

UNIVERSITY OF MODENA AND REGGIO EMILIA

Department of Studies on Language and Culture

DEGREE PROGRAMME

LANGUAGES FOR COMMUNICATION IN INTERNATIONAL ENTERPRISES AND ORGANIZATIONS

The United Nations Human Rights System: Mechanisms for the Promotion and Protection of Human Rights and Contemporary Challenges

Supervisor:

Professor Vincenzo Pacillo

Thesis of:

Francesca Pitzus

206277

Co-Supervisor*:*

Professor Francesco Pighi

Academic Year 2025 - 2026

ABSTRACT

The present study analyses the evolution of the United Nations system for the promotion and protection of human rights, tracing its historical development and assessing its effectiveness in the contemporary context. The analysis begins with the emergence of international organisations and modern international law, providing the historical context necessary to fully understand the process that led to the establishment of the United Nations. Its objectives and main instruments are then examined in detail. Subsequently, the thesis introduces the topic of human rights, tracing the earliest international attempts to ensure their protection and examining the role assumed by the United Nations following the adoption of the United Nations Charter. The main normative and institutional developments of the human rights protection system are then analysed, from the Universal Declaration of Human Rights to the International Covenants to specialised conventions and the establishment of the bodies responsible for their implementation, highlighting both their main characteristics and challenges. Towards the end of the second chapter, particular attention is devoted to the United Nations Human Rights Council, which currently represents the central body of the entire system. In the final section, the thesis focuses on the main challenges facing the system. Despite the existence of a comprehensive institutional framework and numerous international legal instruments, serious violations of fundamental rights continue to occur today. An overview of the current state of human rights compliance is then provided and some of the main factors contributing to the situation are examined. Among these, the work considers: the lack of enforcement mechanisms within the United Nations system, the weakness of follow-up procedures, the limited participation of certain States, the politicisation within the system, the role of the right of veto, and the lack of coordination with other actors in the field. For each point, the study analyses its impact, providing concrete examples and retracing, where they have occurred, the various attempts that have been made to address them, together with all the difficulties they have encountered. The final chapter concludes with a section summarising the main issues that have emerged, presenting some of the most recent reform proposals put forward by experts in the field, with the aim of assessing new possible strategies to strengthen the effectiveness of the international system for the protection of human rights.

RIASSUNTO

La tesi analizza l'evoluzione del sistema di promozione e protezione dei diritti umani sviluppato dalle Nazioni Unite, ricostruisce il suo percorso storico e ne valuta l'efficacia nel contesto contemporaneo. L'analisi comincia dalla nascita delle organizzazioni internazionali e del diritto internazionale moderno, in modo da comprendere appieno il contesto storico e l'intero processo che hanno portato alla creazione delle Nazioni Unite. Si analizzano poi in dettaglio i suoi obiettivi e i principali strumenti attraverso cui opera. Successivamente, il lavoro introduce il tema dei diritti umani, ripercorrendo i primi tentativi di tutela a livello internazionale, e approfondendo il ruolo assunto dalle Nazioni Unite a partire dalla Carta delle Nazioni Unite. Vengono quindi analizzati i principali sviluppi normativi e istituzionali del sistema di protezione dei diritti umani, dalla Dichiarazione Universale dei Diritti Umani ai Patti Internazionali, fino alle convenzioni specialistiche e alla creazione degli organi incaricati della loro attuazione, evidenziandone sia le caratteristiche principali sia le criticità. Verso la fine del secondo capitolo, particolare attenzione è dedicata al Consiglio dei Diritti Umani delle Nazioni Unite, attualmente organo centrale di tutto il sistema. Nell'ultima parte, la tesi si concentra sulle principali sfide che caratterizzano il sistema, in quanto, nonostante l'esistenza di una struttura articolata e di numerosi strumenti giuridici internazionali, al giorno d'oggi, continuano a verificarsi gravi violazioni dei diritti fondamentali. La tesi offre quindi un quadro dello stato attuale del rispetto dei diritti umani ed esamina poi alcuni dei principali fattori che contribuiscono a questa situazione. Tra questi analizza: la mancanza di strumenti coercitivi nel sistema delle Nazioni Unite, la debolezza delle procedure di follow-up, la limitata partecipazione di alcuni stati, la politicizzazione presente all'interno del sistema, il ruolo del diritto di veto e la mancata coordinazione con altri attori del settore. Per ciascun punto la tesi analizza il loro impatto, riportando esempi concreti e ripercorrendo, se ci sono stati, i vari tentativi di risoluzione del problema con tutte le difficoltà che hanno riscontrato. L'ultimo capitolo si conclude con un paragrafo volto a fare il punto delle principali questioni emerse, riportando alcune delle più recenti proposte di riforma avanzate da diversi esperti del settore, al fine di valutare nuove possibili strategie per rafforzare l'efficacia del sistema internazionale di tutela dei diritti umani.

RÉSUMÉ

Ce mémoire analyse l'évolution du système de promotion et de protection des droits de l'homme mis en place par les Nations Unies, retrace son développement historique et évalue son efficacité dans le contexte actuel. L'analyse commence par l'émergence des organisations internationales et du droit international moderne, afin de bien comprendre le contexte historique et l'ensemble du processus qui ont conduit à la création des Nations Unies. Ses objectifs et ses principaux instruments sont ensuite analysés en détail. Par la suite, le mémoire aborde le thème des droits de l'homme, en retraçant les premières initiatives internationales visant à garantir leur protection et en examinant le rôle assumé par les Nations Unies depuis l'adoption de la Charte des Nations Unies. Les principales évolutions normatives et institutionnelles du système de protection des droits de l'homme sont ensuite analysées, depuis la Déclaration Universelle des Droits de l'Homme jusqu'aux les Pactes internationaux, en passant par les conventions spécialisées et la création des organes chargés de leur mise en œuvre, en mettant en évidence à la fois leurs principales caractéristiques et leurs points critiques. Vers la fin du deuxième chapitre, une attention particulière est accordée au Conseil des Droits de l'Homme des Nations Unies, qui constitue actuellement l'organe central de l'ensemble du système. Dans la dernière partie, la texte se concentre sur les principaux défis auxquels le système est confronté, étant donné que, malgré l'existence d'un cadre complet et de nombreux instruments juridiques internationaux, de graves violations des droits fondamentaux continuent de se produire aujourd'hui. Un aperçu de l'état actuel du respect des droits de l'homme est ensuite présenté et certains des principaux facteurs contribuant à cette situation sont examinés. Parmi ceux-ci, l'étude aborde : l'absence de mécanismes d'application au sein du système des Nations Unies, la faiblesse des procédures de suivi, la participation limitée de certains États, la politisation du système, le rôle du droit de veto et le manque de coordination avec d'autres acteurs sur le terrain. Pour chaque point, les impacts sont analysés, en fournissant des exemples concrets et en retraçant, là où elles ont eu lieu, les différentes tentatives de résolution du problème, ainsi que toutes les difficultés rencontrées. Le dernier chapitre se termine par une section résumant les principaux enjeux qui ont émergé, en présentant certaines des propositions de réforme les plus récentes avancées par divers experts du domaine, dans le but d'évaluer de nouvelles stratégies possibles pour renforcer l'efficacité du système international de protection des droits de l'homme.

TABLE OF CONTENTS

INTRODUCTION **1**

Chapter 1 - Origins and organisation of the United Nations **2**

1.1 The League of Nations as a precursor to the modern international order **2**

1.1.1 The need for a stronger international organisation 3

1.1.2 The invasion of Manchuria 3

1.1.3 The Italian invasion of Ethiopia 4

1.2 From World War II to the United Nations **5**

1.2.1 Purposes and principles of the United Nations 6

1.2.2 The structure of the United Nations 8

1.3 A change in the history of international organisations **10**

1.3.1 Before the UN: a glimpse into early international organisations 11

1.3.2 The evolution of the United Nations during the Cold War period 13

1.3.3 The expansion of the United Nations' membership 16

1.3.4 Contemporary challenges: globalisation and inequality in the United Nations system 18

1.3.5 How non-governmental organisations shaped the role of citizens in international law 21

1.4 Chapter conclusions **22**

Chapter 2- Building human rights: from the UN Charter to international recognition **24**

2.1 Defining human rights **24**

2.1.1 First attempts to protect human rights 25

2.1.2 The principle of sovereignty and human rights 27

2.1.3 The Charter of the United Nations and its close relationship with human rights 28

2.2 The current structure of the UN Human Rights System **32**

2.2.1 The role of the General Assembly in protecting human rights 32

2.2.2 The role of the Security Council in protecting human rights 33

2.2.3 The role of the Economic and Social Council in protecting human rights 35

2.2.4 The role of the International Court of Justice in protecting human rights 35

2.2.5 The role of the Secretariat in protecting human rights 36

2.3 The Universal Declaration of Human Rights and the creation of specialised bodies for the protection of human rights **37**

2.3.1 The Commission on Human Rights 38

2.3.2 The drafting of the Universal Declaration of Human Rights 41

2.3.3 Brief view on specialised approaches to human rights protection 45

2.4 The International Covenants **47**

2.4.1 The rationale behind and the drafting of the two Covenants 50
2.4.2 The question of derogation of human rights 53
2.4.3 The Covenant's Committees 54
2.4.4 The general comments and the Committees' actions 55
2.5 The expansion of the international human rights framework: conferences, conventions and committees 56
2.5.1 The Tehran International Conference on Human Rights 57
2.5.2 The new conventions 58
2.5.3 The Treaty Body system 59
2.5.4 The Vienna World Conference on Human Rights 60
2.5.5 The creation of the United Nations High Commissioner for Human Rights 63
2.6 The beginning of the XXI century and the crisis of the Commission on Human Rights. 64
2.6.1 The establishment of the Human Rights Council 65
2.6.2 The issue of the Human Rights Council's membership 67
2.6.3 The Council's working methods and structure 72
2.6.4 Country-Situations and Special Procedures 75
2.6.5 Universal Periodic Review 77
2.6.6 Special Sessions and Complaint procedures 78
2.7 How human rights have impacted the field of international law 79
Chapter 3 – Limitations on human rights protection within the United Nations 82
3.1 The current condition of human rights in the international system 82
3.2 An overview of the structural limitations of the UN human rights system 84
3.3 Enforcement, follow-up procedures and State compliance 86
3.3.1 Follow-up procedures in the UN human rights protection system 87
3.3.2 The assessment of State compliance 92
3.3.3 Limitations of the follow-up system 95
3.4 Political dynamics in the UN Human Rights System 98
3.4.1 Different forms of politicisation 100
3.4.2 Regionalism 102
3.4.3 Politicisation in the field of human rights 104
3.4.4 The impact of politicisation on contemporary human rights protection 106
3.5 The right of veto 107
3.5.1 Early attempts to reform and restrain the use of the veto 110
3.5.2 Veto Initiative of 2022 112

3.6 The marginal role of other actors 114
3.6.1 The role of other actors in the field of human rights 115
3.7 Chapter conclusions and possible reforms 118
Bibliography 124

INTRODUCTION

The protection of human rights at the international level is one of the most significant issues of our contemporary society. Nowadays, armed conflicts, systematic discrimination, genocides, exploitation, and other forms of abuse demonstrate that the full realization of human rights still remains an ongoing challenge for the international community. However, never before have human rights been recognised and safeguarded by such a wide range of international norms and institutions (Amnesty International 2025). This contradiction raises a natural question: how is it possible that, despite the existence of such an international system of protection, these violations continue to occur so frequently?

Faced with this reality, it is natural to question the effectiveness of the international system. However, simply concluding that it does not work would be an oversimplification. International protection of human rights is a highly complex field, influenced by international dynamics, political interests, State sovereignty, and many other factors. Consider, for instance, that when monitoring States' compliance with human rights obligations, international organisations rely on information provided directly by States, even though, in many cases, State authorities themselves are responsible for the violations. It is then evident how this simple example reveals the complexity of the issue. Therefore, following this multifaceted nature, the international community developed various mechanisms aimed at ensuring compliance with international human rights obligations (Carraro 2019). On this matter, the United Nations has a leading role. Since its foundation, the organisation has made human rights protection one of its main priorities and, through the years, various UN entities, mechanisms and treaties have been established solely with this aim. However, at the same time, it needs to be underlined that the UN action in the field of human rights has not developed according to any overarching plan, but rather it has developed gradually over time in response to particular needs. While this process has allowed the organisation to progressively expand in the field and to achieve several significant results, it also resulted in a complex and sometimes fragmented system (Shah and Sivakumaran 2024). It is therefore evident that some of the system's limitations are rooted both in its gradual development and in the inherent difficulties of coordinating sovereign States at the international level. In light of these considerations, the analysis starts from the emergence of the UN system before examining its limitations.

Chapter 1 - Origins and organisation of the United Nations

1.1 The League of Nations as a precursor to the modern international order

With the establishment of the League of Nations, a new chapter in international cooperation began. For the first time States sought to create a permanent institution aimed at preserving peace at the global level. The idea emerged after the First World War, when many States were deeply affected by the economic crisis, social instability, and physical devastation. At the end of the war, governments attempted to restore stability and reshape the international order through the peace settlements (Conforti and Focarelli 2010). During these negotiations, the United States assumed a pivotal role under the leadership of President Woodrow Wilson. The historical context was unprecedented: World War I represented the first large-scale European conflict in which the United States became directly involved. Despite not yet possessing the level of geopolitical influence they would achieve later in time, the country's involvement marked the beginning of its transformation into a global actor. In this context, the post-war peace negotiations offered the United States a strategic opportunity to participate actively in reshaping the international order. Therefore, it was President Woodrow Wilson who first advanced the idea of grounding the new international order in cooperation among States, which he regarded as the only effective means of securing peace. In line with this vision, in 1918, President Wilson presented his famous 14 principles of peace, which included the proposal for the creation of an international organisation (Pennetta, et al. 2024). The League of Nations was then founded two years later, in 1920, by the Paris Peace Conference that also ended the First World War (League of Nations 1919). Still, as we know today, the organisation ultimately failed to fulfil its central objective of preserving international peace, a failure made evident by the outbreak of the Second World War in 1939. However, several other factors contributed to the failure of the newly established organization. Firstly, the League's Covenant was incorporated into the Treaty of Versailles, meaning that every State that signed the treaty automatically became a member of the League and, as it is well known, the post-war treaties were unpopular with many countries. Therefore, this decision was largely perceived as another defeat for the States that had lost the war and as an attempt by the victors to impose their will. Partly for this reason, and partly due to the political context of the time, which was not yet ready for such innovative form of international cooperation, many States were reluctant to fully commit to the League. As a result, some States instantly took advantage of the right to withdraw from the League as soon as decisions were made that they did not agree with. For instance, this was the case of Italy, which left the League in 1937 after the economic sanctions imposed for its invasion of Ethiopia. In addition, the League suffered from the absence of a key strong

power as the United States, those who proposed it, never joined because they never signed the peace treaties. These factors, combined with the outbreak of the Second World War, ultimately left the League weakened, and it was formally dissolved in 1946 (Pennetta, et al. 2024).

1.1.1 The need for a stronger international organisation

The collapse of the League of Nations exposed the fundamental flaws of the interwar international order and strengthened the belief that a stronger institutional structure was necessary to preserve global peace and security. Indeed, some scholars have even referred to the interwar era, and especially the years from 1920 to 1946, as "The Twenty Years' Crisis" (Carr 1939). This period, characterized by deep economic instability and growing tensions between States, further emphasised how the maintenance of peace and the policy of disarmament were only possible with the active participation of all States. However, after the progressive undemocratic turn of a large part of Europe, it quickly became clear that this objective could not have been reached easily. Particularly, these years witnessed numerous invasions and disputes between States, the kind of situations that the League of Nations had taken responsibility for managing but completely failed. The League's project was to create a real system of collective security, based on the principle that each member would have agreed to oppose the arrogance of any potential aggressor with the support of all signatories. In this way, even if the system were to fail, the members of the organisation were expected to be ready to take any necessary measure to defend an attacked State (Caffarena 2009). In this context, article 16 of the Covenant stated that if any member resorted to war against another State, such act would be considered a declaration of war against all other Member States (League of Nations 1919). In addition to this ambitious project of reciprocal assistance, another key pillar of the League was the peaceful settlement of disputes, a task that the organisation itself undertook through various mechanisms, including the Permanent Court of International Justice. However, both objectives revealed that the effectiveness of the League largely depended on the willingness of the actors involved, and for this reason, these years exposed its significant failures (Caffarena 2009).

1.1.2 The invasion of Manchuria

The first event in which this broken system became evident, was in 1931 when Japan invaded Manchuria. Manchuria is a region in northern China and, since 1898, Russia and Japan vied for this

territory. At the end of the Russo-Japanese War of 1904 –1905, while Japan kept its strong influence on the territory, Manchuria officially returned to Chinese control. In 1910, with the outbreak of the Chinese revolution, the territory passed under the control of Marshal Zhang Zuolin who, at the beginning, gave significant concessions to the Japanese, due to their influence on the territory, but ended killed by officers of the Japanese Kwantung Army in 1928 when he tried to limit their privileges. Even if Tokyo never approved the assassination, this fact marked the beginning of increasingly aggressive actions by the Japanese military aimed at pushing the government to intervene in Manchuria. In September 1931, a colonel and a lieutenant of the Kwantung Army staged a false attack to use it as a pretext for invading the region. They detonated an explosive charge near the South Manchurian Railway. The explosion caused limited damage as the train passed over the tracks shortly afterward without being affected, but it was enough to create a pretext. The army officers accused the Chinese troops of bombing a train and proceeded to occupy Manchuria without the government's consent. A puppet State, Manchoukuo, was established under the last Chinese emperor, Pu Yi, as the head of the State. Yet, over the course of the 1930s, Japan consolidated its control over Manchuria, financing and developing its major industries (Xiang 2011; A. 2024). The League of Nations tried to solve the conflict by appointing a Commission to investigate the events, which spent six months gathering information, and in 1932 a report on the case was published. The report stated that the Japanese military operations could not have been regarded as self-defence but, at the same time, the Commission did not exclude the possibility that the troops present that day may have believed they were acting in self-defence. By saying so, the report did not take either side: it blamed the Chinese for conducting an anti-Japanese propaganda campaign and it defined Japan as the aggressor. As a consequence, not only Japan continued to occupy Manchuria but later the State also decided to withdraw from the League following the sanctions imposed by the organisation. The situation persisted until 1945, when Japan's defeat in the Second World War brought an end to this control over the region (A. 2024).

1.1.3 The Italian invasion of Ethiopia

Dating back to those years, another relevant case was Italy's invasion of Ethiopia. In December 1934, the Italian and Ethiopian troops clashed at Ual Ual, on the border between Ethiopia and Italian Somaliland, a territory which was claimed by both sides. This event was brought by Ethiopia before the League of Nations which, one year later, issued a report. However, this report absolved both parties of responsibility for the outbreak of hostilities. This decision mirrored that of the Manchurian

case: it was weak and inconclusive as it assigned no clear blame and, consequently, it had little practical effect on the States involved. In 1935, this battle provided Mussolini with a pretext for launching the aggression against Ethiopia, marked by the entry of Italian troops in the territory on the 3rd of October. After a series of battles in which Italy generally gained ground, its forces entered Addis Ababa, the capital, in May (Redazione 2025). Meanwhile, the emperor of Ethiopia had already abandoned the capital and travelled to Geneva, seat of the League of Nations, to appeal to the international community. In his appeal, the emperor provided a detailed account of the atrocities that his population was suffering, including the use of chemical warfare through serial bombardment, the systematic destruction of land and resources and the extensive suffering inflicted on civilian populations. Subsequently, the League of Nations recognised Italy as the aggressor and adopted economic measures against it. Even though 52 nations supported this decision, its implementation proved largely ineffective. As declared by the emperor himself "At no time, and under no circumstances could sanctions that were intentionally inadequate, intentionally badly applied, stop an aggressor" (Selassie I 1936). In this context, the promises made by the 52 nations were not upheld, and Ethiopia received little concrete assistance. In particular, the implementation of any kind of measure was impeded by several governments that actively obstructed the League's actions: they used pretexts to postpone any concrete decision and denied financial support for the purchase of arms. Here, it became evident that the united international community envisioned by the League of Nations was neither fully prepared nor capable of acting effectively (Redazione 2025; Strang 2008). Surprisingly, these years of crisis and the failure of the League did not undermine citizens' trust in international organisations but instead coincided with the consolidation of the idea that international organisations are an indispensable instrument in building relations among States, a conviction that would later be further reinforced by the Second World War (Conforti and Focarelli 2010).

1.2 From World War II to the United Nations

With this goal of cooperation in mind and building on the lessons learned from the League of Nations, the United States, the United Kingdom, the Soviet Union, and their allies worked together during the war to create a new international body. This organisation, which came to be known as the United Nations, was designed not only to facilitate diplomacy and cooperation but also to provide a stronger and more effective framework for preventing conflicts and promoting global security. It is between 1943, with the Moscow Conference, and 1944, with the Dumbarton Oaks Conference, that this vision

began to take concrete shape, establishing the core principles of the organisation and defining its internal structure (Conforti and Focarelli 2010).

The San Francisco Conference lasted from the 25th of April until the 25th of June 1945. Caffarena (2009) reports that, in contrast to the League of Nations' Commission which had only nineteen members, the San Francisco Conference brought together fifty nations, represented by 282 official delegates and supported by 1,400 contributors. In this case as well, the United States stood behind the organisation. Despite the general fear that the American public opinion would have been against it, after the failure of the first project, the United States actively supported the programme. Already in 1941, the United States and the United Kingdom signed the Atlantic Charter, which, among its various objectives, included the establishment of an institution for international cooperation in the economic sphere. This Charter has been crucial in drafting the principles of the United Nations as its main objectives were discussed in the first Conferences as the organisation's starting points (Caffarena 2009): no territorial expansion, respect for the will of the peoples, right to self-determination, equal access to trade and resources, peace and security for all, freedom of the seas, disarmament, renunciation of the use of force and, precisely, international economic cooperation (Roosevelt and Churchill 1941).

In order to avoid the same mistakes committed by the League of Nations, the Peace Treaties were separated from the San Francisco Conference. The Charter entered into force on the 24th of October 1945 when the major powers, along with all other States, approved it. The original members are considered those 50 who signed the Charter during the San Francisco Conference. Today, the United Nations counts 193 members, and Italy has been part of it since 1955 (Conforti and Focarelli 2010).

1.2.1 Purposes and principles of the United Nations

As Bova (2011) reports, a part of the legal scholarship argues that the Charter of the United Nations, structured in 19 chapters and 111 articles, bears resemblance to a real constitution, and that this aspect highlights one of its defining features: the Charter contains no provision allowing States to withdraw from the organisation. In addition, article 2(6) provides that also non-Member States shall act in accordance with the Charter's principles, as it is necessary for the maintenance of international peace, and article 103 underscores the Charter's rigid and superior legal nature (Bova 2011).

The Charter's core values are then clear from the very beginning, from the Preamble, where the organisation presents its core purposes and principles (Caffarena 2009). The Preamble of the Charter states:

> "WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our life time has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, AND FOR THESE ENDS to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples" (United Nations 1945)

Therefore, from the very beginning, it was clear that the idea of peace among all the people and States was one of the organisation's core values. In particular, the Preamble speaks of saving future generations from the scourge of war, emphasizing that, in order for this to happen, a community of States is needed. It then addresses the fundamental rights of the human person, surprisingly mixing the equality of men and women with the equality of nations, anticipating one of the issues in the field of human rights that will be later developed in the next Chapter. However, despite the importance of this section, it should be also noted that it was not included in the original drafts and it was added later. Indeed, a careful reading shows that its wording is not fully coordinated with articles 1 and 2 of the Charter, which instead present, with greater precision, the purposes and principles (Cede 2001). Articles 1 and 2 set out in greater detail, first, the purposes of the organisation, namely the objectives it seeks to achieve; and, subsequently, the principles, which are the standards that both the organisation and its members need to observe in order to reach those purposes. The organisation's main purposes can be broadly grouped into three main areas:

1. The maintenance of peace and security: an objective carried out through the pacific resolution of international controversies and through the prevention and repression of acts of aggression and threats to peace
2. The promotion of international cooperation: which should be applied in various fields as the economic, social, humanitarian and cultural ones
3. The protection of human rights (United Nations 1945)

In article 2, among the principles, the organisation also acknowledges its role in relation to its members, presenting the principle of sovereignty: *"*The Organization is based on the principle of the

sovereign equality of all its Members*"* (United Nations 1945) and later on, it realises this principle by establishing that *"*Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any States*"* (United Nations 1945).

As it will become clearer later in the chapter, the principle of sovereignty is not only an important principle in international law, but it is a particularly important matter for States, and it often represents an obstacle that interferes with the work of international organisations. In general, it can be said that State sovereignty grants each State supremacy over its own territory and independence in international relations. Therefore, the purposes and principles of the United Nations are based on a constant balancing between the desire to achieve the organisations' purposes and the respect for Member States, which have the right to govern themselves (Bova 2011).

1.2.2 The structure of the United Nations

In terms of internal structure, the newly established organisation mainly followed the structure already decided for the League of Nations. The proposals defining this structure became known as the Dumbarton Oaks Conference's proposals since the main decisions were taken during that Conference. The organisation was structured, and it still is, as follows: they opted for an Assembly, composed of all the Member States; a Security Council, of limited membership for the minor powers (nominated by the Assembly every two years) but with permanent seats for the major ones of the period (United States, United Kingdom, USSR, China and France); a Secretariat headed by a Secretary-General, and the Court of Justice. However, in addition to this "old" structure, they also introduced another body to assist the Assembly: The Economic and Social Council (Conforti and Focarelli 2010). Besides these principal organs, there is another one that still exists today but no longer serves any purpose: the Trusteeship Council. When the organisation was created there were some territories that had not yet achieved self-government or independence and were therefore placed under this Council, which was created precisely to supervise them. A similar mechanism already existed under the League of Nations, but there those territories were called mandates while in the new system were called trust territories. The system worked in this way: certain States administered the trust territories on behalf of the international community but they were not supposed to govern them as traditional colonies, they had the obligation to promote the well-being and political advancement of the local populations in order to help them move towards independence (Pennetta, et al. 2024). All territories under this system have completed this process by 1994, which is why the Trusteeship

Council no longer has an active role today (United Nations 2019). Although connected to the process of decolonisation, the trusteeship system was originally designed as a mechanism of international supervision rather than a direct policy of immediate independence. Later on, the issue of decolonialisation became one of the major topics addressed by the organisation, especially throughout the 1960s, but it advanced gradually (Pennetta, et al. 2024).

Regarding the voting system, during the Conference it was decided that both the Assembly and the Economic Council had to decide by majority, unlike the League of Nations and unlike the usual practice followed in international forums, which required unanimity. This marked a significant innovation in international law because the Assembly did not centre the vote around the five principal powers. In addition, it is important to underline a detail that will be more significant when the organisation will expand its membership: the Assembly gives one vote to each State, no matter what size or population it has. However, on this matter at the Dumbarton Oaks Conference no final decision was taken for the Security Council. This major issue was later addressed during the Yalta Conference, in 1945, in which Roosvelt, Churchill and Stalin agreed on what later became known as the "Yalta Formula". The Yalta Formula established the right of veto given to the five major powers. This provision establishes that, for substantive matters, a sole negative vote by any permanent member prevents the adoption of any draft resolution. On this subject nothing was decided before just for the sensitivity of a similar decision as they could not find an agreement. The Soviet Union was unwilling to accept a system without the right of veto, but the United States and the United Kingdom were against this privilege, at least at the beginning (Conforti and Focarelli 2010). At the end, during the Yalta Conference, they accepted the right of veto and today article 27 of the Charter, in Chapter V, which is dedicated to the Security Council, reports this decision:

> "Each member of the Security Council shall have one vote.
> Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members
> Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting." (United Nations 1945)

The other minor powers initially opposed to this decision: this privilege was against the principle of sovereign equality and the provisions were unclear. However, those complaints only led to a better definition of the provision but nothing more (Caffarena 2009).

Among these bodies, the Security Council holds primary responsibility for the maintenance of international peace and security and may adopt binding measures, under Chapter VII, in such situations. By contrast, the General Assembly may discuss a broader range of matters, within the scope of the Charter, but its powers are generally less far-reaching as its decisions addressed to Member States are predominantly recommendatory in nature. However, despite this, the Assembly also exercises important powers with legal and institutional effects within the organisation. Together they choose the Secretary-General who heads the Secretariat. As previously mentioned, the Economic and Social Council operates under the authority of the General Assembly: it must then act in accordance with the Assembly's directives, and its 54 members are also elected by it for three-year terms. Finally, the International Court of Justice exercises the judicial authority. Its main functions are to settle disputes between States and to provide advisory opinions to the other organs of the organisation. In addition to this structure, beyond its six major organs, the United Nations operates through a broad system which comprises subsidiary organs, specialised agencies, and various funds and programmes. In this expanded system, also referred to as The United Nations System, the General Assembly is responsible for providing overall guidance to these many entities. Nonetheless, this structure is not always strictly hierarchical: the specialised agencies, for instance, are independent organisations and they consequently function with a considerable degree of institutional autonomy (Conforti and Focarelli 2010; Caffarena 2009).

1.3 A change in the history of international organisations

While the development of international law began long before the establishment of the United Nations, it is widely believed that the emergence of the organisation marks a turning point in the history of international law. Until 1945, with the exception of the League of Nations, international organisations were profoundly different from the ones we know today, as they were limited forms of cooperation characterized by a monofunctional nature, which clearly reflected their subordination to State authority. The United Nations, by contrast, introduced a genuinely multifunctional structure, operating across a wide range of fields. For the first time, States transferred part of their competences from the domestic sphere to the international level by conferring specific powers and functions on the organisation, setting a new and far more ambitious standard for international organisations. Within the UN system, this evolution is reflected in the allocation of different functions among its principal organs, including legislative, executive, administrative, and judicial functions. This distribution allows the organisation to oversee and manage every stage of international cooperation across

multiple fronts. Therefore, from the very beginning, the UN was not simply an instrument controlled by States, rather, it gradually established itself as an autonomous actor in the international system. In this sense, the United Nations positioned itself, at least on a normative level, alongside its creators, challenging the traditional idea that States are the only real holders of power (Pennetta, et al. 2024). At the same time, it is true that nowadays the international field is completely different from the one of 1945. In this context, a question naturally arises: has the UN managed to maintain this ambitious position of authority vis-à-vis its Member States, or has it been progressively overshadowed by them?

