both through the provision of humanitarian assistance and, if necessary, military might. The willingness of the Council to issue such a resolution represented a substantial change of course in articulating the relationship between human rights violations occurring within a sovereign state and international security.[30] While in the past, state consent was required for the delivery of humanitarian assistance across state borders, there could be occasions where consent was not possible but intervention was nonetheless necessary on humanitarian grounds. Based upon resolution 688 and subsequent practices, a strong argument can be made that the Council has "legal authority to authorize armed action, or lesser coercive measures, to correct human rights violations materially within a territorial state."[31]

Another fundamental landmark validating UN humanitarian intervention for human rights purposes came in December 1992, when through resolution 794, the Security Council authorized the use of force "to restore peace, stability and law and order" to Somalia.[32] In that case, the Council found that "the magnitude of the human rights tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitute[d] a threat to international peace and security," and resolved "to restore peace, stability and law and order with a view to facilitating the process of a political settlement under the auspices of the United Nations." To achieve these objectives, the Council, this time specifically invoking Chapter VII of the UN Charter, authorized both the Secretary-General and cooperating Member States "to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia." Significantly, resolution 794 focused solely on the human rights and humanitarian crisis within Somalia and made no mention of the potential effects of the crisis on neighboring states. The Somalia intervention was widely considered

legal, signaling support for the argument that grave human rights abuses may alone trigger a response by the Security Council.[33]

The deaths of American soldiers and rapid pullout of peacekeeping troops in Somalia, however, ensured that the episode stood more prominently for another principle: that peacekeepers sent to violent intrastate conflicts be armed sufficiently so that they may defend themselves. Soon after Somalia, the failures of the international community to protect civilians in Bosnia[34] and Rwanda[35] led to another new concept: that peacekeepers must be empowered to defend themselves, and civilian victims of war are entitled to legitimate self-defense. As David Malone observes, "Slowly but painfully, the UN system has learnt that impartial peace-keeping cannot be equated with moral equivalence among the parties to a conflict, in extreme circumstances, nor with unwillingness to intervene to prevent atrocities."[36]

Humanitarian intervention and the responsibility to protect

In 1999, Secretary-General Kofi Annan came out firmly on the side of humanitarian intervention.[37] In his annual report on the work of the United Nations, he issued a challenge to skeptics:

> If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?[38]

Following up on his challenge, in March 2000, the Secretary-General asked a panel of international experts led by long-time adviser Lakhdar Brahimi to evaluate UN peace operations. The resulting *Report of the Panel on UN Peace Operations*—known as the Brahimi Report—offered clear advice about minimum requirements for a successful UN peacekeeping mission. These included a clear and specific mandate, consent to the operation by the parties in conflict, and adequate resources. The Brahimi Report was a watershed in that it strongly argued for the abandonment of any idea that UN peace operations should be "impartial" and "neutral."[39]

The next landmark report on UN peace operations was soon issued by the International Commission on Intervention and State Sovereignty (ICISS), a group of eminent scholars and practitioners which, although funded by the Canadian government, remained independent in its study of the issue. Just as Francis Deng *et al.* had urged that state sovereignty

be conceptualized as state responsibility,[40] the ICISS sought to re-conceptualize the intervention debate as a "responsibility to protect." In so doing, they shifted the focus from the security of states to the security of individuals.[41] In the words of the ICISS report:

> State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.[42]

According to this view, states do not have an unqualified right to non-intervention by other states, but rather the right is conditioned on the state meeting its own responsibility to protect its citizenry. Failure to accept responsibility to protect the safety and lives of citizens opens states to the possibility of intervention.

In its list of "Principles for Military Intervention," the ICISS report employed a just war framework. According to this interpretation of the typical just war criteria, the criterion of "right intention" may only be fulfilled if the primary motive of such a military action is to halt or avert human suffering. The criterion of "right authority" is fulfilled upon Security Council approval or, if the Council fails to act, upon authorization of either the General Assembly or regional organizations under Chapter VIII of the UN Charter. Other criteria require that military force be a "last resort," that it have "reasonable prospects" of succeeding, and that the scale, duration and intensity of an intervention be proportionate to the humanitarian objective ("proportional means").