1.3.1 Before the UN: a glimpse into early international organisations

Before addressing this transformation, it is necessary to understand the broader historical development of international law, which has progressively evolved in response to the need to regulate relationships among States. Since the emergence of international organisations, scholars have questioned their quality and effectiveness and the research always led to the same issue: the main challenge international organisations have to face is linked to the concept of sovereignty. How sovereign States, so different from one another, can form a community that transcends them? This issue has often been addressed by many leading thinkers and political figures throughout history (Caffarena 2009). For instance, one of them was Léon Bourgeois (1913) who, in describing his contemporary society (the early 1900s), observed that a de facto global community had emerged, as countries were highly interdependent. However, at the same time, there were no rules governing that global society. His idea was to create something more than just an economically interconnected community, namely a true international community capable of placing itself on the same level as States' sovereignty (Bourgeois 1913). Yet, the origins of the international system can be traced back well before the emergence of the "economic community" described by Bourgeois (1913).
The idea of an international system based on the principle of territorial sovereignty was firstly raised in 1648, with the Peace of Westphalia. Nonetheless, this period represented only an initial stage in the process, as the modern international organisations familiar to us today only began to be established approximately two centuries after the mid-nineteenth century (Pennetta, et al. 2024). Caffarena (2009) reports that, with the exception of a body established to oversee navigation and the transport of goods on the Reno River, dated 1815, the first modern international organisation was created in 1865. It was the *Union Télégraphique Internationale* (International Telegraph Union), founded to harmonise telegraph transmissions among European countries. This initial effort proved successful, as the organisation was able to keep pace with successive technological advances from the telephone to geostationary satellites and, under its current name, the International

Telecommunication Union, it continues to play a crucial role in the field. Following this initial success, other organisations were created during the mid-1800s, such as the *Union Générale des Postes* (General Postal Union, 1875) and the *Bureau International des Poids et Mesures* (International Bureau of Weights and Measures, 1875). Yet the real boom in the creation of international organisations took place in the 1900s, as the data clearly shows. As reported by Caffarena (2009), citing the Yearbook of International Organizations (1997-1998, vol. I), in 1909 the governmental organisations were 37, while non-governmental ones 176 and, nineteen years later, they respectively increased to 258 and 5,585. Nevertheless, one cannot claim that the organisations founded later are comparable to those created earlier. The main difference between them is rooted in the distinction between coordination and cooperation at the international level. The first organisations created in the mid-800s mainly dealt with coordination problems: the States' main purpose was to coordinate their activities. What mattered was not the achievement of a specific common goal, but rather the prevention of certain events from occurring. In addition, in this context, there was also no need for the organisation to ensure strict compliance with rules, as non-compliance would, in most cases, primarily disadvantage the States themselves. In such cases activities usually aimed at harmonising practices across countries in order to facilitate their use and effectiveness. Initially, this approach was successful as the first organisations addressed challenges linked to economic or technological progress. They operated within clearly defined sectors and focused on resolving one issue at a time. In this context, coordination functioned well: States were confronted with situations they did not yet know how to handle, because these were new, and therefore they chose to respond to them jointly. Once the situation had been addressed, the objective of the organisation was completed. If with coordination approximately any solution was acceptable, as long as all the actors involved agreed, with cooperation everything changed. By now, the issues organisations had to deal with were different and they were more at one time. Many of these new issues were more sensitive, strongly affecting core national interests such as security, sovereignty, or ideological positions, and therefore, the decisions started to affect the States more. Consequently, organisations understood the need to rely more on cooperation, and, in this context, Caffarena (2009) reports that the Concert of Europe represented an intermediate step. Even if it was not a formal international organisation, it was a first attempt to structure cooperation among major powers to solve sensitive issues. It was highly institutionalized, with shared norms and rules conditioning States behaviour, even though it still lacked some of the key features of modern international organisations. In addition, the principle of collective security on which it was based strongly influenced how its members perceived threats and behaved toward one another, showing a genuine form of cooperation. For these reasons, Caffarena (2009) regards the Concert of Europe as one of the first attempts to manage European affairs

collectively and to limit secret diplomacy, which was increasingly seen as an obstacle to stable international relations. In this context, between the mid-nineteenth century and 1914, the practice of multilateral conferences gradually expanded, further reflecting a growing need for more transparent and cooperative methods of international interaction.

The League of Nations would later build on these experiences, further developing and institutionalizing these approaches at the international level. Therefore, besides its big failures, the League of Nations showed that the XX century was the period to understand how to better organise the international system, and the emergence of the United Nations further developed this idea (Caffarena 2009).

1.3.2 The evolution of the United Nations during the Cold War period

The United Nations was required to act in a context that was entirely different from the one in which the League of Nations had operated. Therefore, it is not surprising that a radical change was needed. Although the United Nations succeeded in establishing a framework that addressed the shortcomings of the League of Nations, shortly after its creation an obstacle emerged: the Cold War (Rowe 1970). Only after two months from the first Assembly's meeting, Churchill held his famous speech about the "Iron Curtain" indicating Europe's separation into two blocks: the capitalist West and the East under Soviet influence. During its first three years, the Assembly met frequently, but over time, due to this tense atmosphere, its meetings became less frequent and dealt with progressively fewer political and important issues (Caffarena 2009). The Security Council was experiencing a period of deadlock, marked by a total of 79 consecutive vetoes cast by the Soviet Union between 1946 and 1956 (Patil 1992). The Council's ineffectiveness had repercussions throughout the entire organisation since it was the body responsible for preserving peace, which is also one of the organisation's main purposes. Caffarena (2009) affirms that, within this context, a new capacity of international law emerged: its ability to adapt to new contexts in order to address emerging challenges. The United Nations addressed this issue by adding new practices to its structure, enabled by different interpretations of its own Charter. In particular, with these new practices, the Assembly and the Secretariat tried to assume a substitute role vis-à-vis the Council (Caffarena 2009).

The Assembly tried to achieve this goal in 1950, trying to manage the Korean crisis as the Security Council could not result in any concrete action. The "strategy" was always the same: the Union of Soviet Socialist Republics blocked any decision of the Security Council by using the veto power. To address the issue, the General Assembly adopted the Resolution 377 A (V) (1950), entitled "Uniting for Peace" (Gargiulo, Ingravallo and Rossi 2023).

> "The most important part of resolution 377 A (V) is section A which states that where the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly shall seize itself of the matter. Procedural and substantive steps are suggested. First of all, if the Assembly is not in session, it may meet in emergency special session at the request of the Security Council or of a majority of its own members. Second, such a session shall be convened with a view to making appropriate recommendations for "collective measures…including the use of armed force when necessary"" (Tomuschat 2008)

Tomuschat (2008) reports that this Resolution represented a significant attempt to expand the practical role of the General Assembly in situations in which the Security Council was unable to act because of a lack of unanimity. In those cases, it enables the General Assembly to consider the matter through an emergency special session and to make recommendations. In the meanwhile, the Resolution goes even beyond this by providing that the General Assembly may recommend collective measures, including the use of armed force, when necessary:

> "In substance, through this resolution the Assembly recognizes for itself the right to step in for the inaction of the Council in the presence of situations that trigger Chapter VII of the Charter, recommending to Member States the adoption of collective measures of the kind provided for by that Chapter, including the use of force." (Tomuschat 2008)

In the following years, this Resolution was implemented various times in which the Assembly convened an emergency session and produced strong recommendations. However, this procedure did not always lead to strong positive results as the Assembly's recommendations are not mandatory to follow (Tomuschat 2008). Nonetheless, Caffarena (2009) affirms that the Resolution 377 A (V) can be considered an important precedent of political and symbolic relevance for the period. Indeed, it showed how, in the context of the Cold War, the prestige adopted by the Assembly went beyond the boundaries of the organisation, "showing its ability to act on the international stage to maintain peace, thereby demonstrating (…) the vitality of the United Nations" (Caffarena 2009).

At the same time, during that period, the General Secretariat effectively became a political actor. Its role expanded beyond purely administrative functions, and the office gained greater visibility in matters concerning peace, diplomacy, and global governance. However, in contrast to the Assembly, the outcome was not entirely positive. The General Secretaries were not always ready for the power they were given to, and most of the time they improvised. In this context, the effectiveness and

political influence of the Secretariat often heavily depended on the personality and leadership style of individual Secretaries. Therefore, the organisation alternated more cautious figures and others who interpreted the office in a more activist way. After the death of Hammarskjold, one of these most successful figures, the political activism of the role became more restrained, although the Secretariat continued to maintain an important role within the United Nations system. Caffarena (2009) affirms that, during the Cold War, these experiences have been significant for the history of international organisations, even though they did not evolve into permanent solutions or big amendments to the UN Charter. Meaning that, this period showed how international organisations were gradually emerging as solid and well-defined instruments, able to adapt in case of new challenges (Caffarena 2009). Gargiulio, Ingravallo and Rossi (2023) then confirmed this idea affirming that, the Resolution 377 (1950), still used today, opened the debate on whether the Assembly should have more power to act, debate further emphasised after the fall of the Berlin Wall, an event that showed how the Council's ineffectiveness was not only linked to the war but to a lack in the system.

However, on this matter, Gargiulio, Ingravallo and Rossi (2023) also affirm that, even if a revolution of the structure of the United States is wanted by many, it is not an easy objective to be reached. Furthermore, the years of the Cold War also showed another complication of the organisation: the rigidity of the treaty. Being a rigid treaty, any amendment of the Charter requires the application of specific procedures (namely articles 108 and 109 of the Charter), which are also particularly difficult to implement. For this reason, even here, international law has evolved to find another possibility, as it happened with the Resolution: if the Charter cannot be changed to allow the Assembly to have a stronger voice, the interpretation of the Charter could solve the issue (at least momentarily and partially) (Gargiulo, Ingravallo and Rossi 2023). Therefore, even if article 12 of the Charter, in Chapter IV, states in paragraph one:

> "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests." (United Nations 1945)

meaning that the Assembly cannot issue recommendations regarding disputes or situations in which the Security Council is already working on, the interpretation questioned the meaning of this article. While this provision further reinforces the Security Council's powers and its leading role on the Assembly, in the practice of the General Assembly the article has been interpreted restrictively with regard to the Security Council. The context was always the same. Around the 1960s, the General Assembly sought to assert itself in response to a Security Council that remained inactive facing certain

issues. Consequently, in UN practice, article 12 has been interpreted as not preventing the General Assembly from considering and making recommendations on a matter when the Security Council is not actively exercising its functions in that specific moment. Therefore, Gargiulo, Ingravallo and Rossi (2023) describe this interpretation as allowing the Assembly "to deal "in parallel" with the Security Council with regard to certain disputes or situations, without calling into question its primary responsibility for the maintenance of international peace and security" (Gargiulo, Ingravallo and Rossi 2023). This practice, as it did the Resolution 377 (1950), allowed the Assembly to fill the gaps resulting from the Security Council's inactivity and therefore to expand its room for action beyond what was originally intended, showing an evolution of international law and its adaptation to changing times, while still not proposing any permanent or concrete solution (Gargiulo, Ingravallo and Rossi 2023). Analysing these little steps today, it seems obvious that the United Nations system needs an internal change, as the issue of the veto did not end with the end of the Cold War. However, at the same time, it is important to recall these decisive moments that impacted current international law.

1.3.3 The expansion of the United Nations' membership

During the Cold-war period, Caffarena (2009) reports that the newborn organisation had to face another challenge that other organisations never faced before: the huge expansion of its membership base. The issue was not only linked to the significant number of members, yet it was mainly due to the diversity among the organisation's members. The new members were mainly characterized by significantly different political systems from those of the existing members and, in most cases, less developed economies. Consequently, these new members also had different interests and priorities from the existing ones, and this destabilized the organisation's order. In an already fragile international system, influenced both by the Western and Soviet visions of international order, the accession of newly independent African and Asian States contributed to a gradual but significant transformation of its internal balance. As soon as in 1960, 17 new States joined the United Nations (all ex-colonies) the agenda had to change: the newly admitted States had more pressing concerns than the Cold War, as many of them faced serious challenges in public health and economic development. Therefore, assisting the development of the most vulnerable States became a priority. Caffarena (2009) describes this phenomenon as a big change in the history of the United Nations as before the most discussed themes were only those linked with the major powers.

In this context, during the Cold War, the Assembly had these new perspectives and a virtuous cycle emerged, contributing to a more democratic organisation (at least in a first attempt within the

Assembly). An increasing number of different countries started to be more represented, which boosted participation and as already noted, led to a broader and more inclusive range of topics. The major powers, who were used to discuss and express opinions only about issues that had a direct impact on them, found themselves in a situation where they were forced to face and take a position about topics they never discussed before. The Assembly further established its representative function for many countries, gaining increasing influence in global politics. In addition, this process of inclusion was further expanded in 1963 when some resolutions were proposed. One resolution contained an amendment with which the number of the non-permanent members of the Security Council increased from 6 to 10, and another one about the composition of the ECOSOC which went from 18 to 27 and in 1971 to 54 (Caffarena 2009).

To sum up, this expansion brought a positive impact on the organisation: the Assembly acquired a more complex and multifaceted character by representing greater diversity and all States became more aware of the international context. This situation led to a creation of a more cohesive international community which was widely debated and studied during those years. One of the main successful theories of the time was that of Claude (1966) who had a positive view of the expansion. Following this theory, this expansion not only gave the organisation the occasion to be considered a universal international organisation, but it also allowed it to acquire "collective legitimization". With this term, Claude (1966) in his work indicated the capacity of the organisation to confer international legitimacy, to decide what was accepted and was not in the international community as by now, with a great number of members, the organisation represented the global community (Claude Jr., Collective legitimization as a political function of the United Nations 1966). Certainly, this can also be regarded as merely a theory, especially considering that, over the years, scholars have argued that international organisations would not even exist without States and that, consequently, it should not be attributed more power to the organisations than they technically possess (Caffarena 2009).

In contrast with the positive aspects of these years' expansion, it could be also argued that the phenomenon of expansion has not been completely positive. Indeed, this situation also highlighted issues and critical aspects, some of which are still visible today. While cooperation among different States in various fields such as the economic, healthcare, food, and agricultural sectors was growing and became one of the organisation's main goals, this expansion was not designed from the beginning and therefore it was not dealt with in the best way. Caffarena (2009) affirms that while small-scale collaborative projects have certainly helped to create a more cohesive international community, no global reform projects have ever been established to genuinely address the differences that existed between the most industrialized and wealthy countries and those in the developing world. In addition, the changes introduced to the organisation's bodies are undoubtedly achieved goals but from a more

critical point of view it can be argued that even if the Council augmented the number of non-permanent members the main decisions were (and still are) in the hands of the five major powers. At the same time, the Assembly acquired a new image, with broader deliberative and representative functions, but the Security Council maintained its primary responsibility for the maintenance of international peace and security.
However, it is undeniable how, even if disadvantaged in certain fields by the bipolar environment, the organisation in its first years gained visibility in the domains in which it was able to accomplish major goals, fostering a certain level of trust and positivity toward it (Caffarena 2009).

1.3.4 Contemporary challenges: globalisation and inequality in the United Nations system

Despite having overcome early challenges, the organisation's life after the Cold War period has been far from being simple and linear. At the start of the 1990s, it appeared that the ideal conditions to fully achieve the goals set out in the Charter finally existed, and there was a widespread optimism about the organisation. This sense of optimism about the future role of the United Nations was mainly based on the assumption that the organisation was constrained during the bipolar crisis and could now finally operate. Yet, the international environment is never static and this interpretation was misleading. The international environment evolves with historical events, each time producing a new global order that organisations must manage. Claude Jr. (1995) reported that 1989 was an unusual period for international relations, marked by conflicts rather than wars, and it left a somewhat a more uncertain political landscape to navigate. Therefore, this view according to which the United Nations was largely "paralyzed" during the Cold War and only would have begun to function effectively after its end was not entirely accurate. As previous sections have shown, the United Nations was actively engaged throughout the Cold War period and, rather than remaining static, it was profoundly reshaped by it. Therefore, the overcoming of the bipolar confrontation did not automatically make the organisation the key actor in international politics that the more optimistic observers had hoped for (Claude Jr. 1995).
Modern challenges emerged, or more precisely, long-standing ones became increasingly apparent. The issue of sovereignty, present since the earliest organisations, increasingly became a barrier: in a constantly changing society that was growing more complex each year, cooperation became necessary at multiple levels, but States also wanted to preserve their powers. In addition, the international community was becoming increasingly interconnected, and the phenomenon of globalisation, which had begun in the late 1980s, was entering its peak. These two "modern" issues were then found to be connected: "Sovereignty (…) constitute an insurmountable obstacle to the

development of forms of governance capable of addressing the challenges posed by globalization and beyond." (Caffarena 2009). In addition, even if globalisation is often considered a positive phenomenon that brings growth and better life conditions, it gave rise to various problems. The phenomenon completely changed the market by increasing global trading activities and it complexified in general financial flows. This situation undoubtedly increased pressure on international organisations that had to deal with a new globalised economy and a new international system. Alongside, globalisation highlighted another important issue of the global economy: inequality (Caffarena 2009). Between 1945 and 1980, a dominant connection progressively emerged between population growth, economic underdevelopment, poverty and social instability. This relationship was referred by Schmalz (2025) as "population-development nexus", a framework through which high birth rates were increasingly interpreted as a major obstacle to economic and social development (Schmalz 2025). If many countries experienced globalisation as an economic and technological development, many others, in the same years, never had the chance to make or receive a phone call or use a computer. This happened because the phenomenon did not affect all countries in the same way: the ones that were already stable managed to gain as much as they could from it, while many others did not have the instruments to receive the same advantages. In this system, the United Nations stood at the centre: within the organisation, both types of countries were represented, the inequality between them was clear, and the UN had to design a new economic order that took into account the interests of both parties. In this context, the optimism toward the organisation was also moved by the conviction that the United Nations were the only organism able to manage this type of situation. The organisation then sought to establish a new international economic order aiming ambitiously to achieve a balanced economic development while ensuring that all groups were represented in the political process. As the globalisation process did not start immediately through these years, but it has been a progressive process, this economic development had already started years before. In this period of general growth, it only became more evident and needed.

Already before the end of the Second War, the Allies called a Conference in New Hampshire (1944) to set up a new free trade regime. At the end of this Conference three new organisations were established: the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD) both based on a third one the International Trade Organization (ITO). Having been established alongside the United Nations, they were defined, and two of them still are, as UN specialised agencies, formally independent but in cooperation with it. In 1947 a Conference was called and there the Gatt was established: a General Agreement on Tariffs and Trade, which remained in force and shaped the institutional framework for trade cooperation for many years. This system was based on the organisation of "rounds", negotiating conferences in which bilateral talks on specific

products were held. Three of these "rounds" are recalled: the Kennedy Round (1946–1967), in which the European Economic Community also took part; the Tokyo Round (1973–1979), where non-tariff barriers were addressed for the first time; and the Uruguay Round (1986–1994), focused on the liberalisation of trade in services and defence. The Uruguay Round is also remembered for one of the main innovations introduced in this field, the creation of a real World Trade Organization (WTO). During the 1990s, as already stated, the issue became even bigger as globalisation and the emergence of regionalism made it necessary to move beyond the model of a semi-permanent multilateral conference that was adopted in the previous years. With the creation of the World Trade Organization (WTO), all the initiatives and projects decided in the previous rounds were merged into a single group, all under an articulated structure in which the oversight processes were more effective. Another pillar of this multilateral economic system, guided by the United Nations, was the World Bank. For a couple of years this institution played a key role, and it became the largest provider of capital to developing countries. However, Caffarena (2009) also reports that, despite the undeniable economic development due to these interventions, poverty and economic inequality were not fully overcome and, while some developing regions experienced significant progress, the overall distribution of benefits remained uneven. Therefore, the issues pointed out by globalisation were not solved and it began to emerge even more that the global market only exists because of the differences among countries. Indeed, if all countries were the same there would be no advantage in investing abroad or to produce in one place rather than another and the global market would not have developed as it did. In this context, from a profit perspective, the disadvantaged areas were bound to become even poorer from the beginning, while they were promised to grow. This situation also led to various conflicts among countries. With this issue being even more highlighted, the World Bank developed a certain sensibility toward the subject, but this "reparation" was criticised through the years, as it did not lead to important changes. Meanwhile, these initiatives are still alive, and they are often supported by various non-governmental organisations that try to adjust them by introducing country-specific intervention strategies (Caffarena 2009).

Despite all this, we are unfortunately aware that global inequality has not been overcome yet, and there are still many structural challenges that seem to hinder this process, and the main one is undoubtedly the interests of profit. Nowadays, the situation is even more complicated: the globalised economy is not only made up of trade and tariffs, but also of other policies and factors involved. Global inequality still remains a structural issue within the international economic order, despite the organisation's efforts to address it (Caffarena 2009; Schmalz 2025).

1.3.5 How non-governmental organisations shaped the role of citizens in international law

Since 1945, as discussed, the development of non-governmental organisations has taken place alongside that of governmental ones, often in connection with the United Nations. Today, NGOs continue to play a significant role in international law frequently addressing gaps left by governmental organisations or States, being actors of increasing presence in the field of international relations (Caffarena 2009).

While international organisations are "a voluntary association of States, established through an international agreement and governed by international rules" (Marchisio 1987) non-governmental organisations "are entities created by individuals (natural persons and legal persons), which are not subjects of international law" (Marchisio 1987). Consequently, the juridical context in which they operate is very different. However, with that said, it is relevant to notice that often the two models eventually intersect in the same social environment. Caffarena (2009) argues how, with their peculiarities, it is undeniable that non-governmental organisations changed the field of international law. In the past, States were the primary actors in international relations. Today, thanks to the growth of non-governmental organisations, many more actors are involved: citizens, public opinion, and activists exert now a strong influence on international politics. With the expansion of NGOs, citizens had, for the first time, the tools to directly contribute to international activities and to take decisions in the international field. Non-governmental organisations seek to foster extensive cooperation among citizens from different countries, with the aim of involving as many individuals as possible at the international level. It is important to underline that this phenomenon developed in a period in which the internet was not so diffused yet and social media did not exist. In this context, not only organisations let citizens directly take action in the field but in many cases, they also allowed them to get more in touch with international topics and issues. This process also led to a general sensibilization of the global public opinion on various significant topics, as non-governmental organisations usually operate in delicate fields, such as the field of human rights. In this sense, Caffarena (2009) identifies non-governmental international organisations as the first link between citizens and the international field, allowing people to be more aware of what was happening outside their countries (Caffarena 2009).

Today, digital platforms and social media give us direct and immediate access to any kind of information. We are living the so-called phenomenon of "platformization" where online platforms and social media have a central role in providing the information and, consequently, our reception of information goes far beyond the role of international organisations (Nielsen and Fletcher 2023). However, it is important to underline the role of non-governmental organisations in this context where

the information system was not so complex yet. Citizens, with this new kind of engagement, started to embrace issues they had never experienced before both mentally and emotionally, building a real and involved international community: nowadays “We worry about overpopulation even though we live in a country with zero population growth, or about the death penalty even though it is not provided for in our criminal code.” (Caffarena 2009).

Another important innovation brought by this new system was that citizens started not to relate to the external world exclusively through their own national State anymore. At the beginning, States were the only mediator between individuals and international systems but, with non-governmental organisations, citizens began to influence the international debate without passing through their own State. Obviously, in this process, States remained the main point of reference for citizens in the international context, but the “system” was not so rigid anymore. This new system became more like a web composed of many actors involved. Later on, the internet and social aid to amplify the phenomenon even more (Pennetta, et al. 2024).

1.4 Chapter conclusions

In conclusion, the historical developments of the United Nations show that its history faced numerous challenges. At the same time, it is also evident that it still needs to evolve as, analysing these challenges today, it can be argued that some of them have not been completely overcome.

However, it is also interesting to look how the studies about international relations have evolved: while for almost 20 years from the foundation of the United Nations scholars mainly looked at international law focusing on founding agreements, voting procedures and institutional structures; nowadays research are mainly focused precisely on the modality that institutions progressively assume in response to the constant changing of the international community, as this chapter briefly did. In addition, it is also clear that these studies proved to be significantly important as, nowadays, there is no longer any aspect of our existence that does not fall within the sphere of activity of some international organisations (Pennetta, et al. 2024).

Chapter 2- Building human rights: from the UN Charter to international recognition

2.1 Defining human rights

Human rights can be defined as

> "Internationally guaranteed legal entitlements of individuals vis-à-vis the State, which serve to protect fundamental characteristics of the human person and his or her dignity in peacetime and in times of conflict" (Kälin and Künzli 2009)

This definition given by Kälin and Künzli (2009) helps to address a major issue in defining human rights: how to distinguish them from other guarantees and entitlements deriving from international law as human rights possess certain distinctive characteristics that set them apart. As reflected in the definition, human rights confer legal entitlements on individuals and correspond to obligations incumbent upon States because they can be claimed by the beneficiaries. They are applicable anytime, in peacetime and times of armed conflicts, and today, they are also grounded in an international legal framework rather than being solely granted at the domestic level. Nowadays, this international dimension of human rights is based on the acknowledgment of States that these rights are "necessary to safeguard human dignity and the development of the human person and must therefore be deemed fundamental" (Kälin and Künzli 2009).

In addition, in explaining the definition of human rights, it should be noted that they are traditionally categorised into three generations. Kälin and Künzli (2009) report that firstly, there is the first generation of rights which refers to civil and political rights such as: the right to life, liberty and security of person, the right of freedom of religion, freedom of speech and freedom to exercise political rights. This first type of rights emerged from the late eighteenth-century American and French declarations and served to protect individuals from State interference in their personal life. Meanwhile, the second generation of rights, encompass the economic, social, and cultural rights such as the right to work, to receive an education, to be in health, and to be secure. These others developed during the period of industrialization, a phenomenon that led to serious issues in the field such as the economic exploitation of human work and impoverishment of certain categories. Finally, a third generation of rights includes the right to development, peace, and to have a clean and healthy environment. These were conceived during the second half of the 20th century and they are also called collective rights. However, despite this categorization, contemporary international law emphasises

that all human rights are universal and that no category of rights is hierarchically superior to another (Kälin and Künzli 2009).

2.1.1 First attempts to protect human rights

Human beings have long asked themselves what it means to be human and what entitlements come with that status, yet it was not until the end of World War II that these questions were seriously addressed at the international level. Kälin and Künzli (2009) affirm that the concept of protecting human rights, however, has much deeper roots. Philosophers in the Euro-American tradition have been reflecting on the nature of humans and the resulting basic rights since the Enlightenment.
Thy identify the Virginia Declaration of Rights of 1776 as the first human rights declaration of modern times, which was then followed by the other American Declarations all employing similar language and similar basic principles: all men were equally free and independent, and they were entitled to certain rights simply by virtue of their existence. However, Kälin and Künzli (2009) also argue that, during that period, the concept of human rights was not fully developed, and that "all men" was not thought to include all individuals regardless of origin, race and sex. Therefore, those fundamental rights and the resulting freedoms weren't given to everybody, and particularly not to black slaves and women. Later on, during the French Revolution and with the French Declaration of The Rights of Man and of the Citizen (1789), the concept of human rights began to be associated more with the concept of citizenship, again excluding other categories of individuals. However, although the main focus of this Declaration was on the relationship between citizens and State, it also introduced other types of rights such as the principles of non-discrimination, liberty, property rights, and security (Kälin and Künzli 2009). A little change in this pattern is reported by Bova (2011) who affirmed that, in 1791, the US Bill of Rights represented the first document that prohibited the American Parliament from restricting certain freedoms, such as freedom of religion, freedom of speech and the press, as well as freedom of assembly and association. However, in this case as well, these rights excluded women and African Americans (Bova 2011). Nonetheless, despite these limitations, the American and the French approaches to the protection of human rights will be a model for other States and other international tools, in particular during the 19th and early 20th century (Kälin and Künzli 2009). For this reason, Bova (2011) affirms that the French and the American Declaration are considered the first documents that tried to better define the relationship between States' sovereignty, individuals and human rights and that they are also seen as the historical antecedents of contemporary international human rights instruments.

At the same time, alongside with these first legal attempts of protecting human rights, great contribution in the field was also provided by philosophy, which increasingly began to address topics related to human rights (Bova 2011). Since the Enlightenment, especially in Europe, some authors, such as Rousseau, began to formulate a wide range of theories on freedom and fraternity among people. In these theories the State should have been the defender of rights and should have been able to place rights and citizen's duties on the same level (Corella 2018). In the following years, with the establishment of the Declarations cited before, more theories emerged. Bova (2011) cites Kant reporting its concept of the "peaceful community of Nations". This idea was based on the concept that, in order to reach peace among States, each one should have declared itself free and should have respected every citizen (Bova 2011).

Kälin and Künzli (2009) then declare that the Declarations and Constitutions established after this first period were all similar under one aspect: the rights were granted primarily to the States' citizens, which meant that no system of international protection existed at the time. Since international law governed only relations between States and did not recognise individuals as subjects of law, those who suffered violations abroad could not rely on any direct international guarantees. In this context, protection was available only indirectly, through the institution of diplomatic protection, whereby a State could have intervened on behalf of its nationals. This practice led then to the development of an "international minimum standard of treatment of aliens", requiring States to establish certain basic safeguards to foreign nationals. However, even this mechanism did not instantly lead to genuine human rights protection, as it applied only to foreigners and did not grant individuals enforceable rights under international law. Later on, the 19th and early 20th centuries saw, again, selective international efforts on the issue, such as agreements to abolish the slave trade and minority protection regimes after the First World War. In 1919, the Covenant of the League of Nations remarked the importance of human dignity over States' interests and a system of protection of minorities started. Always in 1919, the Constitution of the International Labour Organization (ILO), started to promote social justice and respect for all workers. These measures represented important steps in the history of protection of human rights, yet they were mere obligations imposed on States rather than universal principles to guarantee respect for all individuals.

As previously stated, the true international human rights protection only emerged after the Second World War (Kälin and Künzli 2009). Indeed, the League of Nations was mainly based on State sovereignty and on respect among States with the only purpose of assuring peace and prevent war, without really citing human rights (Bova 2011) and it did not have any norm related to human rights, with the exception of article 23:

"(…) the Members of the League:

(a) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;

(b) undertake to secure just treatment of the native inhabitants of territories under their control" (League of Nations 1919)

Following the atrocities of the Second World War the United Nations learned from the League's mistakes (Bova 2011).

2.1.2 The principle of sovereignty and human rights

In order to address the issue of human rights within the United Nations, it is necessary to briefly analyse the relationship between sovereignty and human rights. As already mentioned earlier, the principle of sovereignty is a pillar of international law. During the Cold War and during the period when the United Nations was consolidating, Bova (2011) reports that a part of the legal doctrine emphasised the *erga omnes* nature of the principle of State sovereignty, indicating its universal application. At the same time, it was also emphasised how, in classical international law, this principle was often described as a State centred principle. Therefore, it is precisely on this point that sovereignty encounters an obstacle in international human rights law: whereas the traditional concept of sovereignty is mainly centred on States, international human rights law places the individual at the centre of its protection. From this difference, it was then observed that the development of this legal field had, in some ways, affected the principle of domestic jurisdiction. Bova (2011) then states that, following these discussions, it was established that human rights continue to be the product of State decisions and the protection of individual rights has not altered the international legal system. However, on this matter, there is also another view to consider: it must be clarified that States are limited by human rights to the extent that they have committed themselves to complying with human rights obligations deriving from binding treaties, which they voluntarily choose to ratify. In this regard, Bova (2011) explains that States do not lose their sovereignty, but they choose to limit it by signing the treaties. With that said, the balance referred to earlier is evident. On the one hand, human rights require adequate technical and operational support in order to be guaranteed individually everywhere, especially when States are unable to do it. On the other hand, the principle of State sovereignty does not want to suffer any form of erosion, especially at its national level, and sometimes

not even as a consequence of the ratification of international human rights treaties. In this context, part of the doctrine emphasises that the opposition between human rights and the principle of State sovereignty is inevitable (Bova 2011).

2.1.3 The Charter of the United Nations and its close relationship with human rights

After the atrocities of World War II, the international community became more aware about the connection between the respect for human dignity and international peace (United Nations, Department of Public Information 1995). However, despite the efforts made by States to address human rights issues, Bova (2011) reports how many scholars maintain that the 50 States present at the San Francisco Conference did not regard human rights as a central component of the UN Charter. Instead, they considered them only as an instrument for the preservation of international peace and security (Bova 2011). Besides this aspect, some scholarship, as reported by the United Nations Department of Public Information (1995), described the Charter as "the first international treaty whose aims are expressly based on universal respect for human rights" (United Nations, Department of Public Information 1995), implying that, all the declarations and constitutions cited before did not protect human dignity in the overall sense. In line with this theory, another part of the legal doctrine also points out that, by basing its core principles and purposes on the respect of human rights, the UN Charter establishes it, for the first time in history, as a pillar of international law and it portrays it as a global challenge rather than an issue only confined to individual States (United Nations, Department of Public Information 1995). Even Bova (2011) reports this theory underlying how, this part of the scholarship emphasises that, although human rights were not the primary issue discussed at the San Francisco Conference, they received considerable attention during the debates. On this matter, it is also recalled the role of the Commission to Study the Organization of Peace, which during the Conference, proposed the establishment of an International Bill of Rights and a Human Rights Commission, proposals that were subsequently pursued in the following years. Following these theories, it can be argued that with the adoption of the Charter of the United Nations the issue of human rights became an international concern. (Bova 2011). Further proving this theory, article 1 paragraph 3 of the Charter states that one of the organisation main purposes is:

> "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;" (United Nations 1945)

and, later on, the Charter further reinforce this concept in article 55, by saying:

> "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: (…)
> c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (United Nations 1945)

In particular, article 55 in this case not only stresses that human rights must be safeguarded without any form of discrimination but also underlines that insufficient international cooperation in this area could give rise to new conflicts, thereby mirroring the post-war mindset previously mentioned. Due to its peculiarities, article 55 is a very significant provision in the Charter and many scholars argue that it paved the way for the United Nations to be not only an international organisation but a body responsible for the protection of human rights.
Notably, on this topic, the Charter not only outlines these principles, but also provides measures for their implementation (United Nations, Department of Public Information 1995). By saying this, the following provisions of the Charter should be taken into consideration. Article 13, which concerns the General Assembly states that:

> "The General Assembly shall initiate studies and make recommendations for the purpose of: (..) b promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." (United Nations 1945)

In this article, paragraph b assigns the Assembly an active and central role in advancing and promoting the development of human rights. At the same time, it also reiterates what has already appeared in articles 1 and 55, namely the connection between international cooperation and fundamental rights (United Nations, Department of Public Information 1995). In this context, it is then essential to also cite article 56, which establishes that Member States undertake to cooperate with the organisation for the achievement of the purposes set forth in article 55, by saying:

“All Members pledge themselves to take joint and separate action in co-operation with the organisation for the achievement of the purposes set forth in Article 55.” (United Nations 1945). This means that, by joining the organisation, States commit themselves to take initiatives and to advance national legislation in the field of human rights, even without explicit directions from the United Nations (United Nations, Department of Public Information 1995).
Later on, Article 60 further provides:

> “Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.” (United Nations 1945)

This provision underscores the primary role of the General Assembly in this area, as already affirmed in article 13 and, at the same time, it assigns the Economic and Social Council specific responsibilities and powers in this field, under the authority of the General Assembly. Article 62 then sets out in more detail the measures that the Economic and Social Council can take:

> “1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.
> 2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.
> 3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.
> 4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.” (United Nations 1945)

Looking at these provisions, what instantly emerges is that the measures provided by the Charter in the field of human rights can only take the form of recommendations, examinations or studies, and therefore, they do not create legally binding obligations. However, as will be further discussed later, even if recommendations are the only primary tool available in the field of human rights, they should not be regarded merely as non-binding exhortations, contrary to what is often assumed. Over time, certain recommendations issued by United Nations bodies have acquired significant authority and have been widely embraced by so many States that, in some cases, they have evolved into rules of

customary international law. At the same time, although the Charter primarily relies on recommendations in this area, it does not exclude the possibility that in certain circumstances, the United Nations may also adopt legally binding measures. It is a mean of balance. For years, several States have argued that human rights fell within their exclusive domestic jurisdiction and were thus a matter to be addressed solely at the national level. However, many also argue that human rights constitute an area that requires balance between different levels of authority, as they concern both sides: not only States but also, as stated by the Charter, the international community. For this reason, the United Nations generally opts for non-binding measures, but it does not completely exclude also binding ones. In this sense, human rights protection can be understood as a continuous process of balancing different powers (United Nations, Department of Public Information 1995).
Accordingly, the United Nations has consistently sought to involve other actors from outside the organisation in the field, as can be seen in article 71:

> "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned." (United Nations 1945)

This provision allows then the involvement of non-governmental organisations in the protection of human rights and, even today, such organisations are consulted in various areas such as the protection of minorities, women's rights, refugee rights and many more.
Summing up, Bova (2011) affirms that, over the years, the Charter of the United Nations became a real multilateral agreement on which Member States have built their relations: it is considered as a contemporary international agreement based on which States aimed at preventing wars and promoting the respect of human rights. In light of the discussion so far, the Charter addresses human rights both in terms of their content and their role within the organisation. As regards the former, human rights are explicitly mentioned in the preamble and among the purposes of the organisation. With regard to procedural issues, several provisions of the Charter aim to promote respect for human rights through activities and various organs (Bova 2011).

2.2 The current structure of the UN Human Rights System

The Charter provides different functions for each UN organ in the human rights area, and, at the same time, it also stipulates that the organisation promotes the universal respect of human rights without any kind of distinction based on race, gender, language or religion.
Nowadays, from an institutional point of view, the entire UN system includes: the treaty monitoring bodies, also known as conventional mechanisms; the Human Rights Council, as a subsidiary body of the General Assembly; the Universal Periodic Review mechanism; the Special Procedures; the Advisory Committee, a subsidiary body of the Council; the OHCHR, which is part of the United Nations Secretariat; other relevant actors in the field, such as NGOs and independent national human rights institutions; and the Third Committee of the General Assembly. From a functional perspective, this system has developed four main activities to address thematic human rights issues: the promotion of human rights through human rights education and the drafting of new human rights instruments; advisory and technical assistance activities; analysis and monitoring activities in response to reports of alleged violations of human rights standards; and activities related to complaint procedures concerning alleged human rights violations (Bova 2011). However, the emergence of such a complex and structured system required a long period of time, and it was the result of a gradual process of evolution. This chapter will briefly present the key stages of this development.

2.2.1 The role of the General Assembly in protecting human rights

As previously mentioned, article 13 defines the actions the Assembly may undertake in the field of human rights, which are limited to issuing non-binding recommendations. Nevertheless, the Assembly can contribute to the development of binding international law and, in this process, some of these recommendations have turned out to be highly influential. For instance, this was the case of the 1948 Declaration of Human Rights, which will be later analysed. Another concrete example of such a positive result achieved within the Assembly's measures, occurred right after the Second World War, in 1946 during the Nuremberg Trials. In that context, the Assembly reaffirmed the principles recognised during the Trials concerning war crimes and crimes against humanity. Therefore, while some principles had already emerged inside Tribunal, the Assembly helped reinforce and promote them at the international level. Later on, the Assembly also worked on a Code of Offences against the Peace and Security of Mankind in order to further develop them into international legal rules (United Nations, Department of Public Information 1995).

Again in 1946, it declared genocide to be an international crime and initiated a process that led, in 1948, to the adoption of an international convention on genocide called Convention on the Prevention and Punishment of the Crime of Genocide, thereby creating a legally binding norm. These are then clear examples of how the Assembly recommendations can evolve into international principles or legal instruments. From these examples it emerges how the General Assembly concretely contributes internationally to the field of human rights: it validates principles, creates international standards and initiates normative processes. Therefore, it is evident how its role, which was originally limited to making recommendations, has expanded over the years and became increasingly significant. In general, it can be argued that, although the Assembly does not directly create binding norms, it often introduces the institutional process that leads to their development (United Nations, Department of Public Information 1995).

2.2.2 The role of the Security Council in protecting human rights

Despite being one of the main bodies of the organisation, the Security Council has not yet been cited in this chapter. This is because the UN Charter does not directly assign it functions concerning human rights, but this situation has progressively changed through the interpretation and practice of the Charter (United Nations, Department of Public Information 1995). Its main functions are the maintenance of international peace and international security, as stated in Article 24: "In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security (..)" (United Nations 1945). Following this provision, the Security Council is allowed to intervene when international peace is under threat. Over the years, the interpretation of this provision has evolved and the notion of a "threat to peace" has broadened: nowadays, serious human rights violations can be regarded as factors that endanger international peace. Therefore, following this interpretation, where serious violations are considered threats to international peace and security, the Security Council may adopt legally binding measures (United Nations, Department of Public Information 1995).
These cases are then regulated by the interpretation of certain provisions: firstly, Article 39, which empowers the Security Council to determine the existence of a threat to the peace, which has already been mentioned: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations (…)" (United Nations 1945); and, subsequently, articles 41 and 42, which allow the Security Council to decide the measures it wants to implement to complete its functions. Article 41 states:

> "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations." (United Nations 1945)

and article 42 even allows the use of military forces in emergency cases

> "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations." (United Nations 1945)

In addition, considering these provisions, even if article 2 imposes on this matter a limit based on the concept of sovereignty, the same article also establishes that this principle of non-intervention does not prejudice the application of enforcement measures under Chapter VII:

> "7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll." which is precisely the Chapter about "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression" (United Nations 1945)

Therefore, these provisions have been interpreted suggesting that, when there are serious human rights violations and the situation may be regarded as a threat to peace, the Security Council is empowered to impose obligations. In doing so, the United Nations reframed human rights violations as matters of international security: the nature of the abuse itself remains unchanged, but the manner in which the international community can respond to it is fundamentally different (United Nations, Department of Public Information 1995). Therefore, the Security Council is the only principal UN body capable of adopting binding enforcement measures under Chapter VII. On this matter, Bova (2011) reports some criticisms saying that this decision seems to reflect the Council's intention to maintain a primary position vis-à-vis the other bodies (Bova 2011).

2.2.3 The role of the Economic and Social Council in protecting human rights

The primary functions of the Economic and Social Council have already been highlighted in the previous section, but it is also important to emphasise certain other aspects of its role in the field. Indeed, although the Economic and Social Council is under the authority of the Assembly, it has a wide range of competences in different areas. It promotes and coordinates activities not only regarding human rights but also in the economic, social, cultural, and healthcare sectors. By doing so, the Council contributes to placing human rights in a broader framework, ensuring that all areas of individuals' lives are protected. The United Nations Department of Public Information (1995) argues that this Council's particular feature reflects a new perspective on human rights that was gradually emerging during the organisation's first years. Following this new perspective, human rights were becoming to be understood in a more holistic way, covering not only political and civil rights but also social and economic conditions. As it will be better analysed later on in the chapter, a clear distinction will subsequently be made between civil and political and economic rights, showing the importance of human rights in more than one field. One of the first concrete action undertaken by the Economic and Social Council occurred in 1946, when it created the Commission on Human Rights, tasked with drafting an International Charter of Human Rights. Undoubtedly, the creation of the Commission, represented one of the organisation's most significant steps towards the definition of human rights at the international level (United Nations, Department of Public Information 1995).

2.2.4 The role of the International Court of Justice in protecting human rights

The International Court of Justice is the main judicial body of the United Nations and is composed of 15 independent judges elected by both the General Assembly and the Security Council. The Court is governed by its own Statute because the UN Charter only outlines the general structure of the organisation, and the Court requires specific and detailed legal rules. Nevertheless, its Statute is annexed to the Charter, and they have the same legal standing (United Nations, Department of Public Information 1995). One of the Court's main functions is to settle disputes between States. In particular, article 34 of its Statute states that: "Only States may be parties in cases before the Court." (International Court of Justice 1945), meaning that private parties, agencies and individuals cannot appear before the International Court.

Another significant function of the Court is to give advisory opinions. Regarding this function, article 65 states that:

> "1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request." (International Court of Justice 1945)

Therefore, the Court operates in two different ways: in its adjudicatory function, when it settles disputes between States, and in its advisory function, when it provides non-binding legal opinions.
It is important to underline that the judgments of the Court are legally binding upon the parties involved as article 94 of the UN Charter states: "Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party." (United Nations 1945). As its jurisdiction is limited to disputes between States, it is evident that the International Court of Justice is not a specialised human rights court. For this reason, it has dealt with a limited number of human rights cases over the years. Nevertheless, its judgments have established important principles and have also contributed to the development of international human rights law (United Nations, Department of Public Information 1995).

2.2.5 The role of the Secretariat in protecting human rights

The Charter establishes that the Secretary-General is the "chief administrative officer of the Organization" (United Nations 1945), participating to the works of the other bodies and performing specific tasks if requested:

> "The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization." (United Nations 1945)

Having this vast range of competences, the Secretariat has also promoted activities related to the human rights field. In particular, it contributed to the enlargement of the human rights protection system during the first years. This body helped create an entire administrative structure to protect, promote, and disseminate information on respect for human rights. One important step in this

evolution was the creation of the Office of the United Nations High Commissioner for Human Rights (OHCHR). The Secretariat had a central role in its development: it prepared the proposal, offered the concrete administrative structure, and, over time, expanded its functions and tasks (United Nations, Department of Public Information 1995).

2.3 The Universal Declaration of Human Rights and the creation of specialised bodies for the protection of human rights

While the Charter of the United Nations introduced the topic of human rights and stated some principles, it also left several gaps regarding the subject. For this reason, Kälin and Künzli (2009) affirm that the real turning point for international human rights protection came with the Universal Declaration of Human Rights (Kälin and Künzli 2009), proclaimed by the United Nations General Assembly the 10th of December 1948 (United Nations n.d).
Already with its first two articles, the Declaration establishes its foundational principles by stating the universality and non-discriminatory nature of human rights, saying:

> "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." (United Nations General Assembly 1948)

and

> "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty." (United Nations General Assembly 1948)

The rights listed in the Declaration encompass a wide range of categories and entitlements: rights relevant to the protection of life, prohibition of torture; right to defence, freedom of opinion, religion; the right to work and many more. By adopting the Declaration, States expressed their commitment to the universal recognition and promotion of the rights set out therein (United Nations, Department of Public Information 1995).

By describing the Declaration, an important characteristic that needs to be underlined is that it is an example of soft law. The main difference between soft law and hard law is that hard law is legally enforceable, while soft law does not have the same binding force. Valenti (2025) explains that soft laws are non-binding instruments, they influence the behaviour of the various international actors, but they are generally regarded as a set of principles, recommendations or guidelines rather than as compulsory rules. This fundamental difference inevitably leads to a major issue: soft laws instruments are subject to different interpretations among States. As it will be discussed in greater detail later, this characteristic would eventually be recognised as one of the main limitations of this document. However, Valenti (2025) also reports some positive characteristics of this type of law in comparison to hard laws. For instance, they enjoy a degree of flexibility that allows them to adapt more easily to different rapidly changing circumstances, proving particularly effective in urgent situations. Within the context of the United Nations, the Declaration played a crucial role precisely because of this dynamic: although it was a soft law instrument, it led the way to the adoption of numerous legally binding conventions (Valenti 2025).

However, before analysing in detail the Universal Declaration it is necessary to underline the system that was created before and that made its drafting possible. Over time, as the topic of human rights became increasingly broad and relevant within the international community, the system previously described appeared somewhat limited considering the vastness of the subject. Therefore, in addition to the principal bodies, the United Nations established other subsidiary bodies specialised in the protection of human rights.

2.3.1 The Commission on Human Rights

Article 68 gives to the Economic and Social Council the possibility to establish specialised commissions in various areas, including human rights:

> "The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions." (United Nations 1945)

Therefore, in one of its early sessions, in 1946, Member States created the Commission on Human Rights, which for many years, served as the main United Nations body responsible for human rights. During the session the need to promote a number of new activities in the field was emphasized, including: the drafting of an International Bill of Rights; the formulation of recommendations for

either a declaration or an international convention on the status of women and freedom of expression; the safeguard of minority rights; the prevention of discrimination; and the establishment of a highly qualified commission to deal with this broad range of issues. One of the main figures in the creation of the Commission was Eleanor Roosevelt, member of the United States delegation (Bova 2011).
The initial idea was to create a Commission composed of nine independent members, who did not act as representatives of their respective States but in their personal capacity, working solely in the interest of the organisation. Therefore, following this idea, the members would have been selected based on their abilities and experience in the field of human rights. However, this was only an initial proposal, and it has not received sufficient approval. By contrast, the approved composition consisted of 18 Member States, each represented by one delegate. Therefore, the United Nations Department of Public Information (1995) affirms itself that, rather than being a body of independent experts, the Commission was born as an intergovernmental organ, whose members were elected by the Economic and Social Council. Something very different from the initial idea.
At the same time, the United Nations Department of Public Information (1995) reports that, over the years, the number of members increased (reaching 53) in order to ensure broader geographical representation and to incorporate a wider range of perspectives and that, although the initial idea of an independent and expert body was not fully realised, the Economic Council still attempted to ensure balance within it by encouraging governments to appoint delegates with expertise in the field of human rights (United Nations, Department of Public Information 1995).
In particular, Bova (2011) argues that the initial idea was not fully accepted by the major powers:

> "Moreover, neither the United States nor Great Britain could have done otherwise, given their domestic policies that were quite far from the concept of the protection of human rights, due to their respective choices in the fields of racial segregation and colonialism. Similar arguments could also have been made for the Soviet Union (USSR), subject to a totalitarian regime, and for Chiang Kai-shek's China." (Bova 2011)

Many scholars are therefore convinced that, at that time, certain Member States did not truly aim to reach an independent, strong and neutral Commission (Bova 2011).
The Commission started its work in 1946. It was initially responsible for studying and elaborating proposals and reports on human rights, and only later it was empowered to make recommendations (United Nations, Department of Public Information 1995). The capacity to make recommendations was introduced later in line with the same rationale that led the great powers to dismiss the idea of it being a neutral body. In this context even Bova (2011), who reported various criticisms regarding the

issue, underlined how the Cold War influenced this process and how nothing more could have been done. For this reason, already during the Commission's establishment, many scholars affirmed that the new body would have been a mere ineffective political body as there was no chance to overcome those political tensions (Bova 2011).

Through the years, among its functions the Commission came also to deal with individual complaints, in the system of communications. In this task, the Commission addressed written submissions through which individuals, States or NGOs reported possible violations of human rights. Obviously, the Commission was not a court, and therefore it dealt with these communications in a limited and non-judicial manner, and its role was only to examine and handle them in a political and confidential way. This function aimed at monitoring human rights violations and was also, in a certain sense, a way of exerting political pressure on States. However, it is on this role that the Commission started to not completely succeed in its functions and began to receive some criticism. In general, over time, the feeling that the Commission was not truly able to carry out this function was growing. Even on this matter, the United Nations Department of Public Information (1995) argues that its failure was also linked to the historical period: during the Cold War there was a general fear that human rights could have been used as a weapon between the two blocs. As the United States and the USSR continuously accused each other of violating human rights, the Commission was very cautious in this function because these complaints could have easily become a tool for States to politically attack the enemy rather than to protect human rights. A definitive decision was finally reached in 1947, when the Commission declared that it did not have the authority to intervene in individual communications. Although this phase was relatively brief, it played a crucial role in the Commission's history. While it succeeded in achieving other goals, this episode also illustrates how cautious it was in its conduct from the very beginning and how it failed to exercise effective control over States. This moment clearly represented a turning point for the Commission, exposing its weaknesses and marking the beginning of its decline (United Nations, Department of Public Information 1995). However, at the same time, within the Cold War context, the Commission's activity appears to have been the most realistic option available at the time. Some scholars interpret its cautiousness as stemming primarily from the fear that any action could have escalated tensions and led to a Third World War or even a nuclear conflict, a concern that was deeply felt throughout the period (Bova 2011).

After this first drawback the Commission was able to expand its responsibilities over the years, and it came up with a mechanism that would later be adopted also by its successor: the Special Procedures. This process was introduced with the Resolution 1235 which allowed the Commission to publicly address cases of gross violations or serious and systematic human rights violations, leading to the establishment of geographic mandates, namely the Country Special Rapporteurs. Through this

procedure, the Commission examined and monitored country situations, while also exerting a certain degree of political pressure on the State concerned. In cases of gross violations of human rights, the Commission had to decide whether to address a specific human rights situation, adopt an ad hoc country-specific resolution, or monitor the situation by establishing a new Special Procedure. Nonetheless, despite being an important step in the field of human rights, the Special Procedures also presented some limitations. In particular, in all cases the possible measures were only adopted with the consent of the State concerned and this aspect of the procedure was widely criticised. These significant criticisms ultimately contributed to the Commission overall decline. Indeed, during the Commission's final years, a tendency to replace the Country's Special Rapporteur with a monitoring system carried out by the Office of the High Commissioner emerged. This development further highlighted the Commission's limited effectiveness and its inadequacy in addressing gross human rights violations (Bova 2011).

In addition, the Commission had also other duties, such as organizing and promoting international conferences on human rights, protecting all kinds of minorities, preventing discrimination, and carrying out many other activities related to the field of human rights. In order to carry out all these activities, the Commission relied on the support of various non-governmental organisations, which also played a role in drafting the Universal Declaration, demonstrating that States were not the only actors involved in the system. The body used to convene once a year, and its sessions typically extended over long periods, around six weeks. Starting in 1990, it also gained the option to call special meetings, provided that a majority of all members agreed (United Nations, Department of Public Information 1995).

At the end, the growing criticisms gradually contributed to the Commission's decline, and it was completely replaced in 2006 by the Human Rights Council (Sweeney 2022).

> "Writing in 1969, John Humphrey, Director of the UN Human Rights Division from 1946 to 1965, conceded that there was "some truth in the proposition [that] the Commission has been little more than a drafting committee for the General Assembly"" (Murthy n.d)

2.3.2 The drafting of the Universal Declaration of Human Rights

The Commission's first major undertaking was the preparation of the Universal Declaration of Human Rights. This task was completed in a remarkably short period: the drafting began in January 1947 and was finished by June 1948. The purpose was to establish an official International Charter on human rights applicable to all States. For this reason, the draft proposals were developed not only by the Commission and other UN bodies, but also with the contribution of governments,

governmental and non-governmental organisations and other institutions. In addition to these actors, the Commission also established a small drafting committee composed of members selected based on geographical representation. This committee worked on a preliminary draft prepared within the United Nations Secretariat, which was later revised and developed through collective discussion. It is therefore evident that the drafting of the Universal Declaration was a collaborative process which involved the contribution of multiple actors. As a result, the final text represents a balance between different positions of different States, legal experts, and other actors, all aiming at finding a compromise between each other. In line with this principle, once the first draft was completed, it circulated among the Member States of the organisation, which were invited to provide comments and propose amendments. In May 1948 the draft was changed based on these comments. The comments were mainly about single words and some expressions, underlining the attention to details States were bringing in the project and, at the same time, also showing how difficult it was to find an agreement among States so different from each other (United Nations, Department of Public Information 1995). In this context, Corella (2018) affirms that the Declaration constituted a balance of political consensus among different positions that dominated the international community (Corella 2018).

At the end of this process the draft was also accepted from the Economic and Social Council and from the General Assembly. The Universal Declaration of Human Rights was adopted the 10th of December 1948 with 48 votes in favour, zero votes against and 8 abstentions (United Nations, Department of Public Information 1995). Besides the quasi unanimity, even the voting system underlined how delicate the issue was. Corella (2018) reports that, under the request of Poland, it was decided to vote separately on each paragraph of the draft. Therefore, the 48 votes were for all Declaration but before reaching that number all the paragraphs were voted singularly. As regards the abstentions, the reasons why some States opted for it were diverse. The eight abstainers were Saudi Arabia, Belarus, Czechoslovakia, Poland, Yugoslavia, Ukraine, Soviet Union and South African Union. For instance, the South African Union, refused to restrict the application of the principle of non-discrimination in order to preserve its apartheid system; Saudi Arabia was against the recognition of religious freedom and equality between men and women in marriage; the Soviet bloc had instead some opposite views regarding the principle of non-intervention, the reduced sovereignty of States and the principle of self-determination of peoples. However, Corella (2018), citing Villán Durán (2018), argues that we have moved beyond from seven of these abstentions after the end of the Cold War as this event facilitated the adhesion of the Socialist States to the Declaration's values and the same situation also happened later with the end of the apartheid in Southern Africa.

Corella (2018) then argues that, to this day, many scholars still argue that the Universal Declaration of Human Rights has not fully fulfilled all the expectations placed upon it at the time of its adoption, and that numerous shortcomings have been identified. Nevertheless, despite the criticisms, it is undeniable that, at the moment of its adoption, the Universal Declaration of Human Rights represented a landmark event in international law and that it had a significant global influence. Therefore, Corella (2018) describes it as one of the first attempts to articulate principles on human rights aiming at guiding society as a whole (Corella 2018).

In addition, the Declaration also shows its link with the Charter of the United Nations, firstly by referring to article 55 which promotes equal rights among people:

> "Article 2 sets forth the essential principle of equality and non-discrimination, recalling Article 55 of the Charter, which provides that the United Nations should encourage respect for human rights and freedoms "for all without distinction as to race, sex, language, or religion", and conferring on this principle an unlimited scope by prohibiting distinctions made on the basis of any other "status". (United Nations, Department of Public Information 1995)

For this reason, many consider the Charter of the United Nations the antecedent of the Declaration, although several other legal instruments adopted after the Charter also contributed to shaping the Declaration's ethical thinking (Corella 2018).

Regarding its structure, articles 1 and 2 present its general principles. In general, the Declaration establishes that human rights are based on the inherent dignity of every human being and each person has dignity just for being human and for existing. Therefore, this dignity does not depend on States, culture or status and from it we automatically have freedom and equality. These Declaration's principles are presented as inalienable and imprescriptible as they stay over the States' powers (United Nations, Department of Public Information 1995). Later on, article 3 introduces the fundamental rights on which the following provisions are built: *"*Everyone has the right to life, liberty and security of person." (United Nations General Assembly 1948). From this point onward, the Declaration develops a broader set of civil and political rights, including freedom from slavery and torture, equality before the law, the right to a fair trial, the right to privacy, freedom of movement, the right to asylum and nationality, rights related to marriage and family, the right to property, freedom of thought, religion and opinion, freedom of assembly, and political participation (United Nations, Department of Public Information 1995). Article 22 then introduces another category of rights related to the social and economic sphere:

> "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." (United Nations General Assembly 1948)

From this point, the Declaration also presents economic, social, and cultural rights, including the right to social security, work, rest and leisure, an adequate standard of living, education, participation in cultural life, and access to scientific progress. The inclusion of this other category of rights emphasises that protecting fundamental freedoms alone is not sufficient and individuals must also be guaranteed the conditions necessary to live with dignity (United Nations, Department of Public Information 1995). In conclusion, article 29 highlights how the exercise of rights also entails responsibilities toward the community and stresses this relationship between individual rights and duties toward the community: "Everyone has duties to the community in which alone the free and full development of his personality is possible" (United Nations General Assembly 1948). The Declaration has been groundbreaking in many ways, but it is important to notice that it is the first time that civil and economic, social, and cultural rights were placed on the same level and treated as equally important (United Nations, Department of Public Information 1995). Its structure was then described by Cassin (1951), cited by Corella (2018), as formed by four columns plus a façade, which together form the "portico" of the Declaration. Following this explanation, the first column is made up by personal rights and freedoms (Articles 3-11); the second consists of the rights of the individual in relation to the groups to which they belong (Articles 12–17); the third is composed of political rights (Articles 18–21); and the fourth includes economic, social, and cultural rights (Articles 22–27). Above these columns, there are Articles 28-30, which define the relationship between the individual and the society (Corella 2018).

Despite its well-established prestige, Corella (2018) also affirms that the Declaration still faces two recurring criticisms today. The first argues that the Declaration reflects a Western perspective. On this matter, in some cases, scholars have also gone even further by describing it as an imperialist outlook, born from the will of the victors of the war and presented as the only valid model of behaviour. This criticism stems from the fact that it was drafted without the participation of the majority of the world's peoples, and therefore, a Western or Western-liberal bias is undoubtedly present. According to this view, it prioritises civil and political rights over all others. However, over the years, in response to this criticism, it has often been argued that one should look at the true purpose of the Declaration, namely the promotion of human dignity, which transcends cultural boundaries. The other common criticism concerns the legal nature of the Declaration, as it is not a treaty and therefore cannot be considered a legally binding instrument. Within this critique, it is also accused of

being mere rhetoric, without having any real connection to the reality of human rights (Corella 2018). In particular, this last criticism is present within the Declaration since the beginning, when many referred to it as a simple programme of principles. The answers to this criticism have often argued that this weakness was overcome looking at the importance it has achieved through the years. Even if it is not legally binding the Declaration is continuously cited as a fundamental source in international debates, it is used as a base for international treaties and laws and it influences courts and constitutions all over the world. "A considerable number of international human rights instruments affirm the obligation to implement the Declaration" (United Nations, Department of Public Information 1995) and among these there are: the European Convention on Human Rights, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights. Therefore, for many in the international system, the Universal Declaration has become the base of the human rights' law (United Nations, Department of Public Information 1995)

> "(…) The universal declaration of human rights, which was explicitly intended as a common standard of achievement and not as a norm for immediate application has assumed a far more authoritative and normative character over the years than was foreseen in 1948." (Burgers and Danelius 1988)

2.3.3 Brief view on specialised approaches to human rights protection

After 1948, the majority of human rights instruments relied on the Declaration. During the following decades, the field of human rights protection became progressively more diversified and numerous conventions were adopted with the aim of covering an increasingly wide range of areas. In particular, the system began to focus on particularly vulnerable groups and recurring patterns of human rights violations. Some of these instruments had the status of recommendations but others also of binding treaties and, therefore, many conventions adopted after the Declaration also addressed the issue of its non-binding nature. Obviously, Conventions of this kind, containing legally binding obligations, require a more time-consuming effort as "In a declaration rights may be described globally, but a convention has to specify in further detail what these rights involve and what limitations on their exercise are allowed" (Burgers and Danelius 1988). This happened as, during these years, the idea that Conventions are a more effective method of protecting human rights spread, as they add concrete measures to achieve the objectives set. However, Burgers and Danelius (1988) underline a very important distinction on the matter: whereas declarations such as the Universal Declaration are addressed to all States (or even to the entire world), Conventions instead create obligations only for those States that ratify them, and they often only enter into force once a minimum number of States have ratified them. Therefore, it is a much more complex process to implement. However, beyond

the complexity of this procedure, the years following the drafting of the Declaration have seen the adoption of many Conventions that sought to build on the Declaration in order to give greater effectiveness to its principles (Burgers and Danelius 1988).

One example of a binding Convention of this type was the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which unfortunately falls under the category of recurring patterns of human rights violations. This Convention was adopted in 1949 with regard to slavery and similar practices (United Nations, Department of Public Information 1995). This attempt tried to reinforce the right established in article 4 of the Universal Declaration "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." (United Nations, 1948, art.4).