While the existence and nature of a right to intervene on humanitarian grounds under the auspices of the UN continue to be debated,[44] the practice continues. UN peacekeeping operations have since occurred in such diverse places as Afghanistan, East Timor, the former Yugoslavia, Liberia, Rwanda and Somalia. Although the motives and articulated justifications for these interventions vary, the human rights dimensions of the cases were important in all of them. Human rights advocates have increasingly targeted the Security Council in their advocacy, arguing that there is if not a legal, at least a moral duty to intervene in cases of gross violations of human rights. The human rights community, however, remains divided on the legality and morality of using military force to address human rights abuses in any circumstances, see Table 5.2.

Table 5.2 Summary of opinions on humanitarian intervention/responsibility to protect[43]

Opinion type	*Opponents*	*Agnostics and skeptics*	*Optimists*
Principle of opinion	Unequivocally condemn the idea of humanitarian intervention/responsibility to protect.	Pay little attention to the issue/believe it to be of little importance.	Support the idea of humanitarian intervention and/or the responsibility to protect.
Lines of argumentation	Doctrine is an excuse for American hegemony;	Attention now turned to terrorism issue;	ICISS report captures workable consensus;
	Implementation is always too selective;		
	Inherent potential to divide world into the "civilized" and "uncivilized";	Dismissal of responsibility to protect as a mere clever twist of vocabulary;	Incremental measures must be taken in line with ICISS report;
	Unworkable—states will not cooperate;	Just war theory never works; and/or	No excuses are left for state failure to abide by responsibilities to world community; and/or
	Responsibility to protect is subject to political manipulation; and/or	Political will cannot be generated.	Humanitarian intervention is needed based on pragmatism—sometimes it is the "lesser evil."[a]
	The use of force is always a poor way of promoting long-lasting peace and justice.		

Note

[a]Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror* (Princeton, NJ: Princeton University Press, 2004).

Box 5.1: Recent UN peace operations[45]

While the failures of some UN peacekeeping operations have been well publicized, the success stories have not attracted similar attention. Absence of conflict does not often get the big headlines. Some recent examples of successful peacekeeping are:

Bosnia and Herzegovina

When the United Nations Mission in Bosnia and Herzegovina (UNMIBH) ended operations in December 2002, the most extensive police reform and restructuring project ever undertaken by the UN had been completed. UNMIBH had trained and accredited a 17,000 strong national police force. In addition to maintaining internal security, this force has made progress in curbing smuggling, the narcotics trade and human trafficking.

Timor-Leste

The UN was called in to East Timor (now Timor-Leste) in late 1999 to guide the Timorese towards statehood in the wake of violence and devastation that followed a UN-led consultation on integration with Indonesia. The United Nations Transitional Administration in East Timor (UNTAET) operated under a multidimensional mandate to provide security and maintain law and order while working with the Timorese to lay the foundations of democratic governance. The UN established an effective administration, enabled refugees to return, helped to develop civil and social services, ensured humanitarian assistance, supported capacity-building for self-governance and helped to establish conditions for sustainable development.

Sierra Leone

The efforts of the international community to end an 11-year civil war and move the country towards peace have enabled Sierra Leone to enter a period of democratic transition and better governance with the assistance of the United Nations Mission in Sierra Leone (UNAMSIL). Since the May 2002 elections, Sierra Leone has enjoyed a much improved security environment and continues to work towards consolidating the peace. Key milestones include completion of the disarmament and demobilization of some 75,000 combatants, including almost 7,000 children, and destruction of their weapons. UNAMSIL peacekeepers have reconstructed roads; renovated and built schools, houses of worship and clinics; and initiated agricultural projects and welfare programs. UNAMSIL is expected to withdraw by the end of 2004, pending careful assessments of regional and internal security.

Democratic Republic of the Congo

Progress has also been achieved by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC). From a small observer mission in 2000, MONUC evolved to become, first, a disengagement and monitoring mission; then an assistance and verification mission for disarmament, demobilization, repatriation, reintegration and resettlement programs; and now a complex mission tasked with facilitating the transitional process through national elections in 2005. By remaining in contact with all parties of the transitional government, MONUC has helped create an enabling environment for the adoption of key legislation related to the reform of the army and police and competencies of the various ministries and transitional institutions.