At the same time, this new broader human rights system began not only to be made up by legally binding Conventions but also by more specialised bodies with the duty to adopt and implement these kinds of documents. A significant example of this category is the Commission on the Status of Women, a body specifically dedicated to the issue of equality between men and women. Following the creation of this Commission, important international norms concerning women's rights were proposed by it and adopted by the General Assembly, as: the Convention on the Political Rights of Women (1952), the Convention on the Nationality of Married Women (1957) and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962). Moreover, in 1963, the General Assembly adopted the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and, consequently, the Convention on racial discrimination. In 1959 the Declaration on the Rights of the Child and so on (United Nations, Department of Public Information 1995).

Therefore, Corella (2018) affirms that this process of specialisation aimed to face specific issues and to respond to precise needs of particular social groups, following the principles set by the Universal Declaration. This path has then started with the simple adoption of documents that recognised specific rights, but as it was described, it became something more also creating binding treaties for the States, accompanied by monitoring and implementation mechanisms (Corella 2018). These are only a few first examples of how the Universal Declaration of human rights marked the beginning of a broader process that eventually developed into an international human rights system.

2.4 The International Covenants

In line with the development and the creation of specialised human rights Conventions, there was an increasing recognition that all the general principles set out in the Universal Declaration of Human Rights required translation into legally binding obligations for States. This need ultimately resulted in the adoption of the International Covenants (United Nations, Department of Public Information 1995). Indeed, until the approval of the International Covenants, the Universal Declaration was considered the only broad international document in the human rights area, and it did not create binding obligations (Corella 2018).

The International Covenants on Human Rights, one on the economic, social and cultural rights and the other on civil and political ones, entered into force in 1976. "The Covenants constitute the most extensive corpus of international treaty law on the subject, both in terms of the areas covered and in terms of their geographical scope" (United Nations, Department of Public Information 1995). In this context, it is important to emphasise that the Covenant on Economic, Social and Cultural Rights was the first international instrument to deal with these types of rights in such a comprehensive manner (Chukwuma and Adedokun 2021). Today 173 States are part of the International Covenant on the Economic, Social and Cultural Rights while 175 of the International Covenant on Civil and Political Rights (United Nations n.d).

The Commission on Human Rights played a significant role in this major accomplishment as it was the body that advocated for the need to have, alongside with the Declaration, a binding multilateral treaty. This issue opened a great debate on the possible harmonization of these different measures. At the end of the discussion:

> "It was concluded that the two strategies were complementary and that adoption of the Covenants would not in any way rule out the possibility of drawing up non-binding instruments that might perhaps deal with broader areas" (United Nations, Department of Public Information 1995)

As with the drafting of the Declaration, it was a team effort: the Commission did not make all the decisions on its own but considered the recommendations of various stakeholders. The General Assembly and the Economic and Social Council issued many recommendations, but States were also consulted multiple times. In addition, several organs and specialised agencies that did not yet exist when the Declaration was adopted were involved, such as the Office of the United Nations High Commissioner for Refugees, the International Labour Organization, the World Health Organization, and the United Nations Educational, Scientific and Cultural Organization. They presented their

opinions, focusing on the key provisions related to their areas of expertise (United Nations, Department of Public Information 1995).

The two Covenants are strictly connected: they have some similar provisions, and in the preambles they both stress the importance of human dignity and the value of the inalienable rights to freedom and equality (United Nations, Department of Public Information 1995). For instance, article 1 is identical in both: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (…)" (United Nations 1966, International Covenant on Civil and Political Rights; United Nations 1966, International Covenant on Economic, Social and Cultural Rights).

Therefore, they both affirm the right of self-determination that allows everybody to pursue their personal will in the economic, social and cultural field. Following, article 3 is also almost identical, changing only in the category of rights they refer to: civil and political rights in the first case, and economic, social and cultural rights in the second. In particular, Article 3 restates the principle of non-discrimination on the grounds of sex: "The States Parties to the present Covenant undertake to ensure the equal right of men and women (…)" (United Nations 1966, International Covenant on Civil and Political Rights; United Nations 1966, International Covenant on Economic, Social and Cultural Rights). This provision rejects then any partial or discriminatory implementation of the Covenant that would privilege or disadvantage any specific gender (Chukwuma and Adedokun 2021).

Another important pillar that both Covenants have is article 5, which even in this case, is almost identical in substance. The differences are purely stylistic and terminological, with no change in legal meaning (United Nations, Department of Public Information 1995):

> "1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
>
> 2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent." (United Nations 1966, International Covenant on Civil and Political Rights)

This article contains the safeguard provisions intended to ensure that the rights recognised in other articles are neither undermined nor restricted and it also aims to protect rights that exist independently of the Covenant. In particular, paragraph 1 derives from article 30 of the Universal Declaration, thus

emphasizing the connection between the documents. It was designed to prevent misinterpretations that could be used to justify infringements of any kind of rights. Paragraph 2, instead, addresses possible conflicts between the Covenants and the laws or customs of contracting States. This suggests that the identical or closely similar provisions are mainly those concerning general principles as: self-determination, non-discrimination, gender equality, and safeguard clauses. (United Nations, Department of Public Information 1995).

After this first general section, each Covenant starts to differ in their substantive provisions as the ICCPR focuses on civil and political rights, while the ICESCR addresses economic, social and cultural ones. The International Covenant on Economic, Social and Cultural Rights contains 15 substantive provisions establishing a wide range of economic, social and cultural rights, including: the right to work (Article 6); to just and favourable conditions of work (Article 7); to form trade unions and to strike (Article 8); to social security, including social insurance (Article 9); to the protection and assistance of families, especially in relation to parenthood (Article 10); to an adequate standard of living, including adequate food, clothing and housing (Article 11); to the highest attainable standard of physical and mental health (Article 12); to education aimed at strengthening human personality and respect for human rights and fundamental freedoms (Article 13); to free primary education (Article 14); and to participate in cultural life and benefit from scientific progress (Article 15) (United Nations 1966, International Covenant on Economic, Social and Cultural Rights). The Covenant does not explicitly distinguish which are the economic rights and which the social or cultural ones. Following a classification proposed by Chowdhury and Bhuiyan, cited by Chukwuma e Adedokun (2021), the rights related to employment and social security can be considered economic rights. Among these, the Covenant recognises the right to work, while affirming that no individual should be forced to engage in any particular form of employment. It also stresses that workers should be protected through various measures, including training programmes, employment policies, and other appropriate strategies aimed at ensuring access to decent work. In this area, one of the most significant provisions is article 7, which states that everyone has the right to just and favourable conditions of work. This includes fair remuneration, safe and healthy working conditions, equal opportunities for promotion, adequate rest and leisure, and reasonable limitations on working hours. The right to social security instead, which also falls within the category of economic rights, refers to public systems of social protection designed to prevent poverty and support individuals facing difficult circumstances such as unemployment, illness or disability. The second category, namely social rights, includes those rights that aim to guarantee an adequate standard of living and to protect families. Examples include the right to adequate food, clothing, housing, and other conditions necessary for a dignified life. Finally, cultural rights include the right to education. In this area, article

13 of the Covenant establishes that States parties must make primary education free and accessible to all and ensure broader access to secondary and higher education. However, Chukwuma and Adedokun (2021), also point out how these categories overlap very often and, therefore, it is difficult sometimes to follow this strict division. Education for instance, in a certain sense, can be considered simultaneously as part of all three categories: it contributes to individuals' economic development, promotes social inclusion, and is a fundamental element of cultural participation (Chukwuma and Adedokun 2021).

On the contrary, the International Covenant on Civil and Political Rights contains 27 substantive provisions establishing a broad range of civil and political rights, including: the right to life (Article 6); freedom from torture and cruel, inhuman or degrading treatment or punishment (Article 7); freedom from slavery and servitude (Article 8); protection against arbitrary arrest and detention (Article 9); the right of persons deprived of liberty to be treated with humanity and dignity (Article 10); and protection against imprisonment merely on the ground of inability to fulfil a contractual obligation (Article 11). It further provides for: freedom of movement (Article 12); protection against the arbitrary expulsion of lawfully present aliens (Article 13); equality before courts and tribunals and the right to a fair trial (Article 14); protection against retroactive criminal laws (Article 15); the right to recognition everywhere as a person before the law (Article 16); and protection against unlawful interference with privacy, family, home or correspondence (Article 17). The Covenant also recognises: freedom of thought, conscience and religion (Article 18); freedom of expression (Article 19); prohibition of war propaganda and advocacy of hatred (Article 20); the right of peaceful assembly (Article 21); freedom of association (Article 22); the right of men and women of marriageable age to marry and found a family (Article 23); the rights of the child to protection (Article 24); the right to take part in public affairs (Article 25); equality before the law and equal protection of the law (Article 26); and the rights of ethnic, religious and linguistic minorities to enjoy and preserve their culture, religion and language (Article 27) (United Nations 1966, International Covenant on Civil and Political Rights).

2.4.1 The rationale behind and the drafting of the two Covenants

The question on the reason behind the decision of drafting two Covenants instead of one raise spontaneously (Chukwuma and Adedokun 2021). The General Assembly decided to opt for two Covenants one containing civil and political rights and the other the economic, social and cultural ones with a Resolution issued in 1952, called 543 (VI) (United Nations General Assembly 1952). However, despite being two separate documents, it was important for the Assembly to show the link

between them, and, for this reason, they were approved and opened for signature simultaneously. For the same reason, as it has been previously underlined, they have many similar provisions.
While some delegates supported the decision of drafting two separate Covenants, others opposed to it. There was only one thing on which all the actors involved agreed: the economic, social and cultural rights and the civil and political ones are interconnected and interdependent, meaning that if an individual is deprived of one of them is not free as the Universal Declaration proclaims. Therefore, they all agreed on the goal they wanted to reach but not on how to reach it. Both parties had a clear idea in mind. Those who favoured a single Covenant claimed that there was no clear distinction between the different types of rights and that separating them risked giving more importance to one over the other. The other party maintained the opposite. According to this other side there was a significant difference between the two sets of rights. The United Nations Department of Public Information (1995) reports that the civil and political rights can be guaranteed by tribunals and courts and they are immediately applicable, while the economic, social and cultural ones require an action by States in order to be guaranteed and consequently, they are established more gradually. Following this vision, these sets are very different in nature, and they require two different instruments (United Nations, Department of Public Information 1995). The side that wanted two different Covenants prevailed over the other. However, the discussion continued even after. Alston and Quinn (1987) reported that numerous scholars continued to affirm that the economic, social and cultural rights expressed in the Covenant could not be considered real rights in the juridical sense. In addition, from 1981, years after the adoption of the Covenants, the United States affirmed that those rights not only were of a qualitatively different nature from civil and political rights, but that they could not even be considered as rights but more as social policy goals. Nonetheless, even if the discussion did not end with the drafting of the Covenants the scholars have broadly reached a conclusion that remains valid to this day. Following this theory, the civil and political rights are considered negative rights. Meaning that they oblige governments to abstain from actions that would violate them, but they do not require direct actions. On the other hand, the economic ones are positive rights as they require active intervention by governments and sometimes even funds in order to have some effects (Alston and Quinn 1987). Based on this difference, Article 2 of the ICESCR was drafted and paragraph one states:

> 1.Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. (United Nations 1966)

This means that each Member State, by signing the Covenant, commits to taking all necessary actions to progressively realise the rights it contains. In particular, during the drafting many States pushed for the use of the expression "to take steps" rather than "to guarantee," as the latter was considered as a too big commitment for the context. However, as Alston and Quinn (1987) affirm, despite the differences between the two types of rights, this article also demonstrates that there is a genuine legal obligation and this challenges the United States' position previously put forward. Yet, following certain criticisms about this article, Alston and Quinn (1987) also report the difficulties behind its implementation. For instance, even if States are obliged to adopt legislation for the implementation of the article, at the end the ECOSOC concluded that this is not mandatory and that each State can determine if that's necessary or not. This contradiction was subject to much criticism in the early years of the Covenants, to the extent that some looked at them only as two unrealistic documents, impossible to be implemented (Alston and Quinn 1987).

Another debate that arose during the drafting of the Covenants was on which approach the Covenants should have followed, particularly whether they should contain detailed provisions or remain more general. Even on this issue there were two sides: some favoured a more detailed approach, seeking to define in detail the scope and content of each right, while others preferred to set out more general norms in order to give States greater freedom in their implementation. In particular, those who favoured the more specific approach did not want the Covenants to be identical to the Universal Declaration, which already contained general principles of human rights and fundamental freedoms. These two opposite positions became evident especially in moments like these:

> "During the discussion on the right to liberty and security of person, some 30 restrictions were suggested. It was considered preferable to provide that "no one shall be subjected to arbitrary arrest or detention" – the word "arbitrary" being used to mean both "unlawful" and "unjust"- rather than to include in the Covenant a catalogue of 30 limitations" (United Nations, Department of Public Information 1995)

A similar situation arose with other rights, and ultimately, it was agreed that, in such cases, it would be preferable to include a single limitation clause rather than adopt all the various restrictions proposed by different parties. However, at the end, each position had influence on the final drafting as some articles are very general while others are quite detailed. What was needed was only a compromise between the two parties: "The Covenants should be neither a recasting of the Universal Declaration of Human Rights nor a compendium of all civil and penal codes and all social or education legislation" (United Nations, Department of Public Information 1995).

2.4.2 The question of derogation of human rights

It is important to cite another issue invoked during the discussion on the Covenants: the question of derogation. Derogation leads to the creation of derogation clauses, provisions that establish:

> "a public emergency of significant magnitude may temporarily exonerate States from the duty to fully respect their human rights commitments, either through the operation of specific clauses that are included in the relevant treaties (so-called "derogation clauses"), or where no such provision is present—by invoking certain justifications recognized in international law as valid excuses for the non-performance of legal obligations" (Sommario 2012)

States can limit or suspend certain rights in case of a public significant emergency, when there is a threat to the life of the nation. The possibility of derogation was clearly established only in the International Covenant on Civil and Political Rights, under article 4. The provision allows then the suspension of certain rights in times of emergency but, at the same time, it also imposes some limits in order to avoid any kind of abuse from States.

> "1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
> 2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
> 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation." (United Nations 1966)

The article stipulates that derogation is permitted only when a serious threat exists and has been officially declared. In that case, the measures adopted must be strictly necessary to address the situation, must not conflict with other obligations under international law, and must not be discriminatory in nature. In addition, it was also decided that the clause won't apply to certain rights

namely: the right to life, the prohibition of torture and slavery, the principle of legality in criminal law, the recognition of everyone as a person before the law, and freedom of thought, conscience and religion. In conclusion, a State party availing itself of the right of derogation must immediately inform the other States Parties, through the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons for doing so (United Nations, Department of Public Information 1995).

2.4.3 The Covenant's Committees

Another important decision that was taken considering the Covenants was about international monitoring. On this issue, all parties agreed. Once the two Covenants were separated, it was decided that each one would have its own monitoring system (United Nations, Department of Public Information 1995). First, following article 28 of the International Covenant on Civil and Political Rights, the Human Rights Committee for Monitoring the Implementation of Civil and Political Rights was created: *"*There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee)" (United Nations 1966).

The primary role of this Committee was to review periodic reports submitted by States, which outlined the measures they have taken to uphold civil and politic rights. After reviewing these reports, the Committee did not issue legally binding decisions but only made general and objective observations. In 1966, the General Assembly also introduced the possibility for individuals to present individual complaints or communications before the Committee, but even here the Committee's conclusions remained non-binding, taking the form of recommendations. The establishment of an international human rights court with the authority to issue legally binding decisions was repeatedly proposed during the various discussions, but it was never adopted (United Nations, Department of Public Information 1995). The Human Rights Committee still exists today and still is the body that monitors implementation of the International Covenant on Civil and Political Rights by its States parties (United Nations Human Rights Office of the High Commissioner (OHCHR) n.d).

Initially, with regard to the International Covenant on Economic, Social and Cultural Rights, no Committee was established. It was decided that States had to formulate periodic reports and that these would have been examined directly by the Economic and Social Council. The chosen approach was different in relation to what discussed until now: they are different kind of rights and therefore, it was thought that they required different measures. Building on this idea, at the beginning, it was believed that this Covenant did not need any kind of fact-finding procedure. However, this opinion changed rapidly partly due to some organisations operating in the same field. One example was the ILO

(International Labour Organization) which, at the time, already used a fact-finding system (United Nations, Department of Public Information 1995).

In May 1986 the United Nations created Committee on Economic, Social and Cultural rights. Precisely, its main task was to assist the ECOSOC in the implementation and respect of the obligations steaming from the ICESCR. As for the other Committee, it received States' reports. However, in this context, the reporting system was criticised a lot since the beginning, because it was considered not sufficient for its role. It was widely thought that this new Committee should not have been a simple copy of the other, as the approach for these rights should have been different (Alston, The Challenges Confronting the New U. N. Committee on Economic, Social and Cultural Rights 1987). Therefore, Langford (2016) reports that the system was renewed in 2008, when the General Assembly adopted the Optional Protocol. This new mechanism allowed individuals or groups to submit complaints to the Committee if they believed that a State Party failed to comply with its obligations under the Covenant. In 2009, this Protocol opened for signature and ratification. This step is considered a great achievement as it was the result of years of campaigning and advocacy by organisations and other stakeholders who wanted the economic, social and cultural rights to be recognised as equal in status to civil and political ones (Langford, et al. 2016).

2.4.4 The general comments and the Committees' actions

As previously reported, the International Covenants are two instruments resulting from a compromise and, consequently, they contain many general provisions. Over time, this characteristic has led to some difficulties for States to fulfil their obligations. To solve this issue the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, introduced in 1980 the practice of preparing general comments. These General Comments have the goal to summarize the Committee's experience gained through the examination of all reports they received from States, and they are addressed to all States parties. In their early General Comments, both Committees explained what they expected from States' reports, especially their purpose and structure. This implementation was particularly important for the Covenant on Economic, Social and Cultural rights whose language seemed to describe aspirations rather than specific rules to follow. Adding these innovations to their formal functions, the Committees further established their roles as models for other United Nations organs created under more specialised instruments (United Nations, Department of Public Information 1995).

> "The methods they have worked out to identify both the standards for the rights themselves and the obligations of States parties not only to report to the treaty bodies on compliance with their obligations under the Covenants, but also to respect these rights effectively in their own territory, have served as models for similar methods that are used by other United Nations human rights treaty-monitoring bodies" (United Nations, Department of Public Information 1995)

Furthermore, the Committees progressively developed more dynamic methods of monitoring States' implementation of the Covenants. Indeed, the Committees did not limit themselves to examining State reports, they also began to engage directly with government representatives by posing questions and requesting further clarification where necessary. The combination of all these elements contributed to the strengthening of the entire monitoring system (United Nations, Department of Public Information 1995).

2.5 The expansion of the international human rights framework: conferences, conventions and committees

In the late 60s starts the period of the International Conferences on human rights. In 1968, in Tehran, the first International Conference on human rights was organised. It was initially convened to mark the 25th anniversary of the Universal Declaration of Human Rights, but it ultimately became something far more significant. Later, in 1993, an even larger event took place in Vienna, bringing together 171 States and approximately 800 non-governmental organisations. Corella (2018) underlines how, even if the international conferences weren't a new phenomenon per se in the field of human rights, these two events represented a fundamental step in the diplomacy among major powers. Certainly, the Tehran and the Vienna Conference have not been the only ones, but it can be argued that they are considered fundamental in respect to others (Corella 2018).

During these years, many thematic conferences were organised, showing how the international cooperation was expanding. Boyle (1995) reports that, before the Vienna Conference there have been: the Rio's Conference (1992) on Environment and Development, the United Nations Conference on Population and Development held in Cairo (1993), A World Summit for Social Development was scheduled to take place in March in Copenhagen (1995), the Fourth World Conference on Women in Beijing (1995), and many more (Boyle 1995).

In the following paragraphs the two main Conferences will be further analysed as the Tehran Proclamation, the final act resulted from the Tehran Conference, and the Vienna Declaration, the one

from the Vienna's Convention, have been essential in the process of recognition and implementation of human rights (Corella 2018).
In addition, following these conferences and during this period, the system further expanded through the drafting of new conventions and the creation of new bodies responsible for their implementation. More broadly, this period marked a further specialisation of the international human rights field. International Conferences were increasingly organised not only to address human rights in general, but also to focus on specific rights or particular areas of concern. A similar process can be observed in the development of the conventions, which increasingly addressed specific human rights issues in greater detail. Therefore, this process marked a gradual shift from a broad and general institutional framework towards an increasingly diversified and specialised system, characterised by a growing number of instruments and bodies addressing specific areas of human rights protection (United Nations, Department of Public Information 1995).

2.5.1 The Tehran International Conference on Human Rights

Richardson-Little (2019) explains that 1968 was proclaimed by the United Nations as the International Year of Human Rights and it was celebrated all around the world with discourses by heads of States, public protests and commemorative stamps. However, during that period, the international environment was tense, still marked by the Cold War and, therefore, this year was not lived in the same way by Western Europe and Eastern Europe. It is in this tense climate that the Teheran Conference was organised (Richardson-Little 2019). Differently from the Vienna World Conference, which will be better analysed later, this Conference had the "simple" aim to raise human rights awareness among different States. However, many argue that it managed to become something more, representing a significant step forward in the process of human rights implementation and providing the opportunities to set new international goals (Boyle 1995).
The Conference lasted from April 22nd to May 13^{th,} and, in terms of participation, it was a success, counting many different delegations from 84 States. It was an occasion to reaffirm all the principles established by the Declaration and to step up both national and international efforts in the field. At the end of the Conference, 29 resolutions were adopted, and, in addition, 18 more resolutions were transmitted to the competent bodies of the United Nations system for examination (United Nations, Department of Public Information 1995). At the same time, other authors as Burke (2008) also report some limitations. Many argue that compared to Vienna World Conference, this first one resulted more marginalized. The supporters of this theory are convinced that the entire Conference was too

influenced by the period's dynamics and that even simple decisions were object of division and, therefore, the results were general and obvious (Burke 2008). Despite this, some issues have been discussed: it has been an occasion to evaluate the progresses made in the field and to highlight the weakness of the system. In particular, it focused on the issues of racial discrimination, apartheid and the protection of the family and of the child, which represented some of the major concerns of the period. At the end of the Conference, the Proclamation of Tehran was adopted containing all the information discussed (United Nations, Department of Public Information 1995).

2.5.2 The new conventions

After the Tehran Conference, it can be seen the continuation of the process that had already started years earlier with the adoption of the Universal Declaration of Human Rights. This phase, around the early 1970s, was marked by the development of several conventions and legally binding instruments designed to reinforce the principles set out in earlier declarations, including the Universal Declaration. A peculiarity of this phenomenon was that each new convention dealt with one specific type of right and it articulated in more detail all the preventive measures and sanctions linked to that right. One example of these conventions was the Convention on the Elimination of All Forms of Discrimination Against Women, which entered into force in 1981 (United Nations, Department of Public Information 1995). During the previous years, the question of equality became a major concern, and this new Convention brought together all the key principles previously established. Some scholars of the time described it as an international bill of rights for women.

> "Among other things, the Convention recognizes the full equality of women and men under the law and proscribes discrimination against women in education, employment, political participation, healthcare, and economic life" (Cole 2016)

In addition, the convention also led to the creation of the Committee on the Elimination of Discrimination against Women, which was responsible for overseeing progresses in women's protection in that area (United Nations, Department of Public Information 1995).
Another issue addressed by a new convention was the matter of torture, which has been a very common practice throughout history. As Burgers and Danelius (1988) report "Torture has been practised in many parts of the world in many periods of history, in particular as a method to obtain evidence for judicial proceedings" (Burgers and Danelius 1988). Therefore, also the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force

in 1987 (for the first 20 States that ratified it) (United Nations, Department of Public Information 1995), aiming at reaffirming the principle of the Universal Declaration set in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." (United Nations General Assembly 1948). Even in this case a Committee was established alongside: the Committee against Torture. Another example, the Convention on the Rights of the Child was adopted in 1989 and entered into force in 1990, which also established the Committee on the Rights of the Child, composed of 10 independent experts. However, it needs to be underlined that not all the instruments drafted during this period established a monitoring mechanism as for instance the Convention on the Non-Applicability of Statutory Limitations and to War Crimes against Humanity (1968), the Convention concerning Protection and Facilities to Be Afforded Workers' Representatives (1971) and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) did not (United Nations, Department of Public Information 1995).

With respect to the monitoring system, Bova (2011) reports that, during these years, the General Assembly and the Economic and Social Council established some specific procedures for the investigation of allegations of human rights violations in certain situations. Two examples were the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories (1970) and the Committee on the Exercise of the Inalienable Rights of the Palestinian People (1975). In addition, regarding all these juridical international instruments, it also needs to be underlined the important role that the Commission of Human Rights had in developing them. Therefore, despite all criticisms, it is right to say that the Commission, with the help of its Sub-Commission on the Promotion and Protection of Human Rights, created the corpus iuris of the international law on human rights (Bova 2011).

2.5.3 The Treaty Body system

Following the previous paragraphs, it can be argued that experience of the Covenant's Committees contributed to the progressive expansion of the human rights system and provided a model for the establishment of other Committees (or Treaty Bodies). Gradually, over time, this process led to the establishment of a system that today encompasses ten independent bodies, which together form the UN treaty body system (Cleveland 2024). Cleveland (2024) counts ten Committees as she also counts a Subcommittee create by the Optional Protocol to the Convention against Torture (Cleveland 2024). The Office of the United Nations High Commissioner for Human Rights (2010) instead reports that, nowadays, the nine human rights treaty bodies are: the Committee on the Elimination of Racial

Discrimination (CERD); the Committee on Economic, Social and Cultural Rights (CESCR); the Human Rights Committee (HRC); the Committee on the Elimination of Discrimination against Women (CEDAW); the Committee against Torture (CAT); the Committee on the Rights of the Child (CRC), the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and the Committee on the Rights of Persons with Disabilities (CRPD) (Office of the United Nations High Commissioner for Human Rights 2010).

What it is important to underline is that all these Committees of independent experts have created, through the years, mechanisms to monitor the implementation of the treaty provisions by States parties, following then the concept implemented for the International Covenants. Therefore, nowadays:

> "CERD monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Human Rights Committee monitors implementation of the International Covenant on Civil and Political Rights (ICCPR); CEDAW monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women; CAT monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; CRC monitors implementation of the Convention on the Rights of the Child and the Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography; CMW monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW); CRPD monitors the implementation of the Convention on the Rights of Persons with Disabilities; and SPT monitors implementation of OPCAT (Office of the United Nations High Commissioner for Human Rights 2010)

The evolution and the mechanisms behind the Committee's follow-up procedures will be examined more in detail in the third Chapter.

2.5.4 The Vienna World Conference on Human Rights

Following the Tehran Conference, the United Nations decided to hold another Conference on human rights 25 years later, in 1993. The Vienna World Conference on Human Rights was held in Vienna from the 14th to the 25th (United Nations, Department of Public Information 1995). Boyle (1995) reports a great difference between the Vienna Conference and the previous one: while the Tehran Convention was mainly organised to celebrate the anniversary of the Universal Declaration and only after it has resulted in something more, the Vienna Conference was organised from the beginning

with a peculiar scope. Behind the organisation, there was the idea to have an International Conference totally based on human rights held with only the goal to tackle its contemporary issues. The idea was already established in 1989, while the Cold War was ending. As it has been already underlined in the first chapter, in this period a generally optimism surrounded the United Nations with the conviction that the obstacle that limited it for many years was ending. The objective was then to do a significant revision of all the system (Boyle 1995). Since this ambitious goal was set for this Conference, three preparatory meetings in Tunis, San José and in Bangkok were held in advance to collect the different points of view and proposals that had to be taken into account during the Conference. In order to coordinate these preparatory meetings a Preparatory Committee was also established, with the responsibility to coordinate all the activities and to reconcile all the opposites views (United Nations, Department of Public Information 1995). The preparatory process also involved contributions from all major UN agencies, including the World Health Organization, UNESCO, the United Nations High Commissioner for Refugees, and the International Labour Organization. From the outset, it was evident that bringing together the ideas of so many different countries and institutions was not easy. For this reason, Boyle (1995) says that the Vienna World Conference, despite all the positive accomplishment that will be described later, also reflected the profound uncertainties, confusions, and regional tensions that the Cold War had left in international relations. However, the author also underlines another point of view, saying that the conference gave States a great opportunity: after decades of the ideological East-West conflict over human rights, there finally was a chance to find a peaceful engagement (Boyle 1995).

One important accomplishment reached was that the Vienna Conference placed lot of emphasis on the fact that economic, social and cultural rights must be given the same weight as civil and political ones (United Nations, Department of Public Information 1995). It gave then a great contribution to the implementation of the ICESCR and to the acceptance that the economic, social and civil rights are fundamental in order to guarantee political stability and the respect of civil and political ones (Boyle 1995). Therefore, here Member States agreed on the principle of universality, inter-relatedness and indivisibility of human rights, overcoming the concept of hierarchy among rights (Bova 2011). Many other sectors related to human rights were also discussed and, at the end, a Programme of Action was reached (United Nations, Department of Public Information 1995). It is important to underline that a wide range of parties contributed to drafting the action programme, including Member States, intergovernmental organisations, and both international and national non-governmental organisations. According to Steiner and Alston, as cited by Çakmak (2004), almost over 1500 non-governmental organisations were represented at the Conference (Çakmak 2004). In particular, non-governmental organisations have played a crucial role due to their close engagement

with local populations, which allows them to better understand social realities and human needs. Precisely for this reason, a big number of recommendations made even outside the Conference by non-governmental organisations were incorporated into the Vienna Declaration Programme and in the Programme of Action. Therefore, on one hand the Convention has been extremely positive: it reaffirmed the universality of human rights and the collective responsibility of the international community in promoting them and it highlighted the essential role of States in ensuring their practical realization. With regards to States' responsibility, particular attention was given to the problem of inequality: on this matter, great emphasis was placed on the responsibility of economically advantaged States to support less developed ones with the aim of preventing the further exploitation of vulnerable communities (United Nations, Department of Public Information 1995). A great advancement was also taken on the recognition of women's rights, which was considered another major contribution of NGOs during the Conference (Çakmak 2004). Some of the main problems highlighted on this topic were: the persistent underrepresentation of women in decision-making positions at both national and international levels, the insufficiency of healthcare and family planning services, and the continued violation of women's rights. In this context, the States were encouraged to ratify the Convention on the Elimination of All Forms of Discrimination against Women, previously nominated. (United Nations, Department of Public Information 1995). Similarly to this issue, many other topics were approached in the same manner, bringing attention to existing problems while attempting to develop the widest possible range of solutions. Ramcharan (2021) affirms that:

> "It is fair to say, however that the Vienna Conference marked a turning point for human rights. It was a genuine break-through after the end of the Cold War, which was epitomized in the Conference's recommendation for the establishment of the Office of High Commissioner for Human Rights" (Ramcharan 2021)

However, despite these achievements some criticisms were also underlined. One of these was linked with the language used in the Action Programme. Many scholars were not satisfied with the Vienna Declaration as they described its language as too abstract, and difficult to be implemented. On the other hand, some others such as Boyle (1995), underline how only a similar language could have been used as for the Declaration various things were prohibited (for instance the nomination of specific situations or countries). Therefore, this view maintains that the use of an indirect and abstract language was inevitable. Boyle (1995) then reaffirms that the Vienna Declaration represented: "an admittedly uneasy global consensus on core human rights principles for the 1990s and at the least, an outline of priorities for action to implement that consensus" (Boyle 1995).

In general, Vienna Conference was a turning point from a more traditional system and relatively rigid framework towards a more operational and effective one (United Nations, Department of Public Information 1995), gradually culminating in the XXI century with a substantial transformation (Bova 2011).

2.5.5 The creation of the United Nations High Commissioner for Human Rights

During the Vienna World Conference, the General Assembly was asked to consider creating a United Nations High Commissioner for Human Rights, serving as a central institution within the UN human rights system and supporting the coordination of its human rights activities (United Nations, Department of Public Information 1995). The role was therefore conceived with the aim of supporting and stimulating the efforts of the international community as a whole in the promotion and protection of human rights (Ramcharan 2021).

In the autumn of 1993, the General Assembly reached the consensus on the draft of the Resolution 48/141, which provided for the actual creation of the United Nations High Commissioner for Human Rights (United Nations, Department of Public Information 1995). Following this resolution, the role of the United Nations High Commissioner for Human Rights was established (United Nations General Assembly 1993). The High Commissioner was entrusted with principal responsibility for the UN's human rights activities, operating under the authority of the Secretary-General and within the broader mandate of the General Assembly and ECOSOC.

> "The High Commissioner must perform his duties in an impartial, objective, non-selective and effective manner and must be guided by the recognition that all human rights – civil, cultural, economic, political and social- are universal, indivisible, interdependent and interrelated." (United Nations, Department of Public Information 1995)

The Commissioner must have the confidence of the General Assembly and, following this procedure, in April 1994, the first United Nations High Commissioner José Ayala Lasso, took the office. As José Ayala Lasso himself recalled, as cited in Ramcharan's (2021) work, when the first High Commissioner took office, the system was still in its early stages and not yet fully structured. Nevertheless, over time, international institutions and bodies increasingly recognised the importance of the position, and its institutional framework gradually became more stable:

> "(…) a day after I took office on 6 April 1994 and within the first 100 days, without an adequate secretariat structure or appropriate budgetary provisions, the key pillars of this new institution were actually established" (Ramcharan 2021)

This position was created in response to a need, specifically to address the new challenges identified in the Vienna Declaration and Programme of Action and its main functions cover a wide range of areas. It is responsible for: the reinforcement of human rights worldwide and the promotion of international cooperation in the field; for providing advisory services and technical assistance, including support to countries undergoing transitions to democracy; for coordinating activities within the United Nations system; for protecting particularly vulnerable groups and for promoting education and public information programmes in the field of human rights (United Nations, Department of Public Information 1995).

2.6 The beginning of the XXI century and the crisis of the Commission on Human Rights

Bova (2011) affirms that, reporting the opinion of various scholars, the threats and challenges faced over time by the international community have contributed, in an irreversible way, to a complete change within the UN system for human rights. Following this view, the evolution of the United Nations system was shaped by shifting geopolitical power distribution, which have directly impacted its capacity and functioning in the field of human rights; moving from Cold War bipolarity, through the post-Cold War unipolar moment dominated by the United States, to the current context in which the sustainability of multilateralism is increasingly questioned. In particular, during the XXI century, the events of the 11 September 2001 marked an irreversible change in the perception of the new "threats and challenges" and together with the war against terrorism, the 2008 global financial crisis, the various pandemics as the HIV-AIDS, tuberculosis and malaria, and the big phenomenon of hunger refugees, have determined several change in the field of human rights (Bova 2011).

The XXI-century opened with the Millennium Summit in which the Member States of the United Nations showed their commitment in reaching the UN Millennium Development Goals, which included various issues on human rights (United Nations General Assembly 2000).

In addition, following the 9/11 event, the Report High Level Panel on "Threats, Challenges and Change" was drafted. The latter contained motions to change and develop some key-areas of the United Nations, including the human rights field, in order to respond to those emerging challenges.

(Secretary-General's High-level Panel on Threats, Challenges and Change 2004). In particular the Panel was in charge of examining the new threats to global security, promoting international peace, identifying the collective actions that could have faced these threats and presenting the recommendations for a real change. From these results, human rights debates began to focus more on the link between terrorism, poverty and migration, as well as on defamation and religion, freedom of expression and racism, underlying the new challenges of the period (Bova 2011).

In this context of development, following the various criticisms, the 15th of March 2006 the Commission on Human Rights was replaced by the Human Rights Council (Sweeney 2022). Particularly, the decision to create a new Council for human rights was proposed in the Panel. The rapid change between the Commission and the Council came from a need to update the field of human rights: the Commission had already attracted considerable criticism over the years, and, during this chaotic period, it proved unable to effectively meet the new challenges. Therefore, it was accused of partiality, lack of effectiveness, excessive polarisation between the Western group and the rest of the world, the application of double standards, divisive approaches to human rights issues and the unequal treatment of human rights. About the Human Rights Council Bova (2011) writes: "Its creation was perceived as the only way out, or alternatively, as a landmark development in the law and practice of international organizations". However, as it will be shown in the following paragraphs, the Council faced significant difficulties in trying to improve the system (Bova 2011).

2.6.1 The establishment of the Human Rights Council

With the newborn Human Rights Council, an entire new human rights architecture emerged, composed of both old and new components, including : treaty monitoring bodies, the Universal Periodic review, the Special Procedures of the Human Rights Council, the Human Rights Council Advisory Committee (a subsidiary body of the Human Rights Council), the Office of the United Nations High Commissioner for Human Rights, non-governmental organisations, independent national human rights institutions, and the United Nations General Assembly Third Committee (Bova 2011).

The Human Rights Council was established with the Resolution 60/251, which stated that it should have been guided by the principles of universality, impartiality, objectivity and non-selectivity (United Nations General Assembly 2006; Sweeney 2022). Its establishment was organised in a very short time, from September 2005 until March 2006. During these months various issues came up and even when the final text was ready it received various resistances. The final Resolution was then adopted with 170 positive votes, 4 against (Israel, Marhsall Islands, Palau and United States) and 3

abstentions (Belarus, Iraq and Venezuela). The United States, which were among the founders of the previous Commission, maintained that the Council did not match their expectations and that, for this reason, they would not even have stood as candidates in the first Council elections. However, at the same time, they also proclaimed their commitment to its work (Bova 2011). An important difference that the new Council presents in respect to the previous Commission is that, while the Commission was established as a subsidiary of both the General Assembly and the ECOSOC (Sweeney 2022), Member States decided that the Council should have had a higher position. Therefore, the Assembly established it as its subsidiary body (Bova 2011). This happened as its subsidiary position was considered by many as one of the reasons for its ineffectiveness (Sweeney 2022). Therefore, this was seen as a positive step forward as, in this way, the Council should have responded of its actions to all Member States, not only to those that were part of the ECOSOC (Bova 2011).
In the Preamble of the Resolution are reported all the juridical international instruments the Council is based on: articles 1 and 2 of the Charter of the United Nations, the Universal Declaration for Human Rights and the Programme of Action and the Declaration of the Vienna Convention (United Nations General Assembly 2006). Later on in the Resolution, the Assembly also decided to list, in paragraphs 2, 3 and 4 the three main functions inherited from the Commission. Paragraph 2 states that:

> "The Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;" (United Nations General Assembly 2006)

underlying the absence of hierarchies among rights. Paragraph 3 instead reports:

> "The Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system;" (United Nations General Assembly 2006).

giving the Council the possibility to perform its main task. While, paragraph 4, presents the base principles already discussed before:

> "The work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic,

social and cultural rights, including the right to development;" (United Nations General Assembly 2006).

Afterwards, paragraph 5 of the Resolution presents the actions the Council should take in order to perform these functions. These actions briefly are: promoting human rights education and respect for all, being a centre of discussion on all issues on human rights, making recommendations to the General Assembly for the development of international rights law and for the promotion and protection of all rights, using Universal Periodic Review to assure the full involvement of the countries concerned, enhancing dialogues and cooperation on the topic and responding rapidly to emergencies, assuming all the past responsibilities of the Commission, working with governments, regional organisations, national human rights and institutions and submitting annual reports to the General Assembly (United Nations General Assembly 2006; Sweeney 2022; Bova 2011).
However, Bova (2011) underlines a complication arising from these paragraphs. For instance, the Commission's responsibilities are mentioned but not clearly defined, and it is not explained how its previous functions should be continued or reassigned. In particular, the key resolutions that had guided the work of the former Commission are not mentioned. It therefore appears that States did not seek to build directly on the monitoring functions developed by the Commission. Instead, Bova (2011) affirms that they seem to have been more interested in asserting their own authority, without adequately taking into account either the Commission's previous activities or those of other relevant institutions. This was among the first sources of criticism regarding the Human Rights Council at the time of its establishment (Bova 2011).

2.6.2 The issue of the Human Rights Council's membership

Although the Council emerged as a new intergovernmental body, it continues to reflect opposing visions on several issues. More specifically, its functioning is marked by a persistent tension between reform-oriented aspirations and status quo–preserving tendencies (Bova 2011). Unfortunately, as it was for the Commission, the question of membership still remained an issue even within the Council (Sweeney 2022).
From the first debates a crucial aspect regarding the membership was decided: members authors of gross violations of human rights could have been suspended from the Council with the vote of 2/3 of the Assembly. However, as it will be better underlined later, the Council did not use this possibility very often. In particular, on this matter, there is an internal issue as the precise definition of gross violation does not exist. In general, scholars argue that the gross violations are those that are serious

and systematic, such as genocide. However, at the same time, it is also thought that after the end of the Cold War, the definition of gross violations has become less strict as it is widely believed that the UN system nowadays works in all the areas of the field and therefore also in case of "ordinary" violations (Bova 2011). In addition, another factor that makes it unlikely that this power would be used frequently is linked to a criticism that was reserved for the previous Commission. Member States accused the Commission to single out individual countries too much, and within the Council, States wanted to move away from such country-specific measures in favour of a broader system instead. However, this mechanism was applied in some cases, and, contrary to these considerations, the existence of a clear provision for the sanctioning of certain behaviours remains important (Alston, Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council 2006).

In addition, at the dawn of the century, it became clear that the most serious human rights abuses were being inflicted primarily on the most vulnerable countries. Therefore, among the new challenges that the system of protection of human rights had to face there was the re-emergence of the gap between the Global South and the Global North. As it was already an issue inside the Commission, during the Council's decisions the previous limitations were recalled. Bova (2011) reports that, to address the issue, the Commission followed the principle of balanced geographical distribution of its membership to give all the Member States the chance to be represented in an appropriate way. However, inside the Commission, this distribution instantly evolved in an even greater opposition between Western members and the rest of the membership (Bova 2011). This system led to the emergence of one the main criticism of the Commission on Human Rights, which concerned the quality of its membership. The different blocs tended to prioritise their own political objectives over collective goals: "(…) Member States were represented not by independent experts, but rather by governmental representatives whose core loyalty lay with their employers" (Sweeney 2022).

In addition, following this principle of equitable distribution, the Commission organised its membership through regional groups, and even this aspect became an issue. The membership allocation was based on the following groups: the African Group, the Latin American and Caribbean Group, the Western European and Other Group and the Eastern European Group (Freedman, New Mechanisms of the UN Human Rights Council 2011). Sweeney (2022) recalls that each regional group was allocated a fixed number of seats and was responsible for presenting a list of candidates but, over time, national groups began to submit closed slates in which the number of candidates matched exactly the number of available seats, eliminating any real selection process. This aspect was also facilitated by the absence of qualitative criteria for the membership related to human rights expertise. As a result, the system as a whole allowed human rights violators to become members of

the Commission. In addition, the division into "blocs" further highlighted the imbalance of power among Member States: some more influential countries were able to use their considerable leverage to shield themselves and their allies from scrutiny, leading in some cases, to serious human rights violences being overlooked. Moreover, although members were elected for three-year terms, there was no strict requirement for rotation, which in practice allowed some powerful States to maintain a continuous presence on the Commission and effectively secure de facto permanence. Altogether, these factors contributed to further complications in the organisation of sessions, an inability to adopt new initiatives, and a range of other institutional weaknesses (Sweeney 2022).

Based on this experience, Bova (2011) reports that during the discussions of the Council's Resolution many delegations underlined the importance of having clear admissions' criteria. However, at the end, the Resolution established that all Member States could participate but that seats would be allocated to States that maintain the highest standards of human rights protection. Once again, the admission criteria remained vague, and even today the notion of "high human rights standards" is not clearly defined in legal terms. As previously reported, the possibility of expulsion was established but this power was used only two times. The first time happened for Libia in 2011. After a Council's Special Session, the General Assembly ratified a recommendation and with the vote of 2/3 of the present members it suspended its membership (Bova 2011). The second time happened recently in 2022 when with 94 votes in favour, 24 against and 17 abstentions, Russia was suspended (United Nations News 2022). However, these examples do not cancel that other human rights violators were, and still are, members of the Council. In addition, it can be argued that: "The Council does not appear to be an exception to the logic of bloc alliances, already observed in the Commission" (Bova 2011). Today the Council is composed of 47 members elected for three years terms, opting for a smaller membership than that of the Commission, which consisted of fifty-three members (Bova 2011).

As Bova (2011) noted, Sweeney (2022) underlines that one of the membership's main issues is that, although this was one of the main criticisms of the Commission, no mandatory and clearly defined human rights criteria for membership have been established (Sweeney 2022). From the first Council's experiences, it was evident that access was not prohibited to countries with questionable human rights records. After the first election in May 2006, some of the countries that won seats were being closely monitored year after year by non-governmental organisations such as Amnesty International and Freedom House. There have been several attempts at reform to prevent this situation, but these quickly turned out to be ineffective (Bova 2011). This represents a great issue as, even though observer States and other actors can participate in the Council's practices, the decision-making power stays with the Member States. Splinter (2018) highlights the contradiction inherent in allowing States with poor human rights records to serve as members of a body whose primary mandate is the

promotion and protection of human rights, arguing that the quality of each member is central not only to the Council's ability to fulfil its goals and but for its credibility (Splinter 2018).
Sweeney (2022) then reports that the regional grouping system remained unchanged from that of the Commission. The Council continues to rely on the same arrangement, and the issue of closed slates once again emerged:

> "The use of closed slates has been criticised for helping States with very poor human rights records to secure appointment, for example, Saudi Arabia in 2009,2013 and 2016; China in 2009,2013 and 2016; Cuba in 2009 and 2020; and Libya in 2010." (Sweeney 2022)

A number of observers noted that the reduction in the membership of the Council, together with the proportional allocation of seats under the principle of equitable geographical distribution, did not guarantee either comprehensive representation or an impartial reflection of the diverse views of all Member States. It was then widely thought that a more inclusive and representative outcome could have been achieved if the Council was established on the basis of universal membership, allowing for the participation of all Member States, as it is the case with the General Assembly. However, in practice, a mathematical rule was adopted. The distribution of the Council is then as follows: 13 seats are allocated to the African Group, compared to 15 under the former Commission; 13 to the Asia-Pacific Group, compared to 12 within the Commission; 6 to the Eastern European Group, compared to 5 under the Commission; 8 to the Latin American and Caribbean Group, compared to 11 under the Commission; and 7 to the Western European and Others Group, compared to 10 within the Commission. Following this division, within the criticism over the not universal membership, a further concern was raised regarding the so-called "automatic majority". In fact, it was noted that, if the votes of the African Group and the Asia-Pacific Group are taken together, they may be sufficient to secure a majority within the Council. At the same time, from the very beginning, as in the former Commission, alliances among regional groups began to emerge and began to influence all the Council's decisions. This quickly became apparent from the first decisions: notably a coalition of the African Group and like-minded States such as China, Cuba and Russia was born during the first Council's year. They tended to shield one another from any effective scrutiny regarding the implementation of human rights at the national level and, therefore, their alliance was influencing the Council's work. But this is only one example (Bova 2011).
At present, alliances are more flexible and less automatic than in the early years, and are largely based on reciprocal arrangements, in particular the exchange of political favours. However, this does not

mean that the problem has diminished. Nowadays, voting decisions are mainly based upon reciprocal agreements between States than on the Council's interest.

> "This occurs, for example, where State A agrees to support State B's candidacy for the Council in 2021 and, in return, State B agrees to support State A's candidacy for the UN Security Council (UNSC) in 2022." (Sweeney 2022)

In addition, trying to solve the issue of the permanent seats that there was within the Commission, the Resolution stipulated that members would serve for a three-year mandate. However, Bova (2011), citing the scholars of the time, argues that this limit does not exclude the risk of external influences. An example could easily be the UE Member States: they are free to cast their vote as they prefer but their positions are always previously discussed within EU internal negotiations (Bova 2011).

Among these challenges, including the lack of qualitative membership criteria and the reliance on closed States, it becomes evident that the problem is not confined to the institutional framework. It is not merely a consequence of the Council's continued resemblance to the Commission; rather, it appears that the root of the issue lies with the States themselves. Sweeney (2022) affirms that this is proven by the fact that, even when open slates are used, they often include at least one State with questionable human rights records, and States still vote for them. Many argue that a simple concrete group effort can help preventing these situations. One example took place in 2007 when Belarus failed to receive a seat following certain cross-regional outreach by prominent occidental States and some NGOs. Again, Iran was defeated in a competitive slate in 2006 and was forced to withdraw in 2010 for various opposition. However, the issue persists and therefore, the Council's general overall outcome is unsatisfactory. Indeed, for every positive example that can be cited, there are numerous negative cases that point to its shortcomings. Eritrea received 160 votes in 2018 elections, and it was even re-elected in 2021without paying attention to its severe allegations on human rights violations; Venezuela in 2019, the same year in which the UN High Commissioner for Human Rights accused its government of committing human rights violations. Moreover, the fact that the General Assembly has rarely made use of its authority to suspend States responsible for serious and systematic human rights violations further weakens the credibility of the Council (Sweeney 2022). In light of these shortcomings, it is widely acknowledged that the Council's membership system needs to be strengthened and reformed to ensure greater accountability and legitimacy (Splinter, Human Rights Council Elections: clean slates continue to undermine the Council 2018).

Scholars have put forward a range of proposals to address the shortcomings of the Council's membership system. Some argue that the simple introduction of qualitative membership criteria

would help tackle the issue. Others advocate for a stricter approach, proposing the automatic exclusion of States responsible for human rights violations. A further suggestion is to increase scrutiny of candidate States, particularly given that many governments make voluntary pledges and commitments during election campaigns that are later ignored once they assume office. However, despite their apparent simplicity, these proposals would require a substantial reform of the Resolution, and they would probably face significant political obstacles. Since any reform ultimately depends on the support of Member States, it is unlikely that governments would accept. Therefore, many observers see the persistence of these practices as evidence that States have little interest in fundamentally reforming the system. As a result, proposals for significant changes to the Council's membership framework are often regarded as politically unrealistic (Sweeney 2022).

Despite these various reform proposals and the issues encountered and highlighted over the years, the Human Rights Council still presents these challenges. Touminen, in his article of 2025, still points out how the division in blocs influences the Council's decisions, as the States take decisions as groups instead of as individual actors. The regional groups are still particularly opposed to each other, even if certain dynamics have changed, and often the great powers competition still influences the efforts of small States (Tuominen 2025). Therefore, it can be argued that the issue evolved and, nowadays, we refer to it as politicisation. This limitation of the system will be further analysed later in the third chapter.

2.6.3 The Council's working methods and structure

During the Council's first regular session in June 2006, Member States decided that, in the process of building its new institutional architecture, all the instruments and procedures developed over the years by the Commission would have been renegotiated. Therefore, the 19th of June 2006, Member States started the negotiations on the institutional architecture to define the Council's working methods and its associated mechanisms, including the programme of work and the agenda of its regular sessions. In 2007, this renegotiation will result as the Institution-Building Package or IB Package established with two Resolutions 5/1 and 5/2, which together shape the de Alba Package (Bova 2011). Within the IPB system, Sweeney (2022) reports that the Council adopts the following order of topics for its ordinary sessions:

1. Organizational and procedural matters
2. Annual report of the High Commissioner for Human Rights (HCHR), and reports of the Office of the High Commissioner for Human Rights (OHCHR) and the Secretary-General of the United Nations
3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development
4. Human rights situations that require the attention of the Council
5. Human rights bodies and mechanisms
6. Universal Periodic Review (UPR)
7. Human rights situation in Palestine and other occupied Arab territories
8. Follow-up and implementation of the Vienna Declaration and Programme of Action
9. Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action
10. Technical assistance and capacity-building (Sweeney 2022)

However, Bova (2011) underlines that even the establishment of the working agenda was a difficult topic during the decisions' procedures. In particular, some States did not want a complex agenda as it was for the Commission, which had 19 points and 10 sub-points, but at the same time it was also difficult to reconcile the different views of the various regional groups. Particularly, the Western Group and the African group had conflicting proposals: the former favoured an open agenda, which would allow the continuous introduction of new issues, whereas the latter preferred a more predictable and clearly defined agenda. At the end a compromise was eventually reached with the adoption of a ten-point agenda, including one item specifically devoted to the situation in Palestine, as well as eight sub-items. Although the number of points is still significant, the final outcome is considered a compromise between the two competing visions, as it also is more streamlined than that of the Commission. However, many observers also pointed out that this new agenda failed to incorporate some of the Commission's positive achievements. For example, the Commission had devoted an entire sub-item to independent national human rights institutions, a feature that was not retained in the new agenda. Following this view, reported by Bova (2011), in order to reach this compromise, it appears that, in certain respects, the level of protection and attention afforded to human rights issues was lowered. Being the subsidiary organ of the General Assembly, the Human Rights Council applies the General Assembly's rules of procedure. Later in time, in following negotiations on the Council's institutional architecture, it adopted a number of specific procedural rules, drawing on the practice of the former Commission. These include, among others, provisions regulating the participation of non-governmental organisations (NGOs) and other stakeholders. Regarding the Council's structure is

important to cite the creation of the Human Rights Council Advisory Committee. As the Commission had its own Sub-Commission, the Council established this body as well. The Human Rights Council Advisory Committee was created with the aim of preserving an element of expert advice within the Council. For this purpose, it is composed of 26 independent experts whose mandate is to work under the guidance of the Council (Bova 2011).

However, Sweeney (2022) affirms that this working system does not come without criticisms. In particular, during the first sessions it was agreed that the Assembly would review the Council's institutional status within 5 years of its creation. This review took place in 2011 and was not positive at all. For this reason, after the revision, it was agreed that the Assembly would reconsider the Council's institutional status after other 10 years and not later than 15. The second revision was then scheduled to take place among 2012 and 2026 (Sweeney 2022) and it has been not yet concluded. One of the main issues related to the Council's structure identified during the first review, was the acute resource shortage as its mechanisms rely upon unpredictable voluntary contributions. However, Sweeney (2022) also underlines how the situation is difficult to change as any increase in the general founding for human rights also requires an approval of the Assembly's fifth Committee because it could have implications for other UN's priorities. On this matter the problem is that the Council's work is much more expensive than the one of its predecessors. In contrast to the Commission, which had just one session per annum, the Council convenes 3 regular sessions in March, June and September and, in addition, special sessions may also be convened if one third of the members agrees (Sweeney 2022). Today the Council counts: 62 regular sessions, with the last one between 15 June 2026 and 10 July 2026 and 39 special sessions with the last one the 23rd of January 2026 called "The deteriorating human rights situation in the Islamic Republic of Iran" (Office of the High Commissioner for Human Rights (OHCHR) n.d).

Another Council's issue related to the working method which resulted from the review was the excessive number of recommendations and solutions being proposed in every session. Over the years, it was observed that some States tried to start additional bureaucratic procedures to slow down the Council's work when the matter did not interest them or when they opposed to it. In 2015, a mechanism to address this issue was established on the basis of a proposal put forward by the then President. From that year, the Council tries to reduce the adopted texts for each session, but this does not mean that the problem is completely solved (Sweeney 2022).

An important event which has impacted in a negative way the history of the Council's work was the withdrawal of the United States in 2018 (Sweeney 2022). On 19 June 2018, Ambassador Nikki Haley announced the United States' withdrawal from the Human Rights Council. This was a significant event because the reasons given for the withdrawal reflected several long-standing criticisms of the

Council, some of which were already directed at its predecessor. In particular, the United States criticised the continued presence within the Council of States with poor human rights records, an issue already discussed in the previous section. In addition, following the United States' view, another major criticism was Council's persistent bias against Israel (Joseph and Jenkin 2019). However, Sweeney (2022) notices that, even if these public accusations have undoubtedly affected the Council revealing some of its recurring issues, it is interesting to note that the withdrawal was announced one day after the High Commissioner for Human Rights criticised Trump's border policies. In addition, the withdrawal was also consistent with Trump's broader political strategy of distancing the United States from multilateral institutions. Sweeney (2022) then reports that the United States later rejoined the Council in 2021 under the Biden administration.

Besides these criticisms, an important step within the Council's mechanisms of work was made in terms of participation. In 2012 the Voluntary Technical Assistance Trust Fund was founded, aiming at supporting the participation of least developed and small island developing States in the Council's work. This represented a great turning point in the field as it allowed small developing countries to better participate also acting as mediators among the more powerful States from the various blocs (Sweeney 2022).

2.6.4 Country-Situations and Special Procedures

As anticipated in the previous paragraphs, the Special Procedures were considered one of the Commission's biggest achievements. These Special Procedures are systems of independent experts tasked with investigating country-specific situations and human rights issues of particular concerns and the Council started this system as well, dealing with specific country cases through resolutions (Sweeney 2022). Piccone and McMillen (2016) explain that the Human Rights Council Resolutions may either express the collective opinion of its 47 Member States, or they may be thematic in nature and refer to specific countries. The Resolutions are adopted and classified following the respective points on the Council's Agenda and the country-specific resolutions are present in three of these points: point number 4, which regards more broadly human rights situations in specific countries and in this case they are generally adopted despite the opposition of the interested State; point 7 instead, regard one specific country, Palestine and the occupied Arab territories; and then point 10 which regards the technical assistance and capacity-building activities of a single country (Piccone and McMillen 2016).

In addition, pursuant to paragraph 10 of General Assembly Resolution 60/251, the Human Rights Council is also empowered to convene Special Sessions, when required, upon the request of a Member State and with the support of one third of the Council's members (Bova 2011). On this matter Piccone and McMillen (2016) underlined that "Out of the 824 total resolutions and decisions adopted by the Human Rights Council between 2006 and 2015, 2203 of them – or 24.6 percent – were country-specific in nature" (Piccone and McMillen 2016).

A clear example of such specific engagement is the attention that has been devoted, from the very beginning to the situation in the Occupied Palestinian Territories (OAT), to which an entire item on the agenda is dedicated. The dedication to this population was apparent from the very beginning and, in some cases, was also criticised by many States as excessive, but this aspect of the matter will be later analysed in chapter three as an example of politicisation. Precisely, for the link with the phenomenon of politicisation, many of these discussions only led to conflicts. Still today, country-specific situations are addressed through Special Procedures mandates, which investigate and report on human rights developments in the countries concerned (Sweeney 2022) but the mechanism remains delicate and it is often perceived as a threat by many States (Bova 2011).

Since the beginning, great importance was given on how to structure the Special Procedures within the Council and this led to various discussions. Consequently Bova (2011) reports that, over time, one tendency developed: this consists in moving country situations from item 4 of the Council's agenda, which concerns human rights situations, to item 10, which focuses on technical assistance and capacity-building. While item 4 is generally associated with criticism and scrutiny of States, item 10 adopts a more cooperative approach aimed at supporting States in improving their actions. Other similar practices include convening special sessions in response to particularly serious situations, shifting country situations to the framework of the Universal Periodic Review (UPR), or entrusting specific mandates to the Office of the United Nations High Commissioner for Human Rights (OHCHR). However, this cannot be considered as a solution. On the contrary, as a consequence, the continuous shift of country situations towards these alternative mechanisms' risks reducing the importance of country-specific scrutiny and weakening the role of the Special Procedures. In the long term, this may diminish their effectiveness and institutional relevance. Bova (2011) then affirms that this practice of avoiding them only reveals States' resistance and the corporatist dynamics of regional blocs, a phenomenon that dates back to the era of the Commission and remains clearly visible today (Bova 2011).

Concluding, overall, the Special Procedures have constituted one of the most controversial issues addressed during the negotiations on the establishment of the Council. To this day, they still constitute a central element of the UN human rights machinery but the initial reluctance towards the mechanism

still remains visible even today. As they bring to light the most serious human rights violations, many States systematically refuse to cooperate with them and, in addition, these mechanisms remain chronically underfunded (Sweeney 2022).

2.6.5 Universal Periodic Review

The Universal Periodic Review is one of the innovations brought by the Council. With these revisions the Council, every four years, examines the human rights record of each Member State (Bova 2011). Following the Resolution 60/251, the Universal Periodic Review are be based on objective and reliable information of the fulfilment by each State of its human rights obligations (United Nations General Assembly 2006).

During the first discussions, even this point was an issue. As already anticipated in the previous paragraphs, Member States were initially worried about a system too centred and too judgmental on singular States. The Universal Periodic Review (UPR) was introduced as a system in which, for the first time, the human rights practices of all Member States would be examined, a prospect that many States found unsettling. For this reason, on this topic, one of the most discussed issues concerned the role of the Human Rights Council itself: a key question was whether the review process would have been conducted entirely by the Council's Member States or whether it should have involved other independent human rights experts. In this context, the majority of States opposed to the involvement of external actors and argued that the procedure should remain entirely State driven. As a compromise, it was decided that the review would have been conducted within the Council framework on the basis of a country dossier prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR). At the end, the Resolution proposed a: “tighter intergovernmental control over the entire process, without interference from other stakeholders.” (Bova 2011). Therefore, the Universal Periodic Review was created as a cooperative and non-confrontational intergovernmental mechanism based on a dialogue with the State in question (Bova 2011).

Today revisions are based on three reports: one prepared by the State under review, a synthesis of all the information retrieved from relevant documents of the United Nations and a report that resumes information retrieved from other actors (the last two documents are drafted by the High Commissioner of Human Rights). The revisions are adopted by a group that gathers three times a year. After the review, the State under review confirms which recommendations it accepts and which it chooses to “note” rather than accept. The Council adopts the final decision in the next ordinary

session. Each cycle of the Universal Periodic Review lasts 4,5 years and, during this time, they analyse the human rights records of all States and in the second half of this period the review is more focused on the implementation of the recommendations. Sweeney (2020) notes how, over time, it has become evident how the intergovernmental nature of the Universal Periodic Review was the right choice, being one of the most positive features of the mechanism: States seem to be more inclined to follow recommendations issued by other States than those proposed by independent experts or organisations (Sweeney 2022).

Nowadays, the Universal Periodic Review is considered one of the most innovative features of the Human Rights Council. The inclusion of a mechanism for assessing the implementation of recommendations, together with a follow-up process, suggests the creation of an effective tool in line with the model of universality and effectiveness identified by Oakeshott, cited by Bova (2011). Furthermore, from a legal standpoint, the UPR can be understood as the institutionalisation of a procedure designed to give practical effect to the obligations contained in articles 55 and 56 of the United Nations Charter. Nevertheless, the UPR still does not receive universal support. Some critics argues that it is essentially a State-driven process in which States assess one another, and, following this view, many refer to it as little more than a peer-review exercise (Bova 2011). Many complications have arisen even here. In particular, several scholars have pointed out that a big issue within this system is the lack of strong follow-up procedures. Once the recommendations are included in the Universal Periodic Review, there is no systematic or mandatory monitoring (Sweeney 2022). A detailed analysis of the lack of follow-up procedures in the entire UN system will be further given in the third chapter.