A large portion of the country is now at peace, and steps have been taken towards re-unification: the new national flag flies in territories formerly controlled by belligerents; the Congo River has reopened to traffic; commercial airlines fly between Kinshasa and cities once under rebel control; postal and cellular phone networks have expanded. This has allowed MONUC, which has an authorized strength of 10,800 troops, to deploy contingents to the northeastern district of Ituri, where unrest continued in early 2004.

Liberia

In Liberia, the UN peacekeeping mission, UNMIL, was dispatched

in record time to assist in the implementation of a comprehensive peace agreement. Even before UNMIL's full authorized strength of 15,000 uniformed personnel was reached, the security situation in the country improved dramatically. Violence and ceasefire violations decreased, and UN peacekeepers paved the way for the provision of humanitarian assistance and for the demobilization, disarmament and reintegration of ex-combatants. The ongoing deployment of troops, civilian police and civil affairs personnel during 2004 will continue to facilitate the restoration of civil administration.

Holding the UN accountable

Another dimension of human rights advocacy on security issues concerns the monitoring of the foreign troops tasked with humanitarian missions. Whenever military troops or civilian monitors or other staff are deployed under a UN banner, there is a possibility that they may commit human rights violations. Considerable obstacles exist, however, to holding the UN collectively responsible for human rights violations. The UN is not a party to any of the human rights instruments and indeed, some treaties specify in these provisions that only states may be parties to the instrument, thereby foreclosing participation in these regimes by collectives like the UN. Furthermore, the ability to hold the UN accountable to international standards is complicated by the practice of the UN granting privileges and immunities to actors within UN organizations.[46] In Article 105, the UN Charter recognizes that the organization "shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes." The exact nature of the privileges is set through separately negotiated, state-specific agreements.[47]

Nonetheless, several grounds have emerged to support holding the UN accountable to human rights standards.[48] First, the UN is said to be bound by international human rights norms when it is acting as a state. The reasoning here is that "states should not be allowed to escape their human rights obligations by forming an international organization to do their dirty work."[49] The UN enjoys many of the benefits given to states. As already noted, the UN is granted privileges and immunities akin to a state. As the International Court of Justice noted in the seminal *Reparations Case*, the UN has legal personality based on the notion of functional necessity, that is the UN is "exercising and enjoying functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane."[50] The "legal personality" of the UN permits it, like states, to conclude treaties, to make claims on behalf of its agents, and to engage in activities for the fulfillment of its purposes.[51] This approach dilutes the distinction between states and international organizations and emphasizes the role and capacity exercised by an organization, rather than its official status.

A second argument for holding the UN accountable under international human rights standards draws from this notion of "functional necessity." This line of reasoning acknowledges that because an international organization is "obliged to pursue and try to realize its own purpose,"[52] it may exercise the powers implied in its purposes.[53] Article 1 of the UN Charter makes clear that one of the aims of the UN is to achieve international cooperation by "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." Article 55 identifies three purposes which the states of the United Nations pledge to promote: "(i) higher standards of living, full employment, and conditions of economic and social progress and development; (ii) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and (iii) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." By agreeing to the Charter, Article 56 of the Charter elaborates, "[a]ll Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the [three] purposes set forth in Article 55." The commitment of the UN to promotion of human rights, which is affirmed again and again in the UN Charter, has been explicitly recognized by Secretary-General Kofi Annan to be central to UN peace-building work.[54] The United Nations is bound by the international human rights standards that are part of its constitutive document, and thus it has the power and responsibility to hold itself—and all actors under its authority[55]—accountable under these standards.

Furthermore, the leading international human rights documents—the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR)—both recognize that obligations may be attached to non-state entities, thus supporting the application of human rights law to the UN. Article 30 of the UDHR and Article 5 of the ICCPR recognize that "any State,

group or person" may not derogate from the rights and freedoms enumerated in each instrument. This allows leeway for holding a collective like the UN accountable. At a minimum, the argument can be made that because the UN is bound by customary international law, it must follow those international human rights standards that have reached customary international law status.[56]

In the case of a UN administration of a territory, where the UN is the source of the law, the argument is even stronger that the UN must enforce adherence to international human rights standards and provide a means of remedy for violations. If not the UN, who can apply the law? In the case of Kosovo, for example, attempts to rely somehow on existing domestic mechanisms have proven to be tremendously inadequate. Presently, there is great confusion in Kosovo as to even what law should be applied. As Elizabeth Abraham has pointed out, "[s]ince the Federal Republic of Yugoslavia ('FRY') had only acceded to the conventions to which Yugoslavia had signed, which did not include the ECHR [European Convention on Human Rights], the UN's adoption of the ECHR made applicable conventions that were not binding to FRY as a whole."[57] The application of customary norms of international human rights law, in the very least, provides a base minimum standard.

All of these arguments—the UN acting as the functional equivalent of a state, the human rights mandate of the UN, the application of customary international law—may support the argument that United Nations forces conducting operations under UN command and control must operate in accordance with international humanitarian law.[58]

Reform efforts

Transparency, expansion and voting

As with other parts of the UN system, Security Council reform has been discussed and debated for many years. The three major reform issues surrounding the Security Council, namely transparency, expansion, and voting, all have great importance for human rights advocates as they would enhance openness to human rights concerns. On all three questions, the five permanent members of the Security Council have a record of acting to block change that could benefit human rights advocates.

In 1965, Council membership expanded from 11 to 15 members, but few find the body representative or accountable. The first time the issue of expansion formally came before the General Assembly was in 1979, when the "Question of Equitable Representation on and an Increase in the Membership of the Security Council" was placed on the agenda of the 34th session of the General Assembly. However, discussion was put off for many years, and it was not until 1993 that the General Assembly asked states for comments on Security Council expansion. A year later, a working group was formed to consider the issue, but no conclusions were drawn that year or the next. Questions have been raised regarding the number of members, consecutive terms, categories of membership, etc.[59] While numerous proposals have now been put forward by the working group and by concerned countries, no action has been taken by the General Assembly and a great many concerns regarding the lack of representation in the Security Council remain.

A focus on membership reform would address the problems inherent in the current voting process where the P-5 of the Security Council (China, France, Russia, the United Kingdom, and the United States) enjoy the privilege of veto power. This power has been intensely controversial since the drafting of the UN Charter in 1945. The United States and Russia would likely not have accepted the creation of the United Nations without the veto privilege. Fifty years later, the debate on the existence and use of the veto continues, reinvigorated by many cases of veto threat as well as actual veto use. A strong argument can be made that an expanded Council with strict guidelines as to operations will provide a stronger backbone for human rights promotion at the United Nations. However, a dramatic change in the composition of the Security Council is not expected in the near future. Since the P-5 have veto power over Charter amendments, they can trump any efforts to weaken formally their veto power.

Reform on the issue of transparency focuses on the openness and accountability of Security Council members for their actions.[60] The issue of Security Council secrecy has only recently been raised as a concern. As David Malone explains:

> Council members, and the P-5 in particular, had always needed to consult privately among themselves. However, with active cooperation among the permanent members increasingly the norm by 1990, the P-5 saw little value in continuing to conduct much of the Council's business in open, public meetings. "Informal consultations" or "informals," closed to all non-Security Council members and most secretariat staff and leaving no formal record, became the norm. Nonmembers were in the dark on the agenda of upcoming informals and had to scramble for information, feeding off scraps provided in the antechamber by those emerging from the consultations, a humiliating experience for the supplicants.[61]

Leading non-Security Council Troop-Contributing Nations (TCNs) such as Canada, the Netherlands, Malaysia, India, Argentina, Pakistan, and some Scandinavian countries used their leverage to push for consultations and other face-saving measures. The Council began to post its agenda on a daily basis,[62] and to provide states that are not currently represented on the Council with better access to information.[63] The main reform related to transparency, however, is the creation of consultations and other informal channels of direct contact with the Security Council. This matter is discussed in the "Arria Formula" section below.