2.6.6 Special Sessions and Complaint procedures

The Council also presents other systems to protect human rights, such as the Special Sessions and the Complaints procedures. At the time of the Commission five emergency sessions were held regarding the human rights situation in Yugoslavia, Rwanda, East Timor, and in the Occupied Palestinian Territories. Following this line the Council introduced the system of Special Sessions for dealing with situations involving large-scale human rights violations (Bova 2011). The Resolutions established that the Council could convene Special Sessions, when necessary, upon the request of a Council member, provided that the request received the support of at least one third of the Council's membership (United Nations General Assembly 2006).

Unlike the Special Procedures, Special Sessions were viewed positively by States during the negotiations, as they were considered flexible instruments, comparable to the emergency meetings of the Security Council. Here too, a significant number of Special Sessions have been devoted primarily to the Israeli Palestinian conflict. On a more positive note, than the previous ones, it should be emphasised that, in many cases, the Council has also provided follow-up measures after the conclusion of the sessions. Thus, many Special Sessions of the Council have been subsequently followed by resolutions adopted during regular sessions as well (Bova 2011).

At the same time, already in 2007, the Council accepted to introduce among its mechanisms the Complaint procedure, always following a line already traced by the previous Commission. The present system works in two levels composed of two groups: the Working Group on Communications (WGC) and the Working Group on Situations (WGS). First of all, the WGC, made up by 5 members of the Human Rights Council Advisory Committee, receives the individual complaints and makes an initial screening. Secondly, the WGS, made up by 5 Member States of the Council, examines the cases already chosen by the first group and decides which are politically relevant. At the end of this process, the Council can decide to maintain the situation under exam, to close the case, to adopt measures or to use other tools. Once a complaint has been submitted, the procedure focuses on the State concerned, which may be requested to provide explanations, submit specific reports, or seek assistance from the Council (Bova 2011).

2.7 How human rights have impacted the field of international law

Having analysed the UN system of human rights protection a change in international law can be observed. It has been argued that the growing importance of human rights, together with the emergence of various mechanisms and institutional structures in this field, have contributed to a broader transformation in the conceptualization of international law. Within this context, Gardbaum (2008) reports that some scholars suggested that international human rights law has played a role in challenging the traditional and horizontal paradigm of international law, traditionally based on the sovereign equality of States, introducing more vertical or public law-like elements. This thesis has been discussed over the years and different approaches came out. Gardbaum (2008) also notes that other scholars, compared the international law of human rights with domestic bills of rights, given that both emerged in the after-war period, following serious human rights violations, and both limit States' power establishing what governments can do in relation to individuals. However, the author also emphasises the limits of this analogy and avoids drawing overly strong conclusions. As it was

previously analysed in the paragraph dedicated to sovereignty, the issue is not so simple, and it always is a means of balancing these interests. In particular, Gardbaum (2008) underlines the differences between these legislations, especially regarding enforcement mechanisms. For this reason, he does not argue that international human rights law constitutes a global constitution, but rather that it may be understood as part of a broader process of "constitutionalisation" of international law.

In general, it can be said that international law seems to have reached a different stage of its life, and in this sense, it appears to be evolving towards a structure in which individuals play a more central role than in the traditional State-centred model, although States remain the primary actors of the system (Gardbaum 2008).

Chapter 3 – Limitations on human rights protection within the United Nations

3.1 The current condition of human rights in the international system

> "The world is at a historic juncture. Unprecedented forces are hunting down the ideals of human rights for all, seeking to destroy an international system forged in the blood and grief of World War Two and its Holocaust. This religious, racial, patriarchal crusade, which aims for an economic order predicated on even greater inequality between and within States, imperils hard won equality, justice and dignity gains of these past 80 years." (Amnesty International 2025)

According to Amnesty International (2025 and 2026), today's global society is facing numerous violations of human rights and breaches of international law, in direct opposition to the framework established by the United Nations system. The organisation reports that some argue that the escalation commenced with Donald Trump's second presidency. However, it then affirms that the roots of these violations appear to be much deeper, and how it seems that we may have reached a historic turning point. Following this view, for more than a decade, we have witnessed an increase of authoritarian laws and practices, the decrease of civic space and the limitation to the freedom of expression or association. Certain policy choices have enhanced inequality, poverty and only nourished billionaires. In this context, Amnesty International (2025) identifies the situation in Israel and Palestine as the culmination of this serious process, describing the situation in Gaza as genocide. The organisation reports that on 7 October 2023, Hamas carried out attacks against Israeli citizens and took more than 250 hostages. Following, Amnesty International (2025) characterises the situation in Gaza after that episode as a live-streamed genocide, even accusing the other States to have watched it as if they were powerless. In this process, Israeli forces killed thousands of families, destroying homes, hospitals and schools (Amnesty International 2025). Siniscalco (2025) reports that from the 7th of October 2023 to the 19th of January 2025 around 46.913 people died in Gaza. One year from the beginning of the conflict, in October 2024, 59% of these people were women, children and elderly people, while 41% were men. Among this group, 18% were between the age of 18 to 30 (Siniscalco 2025). Therefore, Amnesty International (2025) describes 2024 as a year marked by a further intensification of Israeli military occupation, even arguing that this has been possible with the support of other States.

At the same, this is not the only grave event that the organisation reports. According to Amnesty International (2025) in 2024, the Russian forces continued to target civilian infrastructure in Ukraine,

causing the number of civilian deaths to surpass the total recorded in 2023. And, among other atrocities, it also reports how the Russian authorities illegally processed Ukrainian prisoners of war. In addition, thousands of Sudanese civilians lost their lives from conflicts and hunger and the same happened in the Democratic Republic of Congo, Burkina Faso, Niger or Myanmar under a near-complete global indifference (Amnesty International 2025).

The following year, in 2025, the situation did not improve. Amnesty International (2026) sustains that in 2025 political leaders such as Trump, Putin and Netanyahu continued to pursue their economic and territorial interests through large-scale destruction, repression and violence. Following this reconstruction, Amnesty International (2026) also criticises the other States' response to the situation, including that of many European States, describing it as insufficient:

> "That's how 2025 will be remembered: for its bullies and predators; for the pouring of the politics of appeasement onto burning betrayals of international obligations; for self-defeatism; for States playing with a fire threatens now to burn us all an scorch the future too, for generations to come" (Amnesty International 2026)

Moreover, the 15th of august 2026 was also the fifth anniversary of the return of the Taliban's regime in Afghanistan. Human Rights Watch (2026) reports that "Over the last five years, the Taliban's increasingly draconian policies have made Afghanistan one of the world's gravest human rights crises, particularly for women and girls" (Human Rights Watch 2026).

According then to Human Rights Watch (2026), Taliban policies have gradually, over time, deprived Afghan women of most of their fundamental rights: they cannot receive a secondary higher education, they cannot have a job, they don't have freedom of expression and freedom of movement outside their homes and, unfortunately, these are only a few examples. In addition to these restrictions, the Afghan population is also living a severe humanitarian crisis: "More than 3.7 million children face acute malnutrition, and health services have been severely weakened" (Human Rights Watch 2026).

However, despite all these serious data reported, Amnesty International (2026) also underlines how the organisation is against the idea that the international law on human rights does not exist anymore. The organisation emphasises how the international instruments for human rights, during the last eighty years, have brought profound positive transformations. Following this view, our society has moved toward greater levels of justice, the reduction of power imbalances among States, the recognition and protection of the rights of Indigenous peoples, racial minorities, women and LGBT individuals. However, at the same time, it also acknowledges its limitations which still permit these

significant violations listed before that leave millions of individuals without effective protection (Amnesty International 2026).

At this point, an important question arises: if the international human rights system is not dead, as Amnesty International (2026) argues, what are the major limitations that continue to allow such large-scale and serious violations to occur?

Indeed, looking at the significant data reported, it becomes natural to ask, as many scholars have already done, and Bova (2011) reports, on whether the UN system has become a merely "debating club" or if it has an operational nature that can be truly effective in the field of human rights. Many argue that its efficiency is limited as the entire system still relies too much on States (Bova 2011). But is it actually like this?

3.2 An overview of the structural limitations of the UN human rights system

In relation to this issue, Helfer (2020) argues that the facilitating conditions that once enabled the establishment and expansion of International Human Rights Law institutions are no longer present. In particular, the author identifies three of these conditions. At first the institutions that have been previously analysed enjoyed the support of several powerful States, namely the wealthy democracies of Western Europe and the United States. These States were engaged for decades in sustaining the cause and in making it a central pillar of the United Nations. The second favourable condition of the system regarded its progressive evolution. As we have seen, through years the system progressively expanded with the increase in treaties, mechanisms and institution. This expansion was also based, at the end of the Cold War, on the conviction that after that period the adherence to human rights norms was improving and that it would have continued to do it as a growing number of democratically elected governments were established. Finally, the third condition was based on States' engagement on the cause. This engagement was largely based on the widespread conviction that openly challenging the authority of international human rights institutions or the legitimacy of the system as a whole was beyond acceptable political behaviour. According to Helfer (2020), these favourable conditions don't exist anymore. Especially he argues how: "Although some States remain committed to promoting human rights at home and abroad, the tacit consensus in favour of their protection via international institutions has markedly weakened" (Helfer 2020).

Helfer (2020) then describes the contemporary situation without the favourable conditions: the United States are becoming increasingly isolationist, the European Union is experiencing internal conflicts, in China, Russia and in parts of Latin America are increasing the authoritarianism and, all these conditions are encouraging human rights violations.

In addition, in this new context, the growth of norms and institutions within the international human rights laws has stalled, contrary to the long period of growth previously analysed. Considering all these factors, Helfer (2020) argues that they prospect a dark future for the field.

> "Scholars differ as to whether we are merely experiencing "an especially difficult period for international human rights law" or whether, more fundamentally, the "age of human rights is over" and the world is entering a "post-human rights era." (Helfer 2020)

Although not in the same explicit way as Helfer's (2020) analysis, the system itself acknowledges the severity of the current global context and the challenges it is facing. This is evident, for instance, in the speech held by Volker Türk (2026), the UN High Commissioner for Human Rights who stated:

> "As you are acutely aware, we continue navigating a very difficult global context (…) Anti-rights movements fuelled by bigotry, polarization, and exclusion, are flourishing. Inequalities are surging. The climate crisis continues to be met largely with inertia, while formidable issues need to be reckoned with in the digital space.
> Around the world we continue to see clampdowns on civic space – often with lethal consequences. There is repression, democratic backsliding, and the scapegoating of minorities, marginalized communities, and migrants and refugees. Amid the unimaginable civilian harm, suffering and displacement caused by dozens of conflicts around the world, we have seen the economic and environmental consequences of fighting reverberate across the world – impacting the everyday lives of millions, particularly the vulnerable, even beyond the immediate theatres of war (…)" (Türk 2026)

Even if different scholars offer interpretations of the general situation that differ from Helfer's (2020), the widespread view is that the system of protection of human rights is facing difficult challenges and, in many cases, it is not functioning effectively. Sweeney (2022) notes how this perception has therefore generated a range of criticisms, most of which are directed not only at the United Nations as a whole but more specifically at the Council of Human Rights. Indeed, even though it is not the only body that operates in the field it is considered the principal one. It is then widely though that the Council is struggling to meaningfully address human rights emergencies, especially those that have a long-running nature, as the ones previously listed. In particular, Sweeney (2022) underlines certain limitations of the Council which can be also retrieved in the overall system: the non-cooperation of States concerned in a violation, the intrusion of power politics, the principle of sovereignty and the absence of coercive powers within the institution. Then, at the same time, Sweeney (2022) also underlines that the issue does not only reside within the Council of Human Rights as:

> "Even where it makes progressive recommendations (…) the action necessary to implement the Council's recommendations is often blocked further up the chain by the UNSC, which enjoys primary responsibility under the UN Charter for the maintenance of international peace and security." (Sweeney 2022)

further underlying the ineffectiveness of other institutions in the process. Overall, this instability, which results from various of factors, leads to the conclusion that any progress achieved within this system appears fragile and easily reversible (Sweeney 2022). Some of the issues concerning the Council have already been discussed in the previous chapter. This chapter, however, aims to provide a more systematic analysis of the main criticisms of the UN Human Rights system identified in the literature, focusing both on Council-specific problems and on broader systemic issues affecting the entire system.

3.3 Enforcement, follow-up procedures and State compliance

A crucial issue in analysing the role of international organisations in contemporary society concerns the extent to which their decisions and norms are effectively implemented by States. Much research focused on the issue, highlighting the various challenges associated with enforcement mechanisms, follow-up procedures and States' compliance. As illustrated in the previous chapters, the United Nations has developed a wide range of mechanisms for adopting decisions, monitoring State behaviour, and promoting implementation. However, these mechanisms have often proved insufficient to ensure effective compliance, revealing a gap between the formal recognition of international commitments and their practical implementation (von Staden 2018; Ullmann and von Staden 2024).

As it is commonly known, within the United Nations system, States participate in the adoption of instruments and decisions that may have different legal effects depending on the relevant organ, legal basis and instrument concerned. Nevertheless, even the non-binding ones play an important role within international organisations, as they "specify expectations as to appropriate behaviour in a given issue area" (von Staden 2018). These rules and decisions can be examined through States' level of compliance: States are expected to comply with these decisions because they have voluntarily accepted to be members of the organisation but, in practice, compliance largely depends on their willingness to cooperate (von Staden 2018). The absence of effective enforcement mechanisms therefore represents, for many, one of the main structural weaknesses of the system (Sweeney 2022).

Over time, it has become clear that in order to make this delicate system more reliable, each organisation needs a follow-up system. Within the UN human rights system, the nine committees are entrusted with the primary function of monitoring States' compliance with human rights treaties. Their primary task is then to examine the periodic reports that, as already explained in the previous chapters, States have to submit. In addition, several treaty bodies may consider individual complaints (or communications) given by individuals who report violations. After considering these complaints, the Committees adopt views on whether the States' action was an actual violation or not, but these views are, again, not legally binding. Consequently, the treaty bodies have also established the follow-up procedures through which States are requested to report on the measures adopted to implement the committees' recommendations. Yet, even within this framework, States are merely "requested" to comply. This naturally raises the following question: if these follow-up systems only lead to non-legally binding views, will States comply with them? This is the same question that von Staden (2018) explored during his research (von Staden 2018).

Firstly, addressing this question requires distinguishing between two different dimensions of compliance: first-order compliance, which Tufa (2024) explains "refers to States' compliance with the substantive treaty provisions or rules entrenched in a given legal instrument" and second-order compliance which instead "denotes 'compliance with the decisions of an authoritative body charged with the responsibility of interpreting provisions of a treaty or resolving disputes arising from the implementation of the treaty" (Tufa 2024).

3.3.1 Follow-up procedures in the UN human rights protection system

The follow-up procedures were therefore introduced to fill the existent gaps in the UN enforcement framework. As previously anticipated, the organs entrusted with these procedures are eight. Within three of them, such follow-up systems were stipulated in the protocol that establishes the individual communications procedure, while in the other five, the treaty bodies, have established the procedures on their own. The first body introducing a follow-up procedure was the Human Rights Committee, monitoring compliance with the International Covenant on Civil and Political Rights (ICCPR). Consequently, the other bodies followed. The two Committees that already possessed the competence to receive individual communications, which were the Committee against Torture (CAT) and the Committee on the Elimination of Racial Discrimination (CERD), introduced the procedures respectively in 2002 and 2005. The other three existing treaty bodies, the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on Economic, Social and Cultural Rights (CESCR), and the Committee on the Rights of the Child (CRC), were empowered to

undertake follow-up activities under their respective optional protocols. However, not all treaty bodies followed this trend. The Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on Enforced Disappearances (CED), for instance, were not initially equipped with an explicit follow-up mechanism (von Staden 2018). This progressive evolution has gradually transformed follow-up procedures into a consolidated feature of the UN treaty body system. Today, all eight Treaty Bodies are entrusted with the examination of individual communications and have established mechanisms to monitor the implementation of their decisions and assess States' compliance (Ullmann and von Staden 2024).

The several procedures are not all the same, but they all possess similar characteristics. In each case, one member of the Committee is nominated Special Rapporteur, and this member is the one responsible for interacting with States. On the contrary, one thing that always varies among the different bodies is the time within which follow-up information is requested. Five of them have a deadline of six months (CEDAW, CESCR, CRPD, CRC, and CED), the HRC asks for 180 days, while CAT and CERD 90. In general, the follow-up procedures mainly have a written form, and the information obtained is included in interim follow-up reports. All the information is generally public, and the results of follow-up activities are usually included in the committees' annual or biannual reports to the General Assembly.

From the beginning, von Staden (2018) research shows one issue within the system: States compliance with the obligation to report on the implementation of the views was uneven over many years. While some States provide all the information on the measures adopted, others submit only limited information, or they completely avoid the task. Von Staden (2018) reports an assessment of the Human Rights Committee's follow-up procedure covering the period of 1995-2001. A high number of cases (between 60 and 80 each year) in which States failed to provide any information was found. At the same time, even other Committees have highlighted cases of non-replies, even though also with a sizeable number of substantive responses (von Staden 2018). However, in order to better understand the system and how the measurement of compliance works, a brief analysis of the evolution of some of the main treaty bodies is reported.

The more active treaty body is the Human Rights Committee. In 2018, the number of communications issued by the HRC exceeded those of all other treaty bodies combined. In May 2017, it adopted 1,221 views finding violations of the ICCPR in 1,029 of them. During the first years, the HRC's follow-up procedure worked in this way: it analysed the States' responses following a binary distinction of satisfactory and unsatisfactory. Meaning that, the responses that showed substantial compliance were classified as satisfactory and the others, which failed to address the Committee's recommendation, were unsatisfactory. Over the years this system became more detailed: in 2013 the HRC adopted a

system in which it assigned to each State letter codes as those used in educational systems to give grades

> "Reply/action satisfactory
> **A** Reply/action largely satisfactory
>
> Reply/action partially satisfactory
> **B1** Substantive action taken, but additional information required
> **B2** Initial action taken, but additional information required
>
> Reply/action not satisfactory
> **C1** Reply received, but actions taken do not implement the recommendation
> **C2** Reply received but not relevant to the recommendation
>
> No cooperation with the Committee
> **D1** No reply received within the deadline, or no reply to any specific question in the report
> **D2** No reply received after reminder(s)
>
> The measures taken are contrary to the recommendations of the Committee
> **E** The reply indicates that the measures taken go against the recommendations of the Committee" (von Staden 2018)

and, in 2016 it specialised the system even better by reducing the categories but adding more information for each one

> **[A] Reply/action satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee: in this case, the Special Rapporteur for follow-up to concluding observation or views requests no additional information from the State party and the follow-up procedure on the particular issue is discontinued.
> **[B] Reply/action partially satisfactory:** The State party took steps towards the implementation of the recommendation, but additional information or action remains necessary. In this case, the Special Rapporteur for follow-up to concluding observations or views requests additional information, within a specific time frame or in the next periodic report, on specific points of the State party's previous reply that require clarification, or on additional steps taken by the State party to implement the recommendation.

[C] Reply/action not satisfactory: The action taken or information provided by the State party does not address the situation under consideration. In the case of follow-up to concluding observation, information provided by the State party that reiterates information previously made available to the Committee prior to the concluding observations is considered not relevant for these purposes. The Special Rapporteur for follow-up renews the request for information on steps taken to implement the recommendation.

[D] No cooperation with the Committee: The State party has not provided a follow-up report after one reminder and a request for a meeting with the Special Rapporteur for follow-up to concluding observations or Views.

[E] The measures taken are contrary to or reflect rejection of the recommendations: The State party adopted measures that are contrary to or have results or consequences that are contrary to the recommendation of the Committee or reflect rejection of the recommendation. (von Staden 2018)

In this new way the new rules clarify that in order to have a satisfactory reply there has to be evidence of significant action taken by the State to achieve compliance.

As regards the evolution of the other Committees, von Staden (2018) reports that the CAT's first follow-up report lacked content: it only reported summarized information, and it did not assess the sufficiency required for compliance. The situation changed over time and the scope and level of detail of its follow-up procedures varied through the years. While the 2007, 2008, 2009 and 2010 annual reports included a full list of all adverse views rendered up to that point, the one of 2011 covered only views where the dialogue with the respondent State was still ongoing and mentioned those complied with by case name in a separate paragraph. In 2015, 2016 and 2017 the reports presented only sections to summary statistics and to naming the cases in which the follow-up dialogue was closed. This evolution shows that its follow-up procedure has undergone many significant methodological changes over time, compared to the HRC, and von Staden (2018) refers to this evolution as an evident lack of methodological uniformity. Therefore, CAT did not even develop, as the HRC did, a more detailed formal assessment scheme, on the contrary it adopts a case-by-case approach. While this flexible approach may be sufficient in straightforward cases, it creates difficulties in more complex situations, where the absence of clear criteria makes it difficult to determine whether compliance has been achieved.

Compared to CAT and HRC, the CERD has a limited follow-up activity as it receives fewer individual complaints. Despite this, it has a more complex system than CAT, but it still presents issues as in certain peculiar cases it could not provide sufficiently clear criteria. Here the author underlines the lack of transparency that surrounds the closure of certain follow-up dialogues: the Committee does

not explain why some cases are considered closed with results of partial compliance, without even giving the reasons behind these decisions.

The CEDAW instead, was the first Committee whose follow-up procedures were established in the treaty with the relevant protocol, and it entered into force in 2000. Here the procedures were established particularly slowly compared to the others. Only in 2006 the first two rapporteurs on follow-up were nominated, in 2008 the Committee included the follow-up reports in its annual report and, the report of 2009, was the first one including consolidated follow-up information on a total of four views, together with the Committee's follow-up assessment. However, von Staden (2018) underlines some important positive aspect of this particular Committee. Indeed, the CEDAW has often proven to be more concrete and detailed than other committees when specifying the remedies that States are expected to provide. As a result, its recommendations establish more specific requirements for States to meet in order to comply with the Committee's views. Nevertheless, issues came up even here as often the CEDAW's "satisfactory response" does not necessarily mean that the State has fully complied with the Committee's recommendations and, while in some cases the Committee considered the follow-up procedure closed, the situation was not completely solved.

Finally, the CRPD has adopted its first views with respect to an individual communication in 2012 and, as the other Committees, it requested follow-up information from the respondent State as part of its decision. With regards to the evaluation of State responses, the CRPD has mirrored the assessment scheme used by the HRC which, among the treaty bodies examined, appears to be the most structured and systematic follow-up assessment mechanism, although not without limitations. However, starting from the second interim follow-up report, it implemented one modification. The CRPD changed the category labels from "reply/action satisfactory/partially satisfactory/not satisfactory" to "action satisfactory/partially satisfactory/not satisfactory". This indicates that the Committee assesses the actual measures taken rather than the formal content of the States' response.

In general, Von Staden (2018) underlines how:

> "The follow-up procedure is not an end in itself, but is intended to aid the committees in gauging the extent to which their views are consequential, that is, whether thy result in the adoption of meaningful remedial measures that address and remove the violation(s) found in the committees' decisions" (von Staden 2018)

Therefore, it can be argued that the level of compliance with the committees' adverse views is one of the main indicators for assessing individual complaints' impacts (von Staden 2018).

3.3.2 The assessment of State compliance

The previous paragraph has highlighted the relevance of States' compliance in this process, and it also revealed a crucial challenge: determining whether a State has actually complied with a Committee's views is a difficult process that cannot be reduced to a mere binary distinction. In particular, while States' first-order compliance with treaty law is often difficult to calculate, second-order compliance can generally be more accurately assessed (Ullmann and von Staden 2024). But what makes the assessment of compliance so complex?

In order to understand what compliance really is and to assess why it is such a complex phenomenon, Ullmann and von Staden (2024) introduced in their research The Treaty Body Views Dataset (TBVD). The TBVD is a dataset which comprises all published decisions issued between 1979 and 2019 by the eight treaty bodies, matching them with the information on compliance status. Therefore, it tries to record the level of compliance for each individual decision and to categorize the required remedial measures into three categories: financial compensation, individual measures relating to the applicant, and general measures aimed at ending systemic violations and prevent their recurrence. As it collects and systematizes all available data (related to that period) on individual complaints submitted before the UN Treaty Bodies, it allows a more comprehensive assessment of States' implementation of Treaty Bodies' views and provides a broader overview of the issue. To begin with, Table 1 highlights the different historical development of individual communication procedures with the data available up to 2019.

					Reported Treaty Body Data[b]			Treaty Body Views Data Set	
Treaty Body	Number of Parties to Main Treaty[a]	ICP Competence Provided for in:	Number of Parties Accepting ICP[a]	ICP Operative Since:	Total Number of Communications Submitted	Thereof: Resulting in Views on the Merits	Thereof: Adverse Views	Adverse Views	Follow-Up Information
HRC	173	Op. Protocol (1966)	117 (67.6%)	1976	3624	1577	1213	1155	634 (54.9%)
CAT	173	Convention (1984)	69 (39.9%)	1987	1003	398	158	162	96 (59.3%)
CESCR	171	Op. Protocol (2008)	26 (15.2%)	2013	162	6	5	5	2 (40.0%)
CEDAW	189	Op. Protocol (1999)	115 (60.8%)	2000	155	37	32	34	15 (44.1%)
CRC	196	Op. Protocol (2011)	48 (24.5%)	2014	114+	33	11	7	3 (42.8%)
CERD	182	Convention (1965)	59 (32.4%)	1982	70	36	20	17	12 (66.7%)
CED	68	Convention (2006)	25 (36.8%)	2010	2	1	1	1	0 (0.0%)
CRPD	185	Op. Protocol (2006)	100 (54.1%)	2008	no data	no data	no data	22	10 (45.5%)
Total	---		---	---	**5130**	**2088**	**1440**	**1403**	**772 (55.0%)**

Figure 1

Starting from these data, the authors developed a coding system to evaluate the implementation of remedial measures by States. As previously seen the follow-up procedures and, consequently even compliance, cannot always be adequately assessed through a simple binary distinction between satisfactory and unsatisfactory implementation, and that has been often an issue within the organisation. Therefore, Ullmann and von Staden (2024) developed a coding system based on different types of remedial measures required by the Treaty Bodies: financial compensation, individual measures concerning the applicant's case, and general measures aimed at preventing the recurrence of violations. Each measure was then assessed according to a three-level scale: non-compliance, partial compliance, and full compliance. From their analysis some interesting data about compliance were found, which can be useful to address the issue of compliance.

The category with the highest level of compliance was the individual measures' one, followed by general measures and the last, with the lowest level of compliance, the financial compensation one. Another crucial data, to deeply understand the concept of compliance, is how the adverse views in the dataset are not evenly distributed across treaty bodies and countries. The large majority of adverse views in the TBVD comes from the HRC, followed by the Committee against Torture and, in addition, Europe is the region that has been subject to the largest number of adverse views, with 522 cases, followed by Asia (336) and the Americas (315), as shown by the following graph (Figure 2).

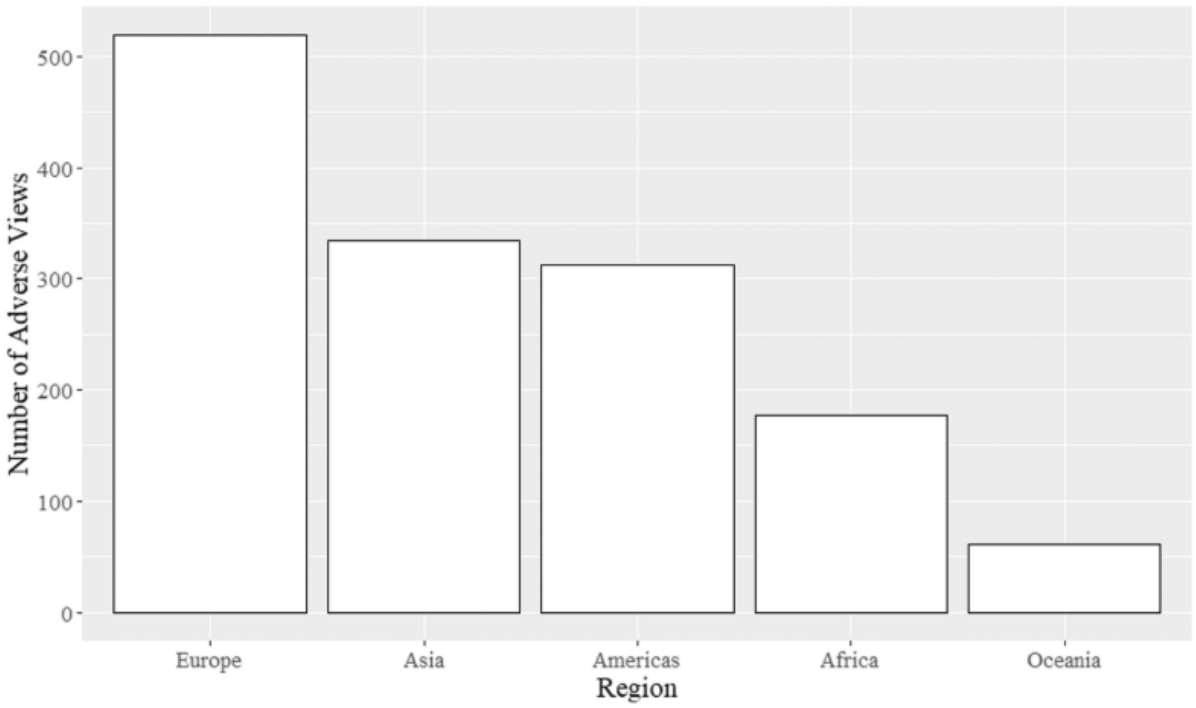


Figure 2

After, another graph reported by the authors (Figure 3) reveals that the large majority of the financial compensation measures are never implemented being, as previously said, the least measure complied with: its mean is of 0.179 compared with the means of non-financial individual measures (0.348) and general measures (0.278).