Opening the Council, the Arria Formula and beyond

The Arria Formula, so named for its inventor, Venezuelan Ambassador Diego Arria, is an informal arrangement that allows the Council greater flexibility in receiving briefings about international peace and security issues.[64] In 1992, during the crisis in the former Yugoslavia, a Bosnian priest came to New York and asked to meet with various Council members individually. Only Ambassador Arria agreed to meet him. Ambassador Arria was so impressed with the priest's story that he felt all Council members should hear it too. When the Council would not agree to hear this testimony in its official sessions, Arria invited Council members to hear the story while gathering over coffee in the delegates' lounge. Many attended, the meeting was a great success, and the Arria Formula was born.

Prior to the Arria Formula, under the UN Charter, only delegations, high government officials (of Council members) and United Nations officials could speak at regular Council meetings and consultations. The Arria Formula enables a member of the Council to invite other Council members to an informal meeting, held outside of the Council chambers, and chaired by the inviting member. The meeting is called for the purpose of a briefing given by one or more persons, considered as expert in a matter of concern to the Council.

Today, Arria Formula briefings allow the Council to open itself in a very limited way to the outside world. Attendance is typically at a very high level, with participation from the permanent representatives or deputies. Only rarely do individual members fail to attend. The meetings are announced by the Council president at the beginning of each month or whenever organized, as part of the regular Council schedule. The meetings are also provided with complete language interpretation by the Secretariat. No Council meetings or consultations are ever scheduled at a time when the Arria Formula meetings take place.

In addition to informal meetings with experts under the Arria Formula, other changes in the operations of the Security Council which demonstrate increased openness include the following:

- The Council has participated in a number of retreats, away from headquarters, with the Secretary-General, other UN officials, and sometimes leading independent experts.
- The Council members have undertaken a number of missions to visit areas where developments are of particular interest or concern to the Council. This has allowed much more extensive contact with government officials, non-governmental groups, and UN personnel on the ground in regions of crisis.
- The Council has met a number of times over the past decade at either the foreign minister or summit level.
- To assist transparency and accountability, it has become common practice for the president of the Council to brief non-members, and often the press, on the results of informal (private) consultations.
- Tentative forecasts and the provisional agendas for the Council's upcoming work are now provided regularly to non-members, as are provisional draft resolutions.
- Consultations among Security Council members and troop contributors, along with key Secretariat officials, are now held on a more regular basis.[65]

While heralding these developments, the 10 non-permanent members of the Security Council urge that they do not go far enough. They call for the institutionalization of the steps that have already been taken, for taking several of them further, and for more public meetings and fewer informal consultations.[66]

Advocacy by non-governmental organizations

The role and interaction of non-governmental organizations with respect to the Security Council both grew significantly and evolved in nature during the 1990s.[67] NGOs have been accorded consultative status with ECOSOC, and have contributed to a broad range of UN activities. Yet for years, NGOs were deemed to be largely irrelevant to the concerns of the Security Council. This thinking changed in the 1990s when NGOs became more operational in conflict areas, working

alongside and in partnership with United Nations humanitarian operations. In partnership in the field, NGOs and the United Nations organizations were providing assistance, offering protection, documenting abuses and assisting with civil society-building and other conflict-prevention and peace-building projects. At this stage, a number of governments (including Portugal, the Netherlands, Germany and Canada) believed that it made sense for NGOs to have greater access to the Security Council.[68]

One reason for NGO success in this area is the ability to organize for a common purpose across a diversity of NGOs. In early 1995, a group of NGOs came together in New York to organize the NGO Working Group on the Security Council. At first the Working Group was aimed at influencing Council reform and it sought to gather a large number of NGOs under its banner. Soon it became clear that a smaller, higher-profile group could be more effective and that direct dialogue with state delegates was needed. Thus, the Working Group evolved into a closed membership organization of 30 of the most influential NGOs—largely Western-based and Western in orientation—with emphasis on direct dialog with delegates.