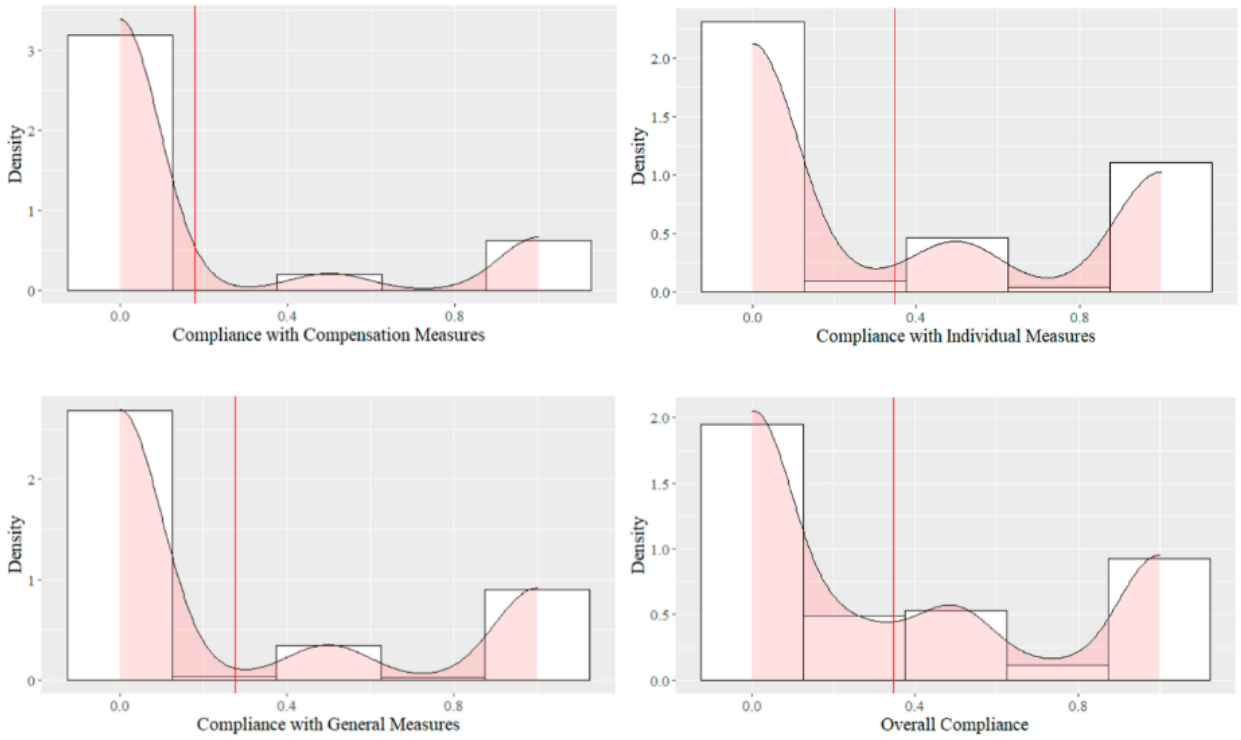


Figure 3

In general, using two different methodological approaches, Ullmann and von Staden (2024) estimate States' compliance between 19% and 39%, depending on the definition of compliance and the treatment of missing follow-up information. While, when considering only cases in which all recommended remedial measures were fully implemented the compliance rate falls to 23%.

One interesting aspect of the research is that the TBVD also demonstrates the broader value of follow-up procedures, showing that they are not only useful for determining whether States respond to Treaty Bodies' Views, but also for analysing how and over what period of time the implementation occurs and, if any, which are the external factors that can influence the process. For instance, the authors find that most instances of compliance take place within the first three years following the adoption of a view, whereas the likelihood of implementation decreases significantly after ten years, although occasional cases of delayed compliance can still be observed even after 15 and 35 years. Additionally, their analysis also considers both decision-level characteristics (such as the type and number of remedial measures required) and country-level characteristics (including democracy, government

effectiveness, human rights performance, and the role of civil society). For instance, contrary to other researchers, they did not find any relation among the level of democracy of a State and the level of compliance, but they found that, the involvement of other types of NGOs in the field of human rights can help States implement the views.

Overall, this research shows that compliance is a complex process that cannot be guaranteed only through the existence of international monitoring mechanisms. The implementation of views depends on several factors, including the characteristics of the decision itself and the situation of the State concerned. In this sense, follow-up procedures are not only important for checking whether States comply with Treaty Bodies' decisions, but also as a source of useful information for understanding how and why implementation takes place and how it can become better (Ullmann and von Staden 2024).

3.3.3 Limitations of the follow-up system

A closer look at the previous analysis reveals several shortcomings, showing that, despite being relatively well-developed and sophisticated in certain respects, the system still presents significant weaknesses. This overview was therefore necessary to identify and better understand these issues. One aspect that clearly emerges is that:

> "(…) following up on their views and opinions in individual communications proceedings has become a core part of the treaty bodies' work, with the HRC, followed by the CAT, leading the other committees in terms of overall volume" (von Staden 2018)

However, this crucial role does not come without limitations. It was shown that compliance is a complex phenomenon that is difficult to identify and measure, and it is equally clear that this constitutes one of the main issues affecting the system. Von Staden (2018) identifies one of the main issues as the lack of clear and uniform compliance standards. As shown before, all treaty bodies have different systems of assessing compliance but, at the same time, they all result quite vague. Even the most advanced procedure, that of the HRC, does not specify in general terms, applicable to all cases, what remedial action needs to be taken to consider the measures compliant. Von Staden (2018) then tries to give a solution to the issue by comparing the Committees' system to the one of the Committee of Ministers of the Council of Europe, which is charged with the supervision of the execution of the judgments of the European Court of Human Rights under article 46 (2) of the European Convention on Human Rights. This provision better clarifies that to close a supervision case and to consider it

sufficiently complied with, the State needs to end any ongoing violation, provide full reparation to the injured party in the form of restitution and/or compensation and, in certain cases, prevent the recurrence of the violation. Therefore, this system identifies in general terms the effects that the remedies need to accomplish. The standards applied by the Committees, do not specify such a requirement and are, because of their greater vagueness, more open to discretionary assessments. Von Staden (2018) affirms that:

> "Basing the committees' compliance assessments on the effects of the remedial measures adopted would be both feasible and contribute to the harmonization of standards across the human rights domain" (von Staden 2018)

Even though von Staden research dates from 2018 the issue still exists today. For instance, in another research, Ullmann and von Staden (2020) discuss some developments within the system that tried to formalise the follow-up procedures. However, after, they also present some data that can be attributed to the lack of standards. They analysed again the HRC and the study found that the lack of systematic and consistent follow-up practices, together with the absence of common standards for assessing compliance, makes the assessments less objective and comparable, as not all cases are treated in the same manner (Ullmann and von Staden 2020).

Another issue in the system identified by von Staden (2018) is the non-legally binding status of the views and opinions. It has already been said that the treaty bodies' decisions are non-legally binding. However, it was also said that, even if they are non-binding, it does not mean they don't have a value: while this characteristic may absolve States from a legal obligation to comply with them, such views still retain an essentially normative legitimacy, therefore carrying a justifiable expectation of compliance. This simply follows the concept of *good faith* in international law. Von Staden (2018) and other researchers assess that this is a clear limitation in the system. Nevertheless, von Staden (2018) also underlines that this cannot be a certain primary issue. While the lack of legally binding status can obstruct the domestic execution of adverse views, in other cases it is unclear whether the formal legal status is the primary driver of non-compliance. Therefore, it is an issue, but researchers are not sure whether it is the cause of the non-functioning of the system. In this regard, von Staden (2018) also cites Henry Steiner (2000) who said that it is not clear if making the treaty's views binding would help improving compliance as the issue, following his view, is not so much that States are uncertain about whether the views are legally binding or not. Rather, some States, particularly those responsible for serious and systematic human rights violations, may simply lack the political will to comply with the decisions of the Treaty Bodies. It can represent therefore an issue but, perhaps, not

the first one that needs priority. In addition to this topic, von Standen (2018) underlines the informal mechanisms for promoting implementation or exerting pressure on States. Even if they are not conventional measures, other instruments are used and they have proved effective in certain cases. Among these more informal mechanisms of exerting influence, the most diffused is the one of naming and shaming. This widely used practice exerts pressure on States by exposing and publicly criticizing them, trying to provoke a feeling of shame that would eventually lead the State to change its conduct, even if partially. As von Staden (2018) reports:

> "Due to the lack, largely, of institutionalized enforcement mechanisms, the incidence and effectiveness of naming and shaming has been particularly widely applied and researched in the human rights domain" (von Staden 2018)

And this is still true today, as more recent scholars confirm that the system continues to work in this way. It is not only about shaming the State, but the publication of a particular case inevitably draws attention to the government concerned. Schoner (2026) then argues:

> "(…) I theorize that violation decisions from committees increase reputational costs for governments to continue repression. Civil society organizations serving as legal representation to victims play a crucial role in helping file these complaints and also publicizing these decisions, increasing negative attention on the government." (Schoner 2026)

In this context then, von Staden (2018) does not entirely criticise the system as he highlights this existence of certain mechanisms through which non-binding views can exert pressure on States. That's why he argues how, from this perspective, the fact that views are not legally binding is not the core of the issue. Consequently, he is affirming that the lack of enforcement is undoubtedly a limitation of the organisation, but the topic is also more complex than that and enforcement does not necessarily only depend on legally binding mechanisms (von Staden 2018). However, at the same time, other scholars have more recently provided other data on the subject. In particular, as already noted, Schoner (2026) confirms how the UN's non-binding decisions can function as a form of naming and shaming. Yet, Schoner (2026) also emphasises that the effects have proven to be relatively small as they depend on the involvement of third-party actors and on how sensitive governments are to their international reputation (Schoner 2026).

3.4 Political dynamics in the UN Human Rights System

"UN organs and bodies have been politicised, to varying degrees, from the organisation's outset." (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011).
As Freedman (2011) suggests in this quote, politicisation has always been embedded in the UN's system from its early years. This tendency became particularly apparent in the context of the Cold War in which the organisation was often used to pursue the United States or the Soviet Union and their respective allies' interests. Consequently, from the organisation's outset. However, even if the phenomenon was present at that time, it was not instantly recognised as it. This has become clearer over time: the boundary between politicisation and ordinary political disagreement is very thin and, consequently, the phenomenon is difficult to be identified.
The phenomenon can be found in all the UN bodies. Freedman (2011) reports the example of the General Assembly. Even if it is a body that includes all Member States, is tasked with considering also political matters and therefore, is politicised daily by singular States, groups and blocs. This shows how, even though some to a lesser extent than others, all UN's bodies are politicised, even those not directly responsible for political matters (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011). Among the scholars many insist on the fact that politization not only has impacted over years all the UN main bodies, but even its agencies. The main indicator of this case was that, over the years, certain controversial issues were brought by nations even when they were not relevant in that particular case or context because they were needed to pursue political interests or, on the contrary, some other important issues have been ignored. Lyons, Baldwin and McNemar (1977) in his work and reconstruction about the role of politicisation within UN agencies argued that, in this sense, the agencies have transformed over the years in forums of political debate rather than active organs in their fields. Following this view, the issue among the agencies became most serious since the early 70s when, as analysed in the previous sections, the international economic order was transforming into something new, and the UN system was expanding. The author then even reported several examples in order to maintain his theory. In 1975, for instance, the United States outlined the possibility of a formal withdrawal from the International Labor Organization in 1977 because of politicisation. In the same year, the Congress had prohibited any United States' payment contribution to UNESCO until certain anti-Israel resolutions passed by UNESCO General Conference were modified. But these are only two examples. Always following this reconstruction, other factors then have reinforced the increase of the phenomenon. Firstly, in the reconstruction of the new economic order the Soviet Union tried to align its interests with those of the third world, seeking to isolate the Western industrialized States and consequently creating

tensions among the different groups. Secondly, politization was not a clearly defined phenomenon, it was not easy to be recognised, and, consequently, it was not easy to deal with it either. For instance, while the United States considered politic actions when the agencies dealt with the issue of apartheid in South Africa or with the liberation movements in the Middle East, for other countries, and in particular for the Soviet Union, those actions were valid and fundamental steps that needed to be taken in order to establish the new economic order. Only when the phenomenon became so evident some fixed theories began to be established. In particular, among the more industrialized States, emerged the belief that the economic and social programmes should have been non-political and, the United States strongly pushed for the resolution of those matters only inside the General Assembly and the Security Council and not within the agencies. However, at the same time, Lyons, Baldwin and McNemar (1977) also reported that while this belief was widely diffused, it was also clear to many that the functional programmes that guide the agencies were established through political intergovernmental agreements and therefore their execution and effects were (and still are) developed through systems of relations in which political, economic and social factors are indistinguishably intertwined (Lyons, Baldwin and McNemar 1977). This is where the issue became to be more evident: politization is not an easy phenomenon to describe and, sometimes, it seems inevitable. Freedman (2011) maintains that "Politicisation will always occur to some degree within international organisations, owing to the nature of interstate relations" (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011). However, even if it can be retrieved in any intergovernmental body, in light of its considerable impact on organisations, the author also states that it should be analysed and understood. As a matter of fact, politicisation in all its forms, plays a significant role within the UN's bodies and its recognition does not lead to its toleration. Freedman (2011) then addresses the complexity of the issue, already recognised years before by Lyons' (1977) work:

> "Whether politicisation occurs is often in the eye of the beholder. States with common political aims will not view those aims being furthered as politicisation, while countries with opposing interests will immediately cry foul in those circumstances" (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011)

While some authors defined politicisation as an organisational defect that needed to be corrected (Lyons, Baldwin and McNemar 1977) others argued that this view was naïve and limited as international organisations cannot be separated from their political agenda (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011).

In particular Freedman (2011) cites Humphrey (1984:25), arguing that it would even be quite unreal to have an international debate, particularly on human rights, without taking into consideration the influence of the political differences that divide the nations and, therefore, without politization. Following this view, politicisation is more a natural consequence than an organisational defect. Freedman (2011), drawing on these theories, interprets politization more as an indicator of the different trends that affect the international system, arguing that "Politicisation directly mirrors current political, military, economic or cultural conflicts between States, groups and blocs" (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011). In this view, Human Rights Council's politization is only an indicator of the differences present in the international community. However, alongside this argument, the author also stresses that the phenomenon turns into a problem when it prevents an organisation from fully carrying out its mandate. In such cases, the strong politicisation undermines the Council's credibility and hampers its work (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011).

3.4.1 Different forms of politicisation

Following Freedman's (2011) analysis the three main forms of politicisation inside the UN are:

1. Politicisation through ideological discourse
2. Overt politicisation
3. Politicisation of human rights through an ostensible "success story"

Freedman (2011) then argues that politicisation through ideological discourse has been repeatedly observed inside the UN bodies and particularly in the Human Rights Council. Indeed, different ideologies have always been visible inside the Council. Developing States have always placed lot of emphasis on the promotion of human rights and on technical assistance in the field, while Western States mainly focused on the prevention of gross and systemic violations. Freedman (2011) underlines how*:* "The tension between those groups demonstrates a deeper political and ideological divide on the role of human rights bodies and the responsibilities of individual States" (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011).

On the contrary, overt politicisation occurs "where groups or blocs of States seek to further a common political aim through the use of group tactics within a UN body or organ" (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011). This means that this

phenomenon mainly occurs when a sufficient number of States share the same objective or support allied States in pursuing their political goals. Following this tactic, groups can dominate proceedings and they can politicise any activity. This type of politicisation can be found in many UN's bodies, due to their structure. Inside the General Assembly, for instance, each State has the same rights and has one vote; in this context, this phenomenon is quite common, and it happens through a mechanism called "regionalism". The same situation happens within the Human Rights Council. Freedman (2011) then cites Bosch (1998:42) who, in his work "*Votes in the UN General Assembly"* presented the Israel-Palestine conflict as one of the main examples of this form of politicisation. Freedman (2011), reporting Bosch's work (1998:42) underlines that many UN bodies and organs have been politicised regarding this issue (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011), even if that happened in different ways over time. Although, in its early years, many UN Member States adopted a hostile stance towards Israel, illustrating how politicisation could be used to target a specific State and its people (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011) more recent reports indicate a shift in this pattern. For instance, in a 2025 statement published by the United Nations, the Special Rapporteur Francesca Albanese argued that Israel's conduct in Gaza had occurred with the support or involvement of other States. This statement affirms that even when such States do not actively back Israel, they may still provide indirect support through inaction or by refraining from taking measures against it (United Nations 2025). This shift is mainly due to the natural change in international relations but in both cases, it is a matter of politicisation. Another criticism regarding this issue has already been addressed in the previous chapter, where the agenda items of the Human Rights Council were discussed. One point of the agenda is entirely reserved to the question of the Occupied Palestinian Territories. On this matter, Freedman (2011) reports that many States, but even the High Commissioner for Human Rights and the Secretary-General, asked the Council to devote attention and resources also to other grave situations.

> "These calls were a response to the Council's repeated focus on Israel to the detriment of other serious situations in, for example, the DPRK (North Korea), the DRC (Congo), Myanmar (Burma), Sri Lanka, and Zimbabwe, amongst others" (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011)

Finally, the last type of politicisation identified by Freedman (2011), is politicisation through an ostensible "success story" and it is perfectly shown by the case of the South African apartheid. This third type occurs when a success story is used to draw attention from any kind of failure or inaction

of the organisation, and this is what happened with the case of South Africa (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011). The United Nations have undoubtedly been key actors in ending the apartheid policy during the 1990s with the support of both the Western and the Soviet blocs (Birmingham 1995). Following Moskowitz's reconstruction (1980), this context led to an increased interest in the South Africa's human rights situation, but the great focus was only reserved for that country, therefore using the topic to move the focus from other countries' shortcomings in the field. Moskowitz said: "the vast majority of those who called for freedom, human rights and racial equality in South Africa hardly conceded them to their own peoples." (Moskowitz 1980). Freedman (2011) then adds that during the same period in many other parts of the world people were experiencing the same type of serious violations of human rights, the only difference was that for other countries the consensus from either the Soviet and Western group was lacking (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011). Afterwards, she also reports one example citing Chitkara's work (1996) about China's occupation in Tibet in 1949. Chitkara (1996) affirmed how the discriminations that took place in Tibet were also described as "apartheid" and how they were also considered by many even worse than those that were happening in South Africa. However,

> "China, owing to its powerful position at the UN, its leadership of political alliances between developing States, and its links to the USSR, was able effectively to ensure little scrutiny of those abuses." (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011)

3.4.2 Regionalism

As politization can occur in many ways it is crucial to focus also on regionalism. According to Freedman (2011), regionalism is one of the primary mechanisms through which overt politicisation is expressed, and it also serves as a key channel by which politicisation spreads within the organisation, particularly in the Human Rights Council. As highlighted also in previous sections when talking about the Council's membership, many factors gave rise to the creation of regional alliances. Some scholars trace the origins of this phenomenon to the moment when developing countries joined the organisation and started forming various groups to strengthen their shared objectives. In summary, when the previously mentioned North-South fight began. The phenomenon then became even bigger when countries cease to align themselves solely on the basis of common interests or geographical

proximity, and these groups become genuine political coalitions. In this way, regionalism allowed smaller countries to have more chances to increase their influence on others by using their collective strength. Initially two groups were created precisely to represent the interests of the developing countries: the Non-Aligned Movement (NAM) and the Group of 77 (G-77). NAM was composed of States that were not directly involved in the cold war, and it developed from the Asian African Conference, a political gathering held in 1955. The G-77 group instead, was developed in 1964 when 77 States decided to gather before the UN conference on trade and development, in order to be prepared ahead together. In addition, in 1969 even the Organisation of the Islamic Conference was established to unite the Muslim countries (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011). This reconstruction demonstrates how regionalism, at least in its early stages, entered in the affairs of the United Nations driven by legitimate motivations and high expectations, particularly with the aim of providing greater representation of marginalised States. However, despite these positive aspirations, Sweeney (2022) notes that during the first five years inside the Human Rights Council, these divisions and in particular NAM, OIC and the African group had an adverse impact on the Council's work. The positions of many of these groups often did not align with those of single member States and therefore they exercised an unbalanced influence on collective decisions (Sweeney 2022). However, at the same time, they were not the only actors, and even western regionalism started to play an important role inside the UN (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011). One of the main examples of Western union is NATO, which was founded with the aim of creating a defence system outside of the UN, particularly against the Soviet power (Kaplan 2004). In addition, around the 1950, even the European Union group began to be established and over the years it contributed to the further rise of regionalism (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011). Over the years, then, the phenomenon has expanded, but it cannot be characterized as entirely negative nor entirely positive. In fact, it has changed shape in multiple ways, and the situation has never been static. While Sweeney (2022) highlights that, during the first five years, the groups previously examined contributed to weakening the Council through the use of bloc voting, this dynamic gradually diminished in subsequent years. Individual members of the OIC, NAM, and African Group increasingly departed from common group positions, and several groups initially considered more "disruptive" began to evolve, adopting less cohesive and more flexible approaches. However, a fact that can be proven is that regionalism never stopped through the years (Sweeney 2022). In 2008, Weiss argued that there were some groups and alliances that obstructed the UN's work (Weiss 2008) and we also see the same trend in the most recent Sweeney's (2022) work.

Over the years, new groups began to emerge, and the situation simply evolved with the changing in the international system, leading also to new types of situations (Sweeney 2022). In general, it can be said that regionalism slowly became a means of advancing political objectives, and that the phenomenon has also affected the human rights field. Unfortunately, this has often resulted in the protection of certain human rights violators through political alliances, as well as in attempts to obstruct the Council and other UN bodies from taking action in certain area (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011).

To this day, the different groups play a significant role in organising and structuring the Human Rights Council's discussions on each topic. The representatives of the main alliances usually initiate debates, and although each State is expected to present its own position, these positions often coincide with the collective one adopted by each group. As a result, discussions may lack diversity and genuine exchange of perspectives. While this strategy enables groups to reinforce their political influence and negotiating power, it undoubtedly limits broader and more pluralistic debates. (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011; Sweeney 2022).

3.4.3 Politicisation in the field of human rights

If the previous sections have demonstrated that politicisation is present, in different forms, across the various areas and organs of the United Nations, it is therefore clear that this phenomenon also extends to the field of human rights and to the bodies responsible for their promotion and protection. As has already been emphasized, the Human Rights Council is the principal body responsible for the protection of human rights, and it differs from other bodies for two specific reasons. First its composition, as it is composed of a limited number of members, organised into groups. Second, it is inherently political, given its broad scope and thus a higher degree of politicisation is expected compared with other bodies. As it already emerged, the issue started even before the Human Rights Council, even with its predecessor, the Commission. In particular, as for the General Assembly, the Commission's politicisation has been particularly influenced by some international dynamics as the Cold War, decolonialisation and the expansion of the field of human rights protection (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011). However, as it has been discovered when talking about the organisation in general terms, and as Heinze (2008) showed his work, even in the field of human rights the phenomenon did not merely stay inside the organisation, but it also touched the other actors in the field as non-governmental organisations. More broadly, Heinze (2008) describes that since the Second Worl War, human rights have been recognised

not only as legal norms, but as criteria of political legitimacy. Unfortunately, this status often leads human rights to become a "political football". This then consequently leads to the creation of the phenomenon: certain States are constantly denounced and considered human rights violators, while other terrible activities are overlooked or sometimes even supported. As an example, Heinze (2008) reports the data given by the non-governmental organisation Human Rights Watch on the Israel-Lebanon conflict of 2006. In its report the organisation denounced the military operations of the Israel Defence Forces for its cross-border strikes. At the same time, some observers, such as Harvard Law School Professor Alan Dershowitz, as cites Heinze (2008), criticised this report of events as it overlooked Hezbollah violations. Following this view then, Human Rights Watch, published a one-sided news. On this matter then, Heinze (2008) does not take a stance but simply wonders how difficult it is to achieve a degree of impartiality in such contexts. Therefore, he argues that the identification of perpetrators of human rights violations becomes unlawful when it is motivated by a political or cultural conflict, thus making the issue even broader and more complex (Heinze 2008). In general, within UN bodies and non-governmental organisations, it can be said that: "Politicisation of human rights bodies, particularly the phenomenon of excessive politicisation, arguably results from human rights and politics' interlinked nature" (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011).

Freedman (2011) reports that, for many years, mainly due to the Universal Declaration of Human Rights, human rights have been separated from politics. The author then reports that many scholars did not agree with this separation even if human rights were given a higher status: they did not agree as, for them, the daily practice of human rights law was linked with politics and, unfortunately, many argue that nowadays even the violations are linked to it. However, Freedman (2011) then clarifies how this view can be true only inside the Charter-based bodies, as the Human Rights Council, where the activities are many and varied and more linked to the political sphere. On the contrary, within the treaty-based bodies (as the Human Rights Committee) politicisation is more contained as the functions and tasks are limited and more focused on singular goals and fields and, in addition, they are often formed by independent experts rather than governmental representatives (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011). It is evident then how the phenomenon of politicisation strongly depends on the bodies' characteristics and it is also evident that it inevitably touches all the international context (Freedman, The United Nations Human Rights Council: A Critique and Early Assessment 2011).

3.4.4 The impact of politicisation on contemporary human rights protection

Following the previous analysis a question emerges: is political polarization linked to a higher risk of human rights violations? As already emphasized, politicisation is a broad and, at times, an unavoidable phenomenon; however, besides its definition and distribution, it is also crucial to understand whether, and in case, to what extent it influences the protection of human rights.
This issue is gaining growing relevance, as the phenomenon appears to have intensified in recent times and Yildiz (2024) in his work maintains that this increase can represent a threat for human rights protection. He argues that in highly polarized societies individuals tend to be more attached to their political views thereby creating a climate where politicians can exploit existing divisions and manipulate opposing groups. As a result, in these contexts, those holding opposing views may increasingly be portrayed as enemies rather than only political opponents. Unfortunately, then, this strong opposition between groups can lead to discrimination. Yildiz (2024) is not the first one who links the phenomenon of politicisation with discrimination. For instance, Broockman, Kalla and Westwood (2023) affirmed that political polarization increases social distance and discriminatory attitudes towards members of different groups and, in these contexts, individuals also tend to avoid interactions with those of the opposite group leading to other similar negative phenomenon in our society as isolation, hostility and intolerance (Broockman, Kalla and Westwood 2023). While these outcomes are not necessarily linked with human rights violations themselves, they could contribute to an environment that increases the likelihood of human rights abuses. Therefore, Yildiz's (2024) study affirms that:

> "As (…) violations of rights are often perpetrated by States, governments, and the elites in power (…) In highly polarized political contexts and societies, governmental intimidation, which has the potential to result in violations, may escalate more easily" (Yıldız 2024)

Polarization creates a context where there is always an enemy and this often leads to the normalisation of violent actions, as vilification and dehumanization, thus transforming any political environment into a hostile one. In particular, the author focused on the definitions of vilification and dehumanization, as he considers them particularly crucial in finding the connection among politicisation and human rights violations. In order to build this connection Yildiz (2024) cites the Queensland Human Rights Commission (QHRC, n.d.) saying that vilification increases feelings of hatred and contempt toward individuals and groups and the European Centre for Populism Studies

(ECPS, n.d.) arguing that dehumanization is the combination of actions and discourse that diminish the humanity of individuals or groups.

> "Such perspectives may justify retaliatory measures, including violence and unequal treatment, even toward vulnerable populations. Consequently, the acceptance of differential treatment can normalize human rights violations that are evident within one's society" (Yıldız 2024)

Looking at these data, it can be argued that politicisation can be linked to the creation of hostile environments, the spread of hatred and discrimination, and, as argued by Yıldız (2024), even to human rights violations. Although Yıldız's (2024) analysis focuses primarily on States and examines these dynamics at the national level, it is reasonable to argue that similar patterns may also emerge in international organisations: since these organisations are composed of States, they may reproduce at the international level their national political dynamics (Yıldız 2024).

3.5 The right of veto

It has already been said that within the Security Council, one of the main organs of the United Nations, the five permanent members, also called P5 (United Kingdom, France, United States, Russia and China) possess the right of veto. The Charter does not directly refer to a veto power, but it can implicitly be found in Chapter V, Article 27. In summary, this right means that a draft resolution cannot be adopted if any of the P5 members votes against it.

On this topic, Illingworth (2020) identifies an issue linked to the field of human rights. Following his view, the matter becomes problematic when it comes for the responsibility to react to mass atrocity crimes under Pillar Three of the Responsibility to Protect, also called R2P, which is a matter that lies primarily in the hands of the Security Council (Illingworth 2020). The R2P represents a crucial component of the human rights framework. The idea to create the R2P, a new system that could go beyond the simple peacekeeping actions of the United Nations, appeared in a report dated in 2001, called "The Responsibility to Protect", published by the International Commission on Intervention and State Sovereignty (ICISS). The report built upon an initial idea of Francis Deng proposed in his book "Sovereignty as Responsibility: Conflict Management in Africa (1996)" and it further developed it proposing all the principles and rules required to regulate any kind of international intervention. The aim was to protect civilians from mass atrocities, including genocide and ethnic cleansing. In 2005 the R2P was adopted during the World Summit in New York (El-Affendi 2023). Illingworth (2020) identifies the main issue in the fact that the R2P and the veto power are intrinsically

linked, as its implementation depends solely on whether the permanent members share a common interest. Illingworth (2020) then reports that other scholars, namely Wheeler (2005), Weiss (2006) and Bellamy (2006) in 2005, during the adoption of the R2P, instantly noted how this could have been an issue in the system. Unfortunately, Illingworth (2020) then affirms: "This prediction has unfortunately come true with veto use meaning that sometimes the Council has failed to live up to its R2P" (Illingworth 2020).

However, despite this severe limitation, many scholars talking about this matter, including Hehir (2018), do not reject the veto altogether. On the contrary, they acknowledge the important role it plays within the Security Council as it serves, following their view, to prevent conflict among the great powers by guaranteeing their participation in the UN system. At the same time, however, Hehir (2018) acknowledges that the veto can, and has, hindered the Council's response to human rights violations (Hehir 2018). Nevertheless, the positions on this topic are varied. Other authors completely disagree with Hehir's (2018) view about the "good reasons" behind the existence of the right of veto. For instance, Binder (2020) affirms instead that the composition of the permanent members of the Security Council and their power of veto represent "the power constellation at the end of World War II" and that they are "perceived to be particularly anachronistic" (Binder and Heupel 2020), suggesting then that a reform of the organ is needed. Despite these opposite positions on whether the right of veto is needed or not, it can be said that many agree on the fact that it surely is a limitation in the implementation of measures in the fields of human rights. For instance, Illingworth (2020) reports various quotes of other scholars:

> "Bellamy and Luck note that P5 disagreements often lead to Council ineffectiveness. Grover argues that not acting on R2P crises makes the Council complicit in atrocity crimes. Wyatt claims that 'the veto power continues to offer a constitutional mechanism whereby intervention can be precluded' despite breaches of international law and R2P violations. Coen notes an international legitimacy problem presented by the veto as those that possess this power can effectively determine which R2P situations warrant a response. Erskine believes that the decision not to act or inability to act in response to an R2P crisis (such as through veto use) equates to a failure of the Council to meet its moral responsibility." (Illingworth 2020)

Therefore, can the veto be considered a limitation within the UN human rights protection system? The answer is yes, and the case of R2P provides a clear example. R2P was developed with the aim of promoting greater protection of human rights as genocide, crimes against humanity, and war crimes are among the most serious violations of international law. Since they also constitute a direct threat

to international peace and security, they fall within the scope of the Security Council's responsibilities. The international community therefore expects the Security Council not only to respond to these types of crises, but also to prevent them. However, the veto prevented the Council from fulfilling this responsibility. Therefore, according to the Global Centre for the Responsibility to Protect (2026), the Security Council has too often been unable to take action in response to such situations due precisely to internal political divisions and/or the use of the veto.

> "This has had a debilitating effect on the UNSC's ability to respond in a comprehensive and consistent manner to atrocities in Myanmar (Burma), Gaza, Sudan, Syria and elsewhere – making ineffective the very body charged with preventing and addressing mass atrocities." (Global Centre for the Responsibility to Protect 2026)

In Syria, the use of veto has impeded the Security Council's condemnation of chemical weapons attacks; in Ukraine it has blocked the establishment of criminal tribunals and the condemnation of Russian aggression against Ukraine; and, in Palestine it has prevented condemnation of the building of illegal settlements and the use of violence against the population (Security Council Report 2022). In particular, the Palestinian case, cited at the beginning of this chapter as one of the most recent cases of human rights violations, is considered by many scholars to be a clear example of the failure of this system (El-Affendi 2023).