Today, the NGO Working Group includes representatives from such groups as Oxfam, Médecins sans Frontières, Amnesty International, CARE, and the World Federalist Movement. The group now organizes off-the-record briefings almost every week with one of the ambassadors on the Security Council. The Working Group also organizes informal contacts between NGOs, delegates, experts and others. It holds an annual holiday reception with delegates in December, and occasionally organizes small private meetings or lunches. Furthermore, it helps to circulate documentation and information about the Council to the NGO community and the wider public. Though it is completely informal and enjoys no official status, the Working Group wields considerable influence over Security Council deliberations, particularly on human rights and humanitarian matters.

One area in which NGOs have had tremendous impact on the Security Council is with regard to child soldiers. Restrictions on child soldiers first found their way into treaty law in 1977 with the Additional Protocols to the four Geneva Conventions of 1949 and, later in 1989, with the Convention on the Rights of the Child ("the Children's Convention"). Yet much to the disappointment of child rights advocates, these agreements set the minimum age at 15 for recruitment and participation in hostilities. For many years, advocates campaigned to increase the minimum age to 18. Instead of creating a separate international treaty to that effect, advocates sought to draft an Optional Protocol to the Children's Convention focusing specifically on the involvement of children in armed conflict. This tactic made a great deal of sense, given strong international support for the Convention.

Under pressure from child rights NGOs, in 1994 the United Nations Commission on Human Rights formed a working group to draft the text of an "Optional Protocol on the Involvement of Children in Armed Conflict." The drafting process was open to the input of country representatives, non-governmental organizations, United Nations agencies and independent experts. It was also influenced by the landmark study *The Impact of Armed Conflict on Children*, authored by Graca Machel, an independent expert who had been appointed by the Secretary-General to study the problem. Released in 1996, the report caused a storm at the UN as it pointed to the cynical exploitation of children by militaries in many countries and the willingness of other countries to turn a blind eye to the misuse of children as soldiers.

Two further developments helped create momentum for the Optional Protocol. In 1998, the United Nations Secretary-General appointed a Special Representative for Children and Armed Conflict, a post akin to a public advocate for children affected by war. Immediately, the Special Representative undertook activities to build greater awareness of the problem and to protect children in specific conflicts. The same year, the United Nations Secretary-General also established a new policy that would require that civilian police and military observers in United Nations peacekeeping operations be at least 25 years old. Under the agreement, troops in national contingents were to be at least 21 years old, but not less than 18.

There is little doubt that the Secretary-General's interest in the issue of child soldiers and the unrelenting NGO lobbying had an impact on both the General Assembly and Security Council deliberations. In May 2000, the United Nations General Assembly formally adopted the Optional Protocol on the Involvement of Children in Armed Conflict; it became legally binding on 12 February 2002. On almost a parallel track, beginning in 1999, the Security Council started adopting a series of resolutions on children in armed conflict. Five of these are summarized in Box 5.2. The impact of children's rights NGOs on Security Council deliberations in the case of their advocacy on the issue of child soldiers is part of a trend in human rights practice wherein the Security Council is increasingly viewed as a site for human rights advocacy.

Box 5.2: UN Security Council and children and armed conflict

Provisions and developments relating to child soldiers

August 1999: Resolution 1261 (first ever)

- strongly condemns recruitment and use of child soldiers;
- calls on UN and governments to intensify efforts to end the recruitment and use of child soldiers, and to facilitate disarmament, demobilization, and rehabilitation (DDR).

August 2000: Resolution 1314

- condemns deliberate targeting of children in situations of armed conflict;
- calls on parties to respect international law, including the Optional Protocol;
- calls on parties to armed conflict to demobilize and reintegrate child soldiers.

November 2001: Resolution 1379

- calls on parties to respect international law, including the Optional Protocol;
- urges governments to ratify the Optional Protocol;
- urges governments to consider "legal, political, diplomatic, financial and material measures" to ensure that parties to armed conflict respect international norms protecting children;
- calls on parties to armed conflict to demobilize and reintegrate child soldiers;
- urges the UN to work to reduce child recruitment in the context of development assistance programs, and to devote particular attention to rehabilitation of children affected by conflict;
- encourages international financial institutions to support DDR of child soldiers;
- urges regional organizations to address cross-border recruitment and abduction of children and expand regional initiatives to prevent the use of child soldiers;

- requests the Secretary-General (SG) to submit a report, attaching a list of parties to armed conflict that recruit or use children in violation of international obligations in situations that are on the Security Council's agenda, or that may threaten international peace and security.

November 2002:

SG's report lists 23 parties in 5 countries (Afghanistan, Burundi, Democratic Republic of the Congo (DRC), Liberia, Somalia) for recruiting and using child soldiers. The body of the report also identifies governments and/or groups in Burma, Colombia, Nepal, the Philippines, Sudan, Uganda, and Sri Lanka.

January 2003: Resolution 1460

- calls on parties to armed conflict that recruit or use child soldiers to immediately halt such practices;
- commits to enter into dialog (or support dialog by the SG) with parties recruiting or using child soldiers in order to develop clear and time-bound action plans to end this practice;
- calls on parties that were listed in SG's report to provide information on steps they have taken to end the recruitment and use of child soldiers;
- expresses its intention to consider appropriate steps to further address this issue after receiving the next report from the SG, in cases with insufficient progress;
- calls on Member States and international organizations to ensure children are included in DDR processes;
- requests the SG to include in his next report progress made by the parties listed in the annex of his previous report, "taking into account" the other parties mentioned in the report;
- requests the SG to include in his report "best practices" on DDR.

November 2003:

SG's report includes two annexes of parties recruiting or using

child soldiers. The first (situations on the Security Council's agenda) lists 32 parties in 6 situations (Afghanistan, Burundi, Côte d'Ivoire, DRC, Liberia, Somalia). The second lists 22 parties in 9 situations (Burma, Chechnya, Colombia, Nepal, Northern Ireland, the Philippines, Sri Lanka, Sudan, Uganda).

April 2004: Resolution 1539

- strongly condemns the recruitment and use of child soldiers;
- requests the SG to devise within three months an action plan for systematic and comprehensive monitoring and reporting, in order to provide timely, objective, accurate and reliable information on the recruitment and use of children and other violations against children;
- calls on parties in Annex I (those on the Security Council's agenda–Afghanistan, Burundi, Côte d'Ivoire, DRC, Liberia, Somalia) to prepare within three months concrete, time-bound action plans to halt recruitment and use of child soldiers, in close collaboration with the UN;
- requests the SG to appoint a focal point in each country to engage parties in dialog leading to time-bound action plans, and to report back to the SG by 31 July 2004;
- expresses its intention to impose targeted and graduated measures, such as a ban on the export or supply of small arms, military equipment and military assistance, against parties that refuse to enter into dialog, fail to develop an action plan, or fail to meet the commitments in their action plan;
- calls on other parties mentioned in SG's report to immediately halt recruitment and use, and expresses its intention to consider additional steps to address this issue, based on information received from relevant stakeholders;
- requests a report from the SG by 31 October 2004, including information on compliance and progress made by parties mentioned in his last report in ending recruitment and use of child soldiers, "bearing in mind" all other violations and abuses committed against children affected by armed conflict.

Concluding thoughts

Today, human rights concerns are so integral to the United Nations Security Council that any book on the UN human rights system would be incomplete without a separate chapter on its involvement in these matters. Although the UN Charter's original mandate for the Security Council has not changed, the Council's interpretation of its mandate has decidedly embraced human rights. Informal networks such as the recently strengthened campaign for children caught in armed conflict are highly indicative of this trend. The Council now routinely issues declarations on human rights, and the protection, promotion, and monitoring of human rights form an important part of the mandates of several UN peacekeeping operations.

The Security Council has become much more open to the input of non-governmental organizations, giving particular attention to those advocating for human rights. In addition to advocates for the rights of children, the Security Council responded favorably to the efforts of advocates for women's rights. Most significantly, in October 2000, the Security Council acknowledged that women have a key role in promoting international stability by passing resolution 1325 on Women, Peace, and Security. It called on all parties to ensure women's participation in peace processes, from the prevention of conflict to negotiations and post-war reconstruction to efforts to address the issue of women, peace, and security broadly and also to focus on disarmament in particular.[69] This resolution portends the future. As the Security Council continues to be involved in peacekeeping and peace-building efforts around the globe, its involvement in human rights concerns is likely to continue to develop.