Consequently, already in 2020, Illingworth (2020) argued that a veto reform is necessary in order to better protect human rights. However, at the same time, he also acknowledges the possible significant challenges that can be encountered in such reform. One of the main constraints is undoubtedly the potential conflict with the interests of the P5, which have strong reasons to preserve their privilege.

> "The veto power ensures that the P5 members hold a permanent position of authority within the international community and enables them to further their interests by blocking potentially damaging Security Council action." (Illingworth 2020)

That's why the complete abolishment of the right of veto is highly improbable: the major powers would not renounce to it entirely and, unfortunately, they would not even accept certain kind of reforms. This can therefore be a first limitation. On the other hand, a second limitation, following Illingworth's (2020) view, is that abolishing the veto could be dangerous in certain circumstances. The Security Council has to come into contact with very serious matters, linked with international security, and without any kind of veto actions that are not aligned with the purposes of R2P can also

happen. Illingworth (2020) argues that "Without a check on the application of military force, States may be able to too easily authorise interventions that could potentially undermine human protection" (Illingworth 2020).
Finally, a more practical limitation has already been addressed in the first Chapter, even if not on this topic. The Charter, being a rigid treaty, is very difficult to modify. Therefore, a reform of the existing veto system appears more feasible than its complete abolition (Illingworth 2020). Webb (2014) even says in her research "it would probably be easier to dissolve the UN than to amend the veto power under the Charter" (Webb 2014).

3.5.1 Early attempts to reform and restrain the use of the veto

Being a well-known and criticised issue, several attempts to restrain the use of the veto power have already been made. Precisely because of the complexity of formal reform, attention has increasingly turned towards a more informal reform process, focusing on changes to the working methods of the Security Council. On this regard, Adediran (2018) cites other critics introducing the general idea that there was behind the reforms:

> "Some have argued, opening up the Council to more deliberative consultations during humanitarian situations and reining in the use of the veto by the five permanent Council members (P-5) would improve the international response to atrocity crimes." (Adediran 2018)

Following this sentiment the idea of a Code of Conduct (CoC) was introduced: a set of principles and rules to regulate the actions of Security Council Members during the consideration of mass atrocity situations. Adediran (2018) then reports that in June 2018, 119 out of 193 UN Member States have expressed support for two of the CoC initiatives asking the P-5 to suspend the veto vote during humanitarian crisis. As the idea of a Code of Conduct began to gain prominence, scholars expressed different opinions about its potential. Adediran (2018) discusses some of the main academic views that emerged in the early 2011s. For instance, Ariela Blätter and Paul D. Williams (2011) acknowledged some of the limitations of voluntary veto restraint discussed above but, nevertheless, remained relatively optimistic about the potential role of a CoC in R2P. However, Adediran (2018) also refers to more critical views, such as that of Daniel Levine (2011), who argued that a CoC could implicitly privilege military action and lower the threshold for questionable military interventions. It is therefore important to notice how the CoC changed through the years: with the rise of all these differing views various modification were added to it. In this regard, it is significant to cite the 2015

Accountability, Coherence and Transparency (ACT) proposal: the ACT is a group of 20 States who tried to form a more consultative and transparent system. Adediran (2018) cites the ACT's opinion on the issue saying that:

> "ACT advocates for the "voluntary suspension of the use of the veto in cases of atrocity crimes . . . when the Council's actions aim at preventing or ending genocide, war crimes, or crimes against humanity"" (Adediran 2018)

This means that the ACT provides more details on the proposal for the suspension of the veto in cases of mass atrocities. In addition, it suggests that a CoC should apply not only to permanent members of the Security Council but to other current and future Council members as well. This detail was added as they wanted to underline that their proposal was not only about the veto issue, but it aimed at representing a broader novelty to support any Security Council action. Therefore, in this sense, the CoC would also apply to the ten non-permanent members.

> "In that regard, the group requests member States to pledge not to vote against a "credible" draft resolution that seeks to end the commission of genocide, crimes against humanity, or war crimes whenever they are serving on the Council." (Adediran 2018)

This initiative attracted considerable support. However, at the same time, another initiative started to generate comparable interests: the France/Mexico Initiative. It is not a surprise that France showed interest on the subject. Adediran (2018) remembers that France is the only State that has not invoked its veto privilege since 1989 and that it has a long history of advocating for restraint in the use of the veto. During the 68th General Assembly in September 2013, the President Francois Hollande advocated the States' interest for a reform and the creation of a Code of Conduct. After, the idea was further developed in an article with the Foreign Minister Laurent Fabius in The New York Times in October (Adediran 2018). In particular, Fabius (2013) underlined the urgent need for a CoC and for a solution on the veto issue as, for a long time, the Security Council, constrained by vetoes, was powerless in the face of the Syrian tragedy where, while populations were massacred (Fabius 2013). The State of France then proposed that, where the Security Council was required to make a decision with regard to a mass crime, the permanent members would agree to suspend their right to veto. In addition, in contrast to the ACT, this initiative established that the mechanism should have been activated when at least fifty Member States would request the Secretary General to assess the nature of the crimes being committed. After two meetings on the subject, France and Mexico issued a joint

political declaration at the 70th General Assembly requesting for the suspension of the veto in atrocity situations. Even this initiative gained particular support (Adediran 2018).
However, to this day, not all the States signed the two initiatives, and therefore these proposals did not solve the issue. In this context, the Security Council Report on his monthly forecast of April 2026 reports that, 107 member States have pledged their support to the French/Mexico initiative, while 130 member States and two observer States (the Holy See and the State of Palestine) have supported the ACT Code of Conduct. In addition, it also continues encouraging the others to do it

> "(…) member States that have yet to sign on to the French/Mexico initiative and the Accountability, Coherence and Transparency (ACT) Group Code of Conduct—which call for veto restraint in the face of atrocity crimes—could continue to be encouraged to do so." (Security Council Report 2026)

While it assesses these data as a significant level of support, at the end it also specifies how the fact that the France/Mexico Initiative has not been supported by any other permanent member can be a further issue. Same for the ACT where France and UK are the only P5 supporters (Security Council Report 2026).

3.5.2 Veto Initiative of 2022

Years after the first attempts to reform the veto, a different type of reform was introduced called Veto Initiative. Rather than abolishing the veto or establishing a formal "responsibility not to veto", this new initiative aims to promote greater transparency and dialogue on its use. The Veto initiative entered into force the 26th of April 2022, two months after the Russia's invasion of Ukraine and the timing was not accidental. The Russian aggression re-opened the issue, and it gave new perspectives (Peters 2023). Following the Resolution 76/262 of the General Assembly established that every time a permanent member of the Security Council uses its veto, the General Assembly must meet within 10 working days to discuss the situation. In addition, the General Assembly also invites the Council to submit a special report on the use of the veto at least 72 hours before the discussion in the Assembly (United Nations General Assembly 2022). "In result, this important resolution establishes a standing mandate to publicly discuss and criticise each and every veto in the General Assembly (…)" (Peters 2023). The veto initiative therefore differs from the earlier attempts discussed above, although the idea was already developed in the scholarly literature. In particular Peters (2023) cites Daniel Moeckli and Raffael Nicolas Fasel (2017) who, already in 2017, discussed the importance of discussing and giving reasons for the Security Council's actions. In particular: "Devika Hovell has drawn out the

duties to notify, to inform, to consult, to give reasons, and to account, as part of the Security Council's fiduciary role" (Peters 2023). Following, the author cites also Spain (2013) who argues that, once the Security Council has determined whether a threat to peace exists, it has a duty to disclose information if it wants to exercise its veto, by issuing a public statement and even providing the reasons behind it. The Initiative followed then these views. The procedure was used shortly after its creation with a General Assembly following the vetoes cast by Russia and China on a draft resolution seeking to condemn some actions of the Democratic People's Republic of Korea. During the discussions inside the Assembly numerous States made explicit positive statements toward the new procedure and Peter (2023) reports that some States even qualified the situation as "historic" and as a "milestone" and others founded that it would enhance transparency and accountability within the Council.

> "Several States welcomed the empowerment and the 'vital' role of the General Assembly.44 The State using veto would no longer have 'the last word',45 but the Assembly could step in and assume a useful function." (Peters 2023)

Only Syria had to say some criticisms regarding the new system. Syria affirmed that the procedure would lead to a political polarization of the matter as publicity in such situations carries the risk of transforming debates in "show debates". However, this vision has not been convincing for the others. Nevertheless, some opinions rapidly changed already during the second discussion. Peters (2022) reports that the second debate was organised after a Russian veto against cross-border humanitarian assistance in Syria. Here Nicaragua, Belarus, and Cuba criticised the procedure as they maintained that the meeting undermined the good faith negotiations on the draft resolution in the Council, as it had duplicated the Council's work. A third application regarded again the Ukrainian case. Russia used again its veto when Albania and the United States presented a draft resolution to condemn and declare invalid the referendums conducted at the end of September 2022 in the occupied zones Donetsk, Luhansk, Kherson und Zaporizhzhya. During this debate the limitations of the new procedure were evident. The procedure had a marginal role in the discussion, and the focus was only on the violation of international law by the Russian annexation (Peters 2023). Therefore, the limitations of the Initiative became apparent very soon and despite it represented a step forward at least on the introduction of the topic as a priority (Security Council Report 2022) it is also clear how it did not solve the situation. The Security Council Report (2026) reports in its 2026 Monthly Forecast of April that one of the issues that still generates much controversy is the veto:

> "In recent years, P5 divisions have hindered meaningful engagement on situations such as Myanmar, Sudan, "The situation in the Middle East, including the Palestinian question", and Ukraine The exercise of the veto has continued to increase. The seven vetoed draft resolutions in 2024 were the most since 1986. A total of eight vetoes were cast on these failed drafts: four by Russia, three by the US, and one by China. They were on a range of issues, evidence of the divisiveness that currently pervades much of the Council's work in an era of elevated tension among the major powers. In 2025, there were four vetoes: two by the US on draft resolutions on the war in Gaza, and two by Russia on amendments to a draft resolution on Ukraine. Significant attention continues to be focused on the adverse effects of the veto (…)." (Security Council Report 2026)

In conclusion, the veto remains to this day one of the most significant limitations of the United Nations human rights protection system (Security Council Report 2026).

3.6 The marginal role of other actors

As previously underlined, the United Nations system is not only composed of institutional bodies and States, but it also seeks to establish collaborative relationships with a diverse range of non-governmental organisations (NGOs). These collaborations are based on the formal consultative status programme for NGOs within the UN ECOSOC and, particularly in recent years, they proved to be crucial within the system. For this reason, the UN added among its priorities the further development of this diverse institutional structure. However, despite these efforts, the involvement of NGOs remains subject to several shortcomings. Many scholars argue that among the main organisation's limitations there is also the insufficient involvement of other actors. Mowell (2025) reports that, over the years, the United Nations has consistently sought to encourage inclusion and participation of NGOs, particularly in the field of human rights, also providing financial support to enable NGOs from developing regions to actively participate in UN functions. However, the effectiveness of these measures was questioned by several other scholars. For instance, the author also reports Kymlicka 's (2008) critical assessment of this UN's approach, arguing that it is unclear whether such efforts have facilitated some improvements in the diversity of NGOs representation or if such initiatives have remained principally symbolic in nature. From this perspective, the existence of these measures does not necessarily mean they are effective in increasing NGOs' influence on the system. Similarly, Mowell (2025) then also reports Bloem's (2008) idea who points to another difficulty arising from the large number of NGOs involved in the system. According to this view, it is inevitable that certain relations don't have the same quality as others because coordinating such a diverse range of organisation is not easy.

Building on these different perspectives, Mowell (2025) then comes to the conclusion that the main obstacles that NGOs encounter in trying to build these relations within the UN system are: the lack of knowledge of the NGOs about the UN's procedures, the lack of necessary funds and logistical issues (such as geographical distance from UN conferences). Mowell's (2025) findings, in fact, revealed significant limitations in the frequency and depth of the relationships between UN bodies and NGOs. While some of the organisations participate actively within the system, others seem to have lost contacts due to inactivity or to have reduced their involvement to only occasional efforts. Overall, the finding showed that substantive and regular communication between NGOs and the UN is relatively limited. In addition, the results cast doubt also on the extent to which participation is sustained over time: only a small minority of the organisations are regularly involved to a substantial degree, while another minority are mostly to entirely disengaged from active participation. The majority, instead, are engaged only to a minimal or moderate degree, participating only sporadically (Mowell 2025). This suggests that, despite the creation of a formal mechanisms to involve other actors within the system, these mechanisms do not always lead to meaningful collaborations, which may represent a limitation of the system, especially in fields such as human rights that require collaboration even more than others.

However, beyond these difficulties, the importance of the role played by other actors within the UN system, should also be acknowledged as the benefits of these relationships are reciprocal. Riddell-Dixon (2008) emphasises that by gaining knowledge of the language and procedures of the UN, NGOs can learn to use international instruments more effectively to advance domestic or transnational agendas particularly in areas such as human rights (Riddell-Dixon 2008). Meanwhile, Uhlin (2009), cited by Mowell (2025), establishes how NGOs can contribute to strengthening democratic ideals and practices by representing and aggregating the interests of different groups, contributing then to the consolidation of democratic norms (Mowell 2025). Overall, Mowell (2025) affirms that several research demonstrated that cooperation among different actors is the key element that often leads to the success of numerous initiatives in the international field (Mowell 2025) and this was also proven by some of the success reported in chapter two where NGOs successfully participated to various UN's initiatives.

3.6.1 The role of other actors in the field of human rights

The importance of the role of NGOs within the UN system of promotion and protection of human rights was already recognised before the establishment of the Human Rights Council. NGOs played

an active and significant role inside the Commission, and their contribution continued to be essential following the establishment of the Council. During its first year, 284 NGOs participated in the Council's sessions. Nader (2007) observes how, during that year, NGOs contributed to the Council's work by drawing attention to local situations of human rights violations and monitoring the positions adopted by Member States. In particular, while monitoring, they sought to put pressure on States, trying to ensure better human rights protection. However, despite this, Nader (2007) also identified several obstacles that limited the effective involvement of these actors in the work of the Council, at least during the first years. These included: the difficulties in obtaining ECOSOC consultative status, the high financial costs, the lack of staff available to attend sessions in Geneva, the limited familiarity with the Council's procedures, the restricted access to information (including language barriers), and the difficulty of translating participation at the international level into tangible benefits in NGOs' work at the national level (Nader 2007). Similar to the difficulties identified by Mowell (2025) in more recent years, suggesting that the situation has not really changed (Mowell 2025). Therefore, already in the early years of the Council, a gap was present between the formal recognition of the importance of NGOs and their practical ability to participate effectively in the Council's activities (Nader 2007).

Nowadays, the collaboration is always enhanced and proposed in the field of human rights and in particular Takata highlights how:

> "UN human rights treaty bodies have been under constant review within the framework of the UN in an attempt to improve their effective functioning, and stakeholder participation has always been treated as one of the critical issues in these reviews." (Takata 2024)

And therefore, these organs implemented various reform to promote participation and collaboration. Takata (2024) even reports that the web sites of the Treaty Bodies have a section called "Participation: Information for civil society, NGOs and NHRIs". Takata (2024) in his research in particular addresses the importance of both NGOs and NHRIs (national human rights institutions) as the first "challenges its fundamental assumption that States are the only relevant legal entities under international law" and the second "challenges its perception of "States" as unitary and monolithic legal entities" but both are considered the "(…) new actors in the eyes of traditional, state-centric international law" (Takata 2024). Therefore, underlying that when talking about "other actors" the system does not refer only to NGOs. In particular, Takata (2024) then reports the three main values that stakeholders (in general) bring to the treaty bodies' activities nowadays:

I. Facilitating bounded deliberations at the national level
II. Promoting deliberations on human rights treaty standards at the international level
III. Supplementing treaty bodies' weak fact-finding capacity (Takata 2024).

Nevertheless, certain limitations already identified by Nader in 2007 persist today and continue to hinder the effective collaboration in the UN human rights system. Doyle, Higgins and Murphy (2026) report that NGOs still face a number of challenges in participating in the HRC's works, particularly noting that their contributions are sometimes ignored during sessions. Focusing specifically on their participation in the UPR, the authors highlight that NGOs have a relatively limited role in the process and that their contributions are not always given the consideration they deserve. In this regard, they describe the lack of NGO involvement as "one of the distinctive features of the UPR" (Doyle, Higgins and Murphy 2026).

Further evidence of this issue can be found in the work of other researchers. For instance, MacInnes (2025) reports that the important role of NGOs inside the UN is principally hindered by two structural shortcomings of the current treaty body system: the fragmentation of rights across the bodies and the absence of coercive tools. In this view, the NGOs are required to operate in a fragmented framework that limits their ability to fully exercise their potential and, in a context where the lack of effective enforcement mechanisms further limits their ability to ensure the implementation of decisions. The author then addresses the various changes the Treaty Bodies had through the years underlying how other stakeholders were not considered in the process. McInnes (2025) cites then Holmlund (2023) who affirms:

> "While the importance of multistakeholder collaboration has been stressed at several points throughout the history of treaty body strengthening, the process had reverted back to the committee-States parties bipartite by 2012, and the participation of human rights organizations in the most recent review in 2020 was, arguably, 'almost non-existent'" (McInnes 2025)

According to McInees (2025) it therefore appears paradoxical that NGOs have not been sufficiently involved in these processes, given that they have historically acted as a driving force in the advancement of human rights. NGOs "serve as an active intermediary between rightsholders and treaty body mechanisms" (McInnes 2025) but despite this great power "human rights organizations are perennially hampered in their advocacy before the treaty bodies on behalf of rightsholders" (McInnes 2025). As anticipated, McInnes (2025) also highlights that the fragmented structure of the treaty body system leads to this issue. In this system a single human rights violation may fall within the jurisdiction of several treaty bodies, and, for this reason, NGOs are forced to submit multiple

case-specific contributions to each body and many of them cannot sustain this rhythm. Moreover, due to the lack of enforcement, when States fail to implement these findings, NGOs may be required to submit their cases again before the treaty bodies in order to re-open the case, again a difficult path to be followed. Summing up, it can be argued that the collaboration with other stakeholders in the field of human rights has consistently produced significant contributions. However, while, as highlighted in these two paragraphs, NGOs and other human rights actors actively seek to engage with UN human rights mechanisms, several limitations continue to hinder their effective participation. In this regard, McInnes (2025), and other authors, call for a profound transformation of the system, within which human rights organisations would constitute an important pillar of a more effective and integrated system of human rights protection (McInnes 2025).

3.7 Chapter conclusions and possible reforms

In conclusion, the analysis conducted in this chapter has highlighted that the UN human rights system, and particularly the Human Rights Council (HRC), continues to face significant challenges that limit its effectiveness. These limitations, examined from different perspectives, are also reflected in the findings of King and Pousadela (2025), whose recent report identifies four interconnected challenges facing the system: "the non-enforceability of human rights norms, the presence of right violating member States on the HRC, shrinking civil society access, and severe resource constraints." (King and Pousadela 2025). These findings provide then a synthesis of several of the issues discussed in the chapter. In addition, the authors further argue that these challenges are exacerbated by growing polarisation between Western and non-Western States, linked to the discussion of politicisation. Consequently, they also add the inconsistent engagement of the United States as a source of additional instability nowadays. After assessing the difficulties, King and Pousadela (2025) trace the several reform attempts undertaken within the HRC, underlining their shortcomings, arriving to propose the possible reforms founded in the literature.

The first attempt of reform was the revision process wanted by the General Assembly, which aimed at evaluating the HRC's work five years after its establishment. However, this first attempt did not lead to concrete solutions. King and Pousadela (2025) report that "Major challenges – including the fact that rights violating States are members of the HRC – were ignored, and no real reform took place" (King and Pousadela 2025). A second reform emerged in 2015, consequent to the economic difficulties of the HRC, which were increasingly evident. In this context, various States tried to propose measures aiming at strengthening the Council's efficiency but even here, all these proved

ineffective. After, the COVID-19 pandemic has favoured positive reforms, introduced mainly for necessity. In that period, HRC adopted new tools for remote participation in its activity and this innovation proved particularly efficient for stakeholders and member States that sometimes were not able to participate at in-person activities. However, even in this case there was a negative aspect: all the innovations were abandoned after the pandemic. Another attempt at institutional reform took place in 2017-2018, when Trump's administration proposed substantial changes to the system regarding the HRC's membership criteria and the election process. However, the proposal encountered strong opposition. In response to this opposition the United States ultimately decided to withdraw unilaterally from the HRC, further weakening its legitimacy.

Following this brief analysis of the previous unsuccessful reforms, King and Pousadela (2025) report then several perspectives of the main stakeholders in the field on possible ways to address the key limitations of the system. These proposals regard four main areas: "compliance mechanisms, membership criteria, civil society participation, and resource allocation" (King and Pousadela 2025). As regards the compliance mechanisms the different opinions mainly focus on the reinforcement of the complaint procedure, aiming at transforming it into a real early-warning mechanism. In this way the stakeholders proposed to create a system that instantly draws attention to the situation within the HRC. In addition, more transparency and a more robust follow-up system are proposed. Some even advanced the idea of creating the "Universal Periodic Review screenings", trying to give even more public visibility to each case. Concluding, many agree on the fact that a lot of effort should be also put on prevention and not only on intervention. Regarding the issue of the membership that allows human rights violators to be part of the HRC, some stakeholders maintained the idea of creating a parallel institution in which governments, NGOs and other actors are on the same level. King and Pousadela (2025) in this context report Rose's (2022) words who affirmed that "such a model could feature selective membership criteria, weighted votes, strict funding guidelines, and financial transparency" (King and Pousadela 2025). However, on this matter, not all the stakeholders agreed and some of them affirmed to prefer more moderate reforms. This other side simply proposed then a more rigid candidates' scrutiny and more openness toward the public. On the contrary, in relation to the participation of other actors in the field, stakeholders focused heavily on practical solutions. Therefore, the discussion focused on dedicated funding for technical assistance and hybrid participation modalities. However, after reporting the proposals, King and Pousadela (2025) also highlight the difficulties behind the implementation of some of these measures. Given the current political context, it remains uncertain whether some of these reforms can be effectively implemented. With regard to the compliance mechanisms, they highlighted how the reforms could be limited due to the major powers with a negative high score in terms of human rights violations, as China and

Russia, who often opposed to any reinforcement of the system. Furthermore, the polarisation between Global North and Global South on the issue further complicates efforts to reach consensus. Even the reforms linked to the membership must face similar obstacles: the polarization and the divisions among States do not allow to find a consensus easily. King and Pousadela (2025) notice that "The persistence of closed slates in regional blocs suggests limited political will for competitive elections that would strengthen the quality of membership" (King and Pousadela 2025).
On the contrary, the reforms related to the participation of other actors could have better perspectives as they require a lower level of consensus and practical measures are usually accepted with less oppositions. Yet, it also depends on the international context and its changes:

> "(…) the trend towards restricting space for civil society globally – as led by authoritarian States but increasingly embraced by many democracies – suggests that any meaningful expansion of civil society access may also be unlikely in the short term" (King and Pousadela 2025)

At the same time, financial reforms face even greater obstacles as : "The chronic underfunding of UN human rights mechanisms reflects a deliberate political choice by Member States rather than mere budgetary limitations" (King and Pousadela 2025). Unfortunately, often these reform proposals come up against the organisation's budgetary constraints.
In conclusion, it can be argued that the HRC, but also the entire human rights system, faces numerous challenges as it is placed in an increasingly polarised environment and its limitations derive both from structural and political factors. Following King and Pousadela's (2025) view, from a structural point of view, its main limitation is linked to the fact that it is an organisation guided by States, based more on public shaming than on the enforcement of norms. This difficulty is then further worsened throughout time when an increasing number of States accused of human rights violations became members of the HRC, protecting themselves and their allies. In general, King and Pousadela (2025) identify as one of the main risks of the system the "cascade of State disengagement" which would create space for the more authoritarian States to redefine the organisation.
Nevertheless, it also needs to be underlined that the HRC and the entire system of promotion and protection of human rights still possess a significant value. Therefore, it is not entirely a failing institution, and it still maintains a certain reputation. King and Pousadela (2025) report the words of the Universal Rights Group (2018) by saying:

> "The UPR process, despite its limitations, remains the only mechanism that requires all States to undergo periodic scrutiny of their human rights records. This universality principle maintains pressure

> on governments to engage with human rights issues, even if implementation remains uneven. Despite clear room for improvement, much of the HRC's work remains inclusive, productive, and effective" (King and Pousadela 2025)

And they also add:

> "The HRC's legitimacy also persists: authoritarian States remain "afraid" of it and attempts to restrict civil society participation paradoxically demonstrate its continued influence. (…) The HRC's ability to confer or withhold legitimacy by means of its resolutions continues to influence State behaviour, even when compliance is imperfect." (King and Pousadela 2025)

Undoubtedly, the current humanitarian crises further highlight the shortcomings of the system. In particular, some scholars observed that the situations in Gaza and Ukraine illustrate the differing positions adopted by Member States in response to human rights violations and international conflicts. Therefore, these cases demonstrate how the geopolitical context still influences States' positions on the matter of human rights within the system. This situation further complicates any attempts of reform.

> "Looking ahead, maintaining the HRC's effectiveness, robustness, and democratic character will require active defence and strategic reform. While comprehensive restructuring appears unlikely given current geopolitical tensions, targeted improvements remain possible." (King and Pousadela 2025)

Despite these limitations, the UN human rights system, and the HRC in particular, remain fundamental institutions for the promotion and protection of human rights. For this reason, in an era characterised by increasing geopolitical competition and new challenges to human rights, preserving and strengthening it remains an important avenue for addressing the current challenges facing the international human rights system (King and Pousadela 2025).

Bibliography

Çakmak, Cenap. 2004. “The Role of Non-Governmental Organizations (NGOs) in the Norm Creation Process in the Field of Human Rights.” *Alternatives: Turkish Journal of International Relations.*

A., Mirko. 2024. *Il fallimento della Società delle Nazioni in Manciuria.* 19 July. Accessed 2026. https://www.nxwss.com/il-fallimento-della-societa-delle-nazioni-in-manciuria.

Adediran, Bolarinwa. 2018. “Reforming the Security Council through a Code of Conduct: A Sisyphean Task?” *Ethics & International Affairs* 463–482.

Alston, Philip. 2006. “Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council.” *Oxford Journal of Legal Studies.*

Alston, Philip. 1987. “The Challenges Confronting the New U. N. Committee on Economic, Social and Cultural Rights.” *The Johns Hopkins University Press.*

Alston, Philip, and Gerard Quinn. 1987. “The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights.” *Human Rights Quarterly* 156–229.

Amnesty International. 2025. *The State of the World’s Human Rights.* Annual report, London: Amnesty International Ltd.

Amnesty International. 2026. *The State of the World’s Human Rights.* Annual report, London: Amnesty International Ltd.

Binder, Martin, and Monika Heupel. 2020. “Rising Powers, UN Security Council Reform, and the Failure of Rhetorical Coercion.” *Global Policy.*

Birmingham, David. 1995. *The Decolonization of Africa.* London: Routledge.

Bourgeois, Léon. 1913. *Pour la Société des Nations.* Paris: Bibliothèque nationale de France.

Bova, Maja. 2011. *Il Consiglio Diritti Umani nel sistema onusiano di promozione e protezione dei diritti umani: profili giuridic ed istituzionali.* Torino: G.Giappichelli Editore.

Boyle, Kevin. 1995. “Stock-taking on human rights: The World Conference on Human Rights, Vienna 1993.” *Political Studies.*

Broockman, David E. , Joshua L. Kalla, and Sean J. Westwood. 2023. “Does Affective Polarization Undermine Democratic Norms or Accountability? Maybe Not.” *American Journal of Political Science* .

Burgers, Jan Herman, and Hans Danelius. 1988. *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.* London: Martinus Nijhoff Publishers.

Burke, Roland. 2008. “From Individual Rights to National Development: The First UN International Conference on Human Rights, Tehran, 1968.” *Journal of World History.*

Caffarena, Antonella. 2009. *Le organizzazioni internazionali.* Bologna: Il Mulino.

Carr, Edward Hallett. 1939. *The Twenty Years' Crisis, 1919-1939.* London: Macmillan.

Carraro, Valentina. 2019. “Promoting Compliance with Human Rights: The Performance of the United Nations’ Universal Periodic Review and Treaty Bodies.” *nternational Studies Quarterly.*

Cede, Franz. 2001. “The Purposes and Principles of the United Nations.” In *The United Nations: Law and Practice*, by Franz Cede and Lilly Sucharipa-Behrmann. Leiden: Brill | Nijhoff.

Chukwuma, Victor, and Issa Adedokun. 2021. “The International Covenant on Economic, Social and Cultural Rights: A Comparative Glance at its Implementation and the Challenges Thereof.” *UNIPORT Journal of International and Comparative Law.*

Claude Jr., Inis Lothair. 1966. “Collective legitimization as a political function of the United Nations.” *International Organization* 367–379.

Claude Jr., Inis Lothair. 1995. “The United Nations in the Post-Cold War Situation.” *Fordham International Law Journal* 789-808.

Cleveland, Sarah H. 2024. “Human Rights Connectivity and the Future of the Treaty Body System.” In *Human Rights in Transition*, by Nehal Bhuta, 150–181. Oxford University Press.
Cole, Wade M. 2016. “Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).” *ResearchGate.* April. Accessed 2026. https://www.researchgate.net/publication/316228202_Convention_on_the_Elimination_of_All_Forms_of_Discrimination_against_Women_CEDAW.
Conforti, Benedetto, and Carlo Focarelli. 2010. *Le Nazioni Unite.* Padova: CEDAM.
Corella, Ángeles Solanes. 2018. “The Political, Legal and Moral Scope of the Universal Declaration of Human Rights: Pending Issues.” *The Age of Human Rights Journal.*
Doyle, David M., Noelle Higgins, and Muiread Murphy. 2026. “Non-governmental organisations, the United Nations Human Rights System and access to education in Europe.” *International Journal of Discrimination and the Law* 6-38.
El-Affendi, Abdelwahab. 2023. *Where is the ‘Responsibility to Protect’ in Gaza?* 31 October. Accessed August 19, 2026. https://1-e8259.azureedge.net/opinions/2023/10/31/where-is-the-responsibility-to-protect-in-gaza?
Fabius, Laurent. 2013. “A Call for Self-Restraint at the U.N.” *The New York Times*, 4 October.
Freedman, Rosa. 2011. “New Mechanisms of the UN Human Rights Council.” *Netherlands Quarterly of Human Rights* 289-323.
—. 2011. “The United Nations Human Rights Council: A Critique and Early Assessment.” London: University of London, August.
Gardbaum, Stephen. 2008. “Human Rights as International Constitutional Rights.” *European Journal of International Law (EJIL).*
Gargiulo, Pietro, Ivan Ingravallo, and Pierfrancesco Rossi. 2023. “Assemblea generale e mantenimento della pace: Riflessioni sull’antica questione dell’ampliamento dei poteri.” *La Comunità Internazionale – Rivista Trimestrale della Società Italiana per l’Organizzazione Internazionale.*
Global Centre for the Responsibility to Protect. 2026. *2027-2028 UN Security Council Elections and the Responsibility to Protect.* 3 June. Accessed August 19, 2026. https://www.globalr2p.org/publications/2027-2028-un-security-council-elections-and-the-responsibility-to-protect.
Gordenker, Leon. 2013. *The UN Secretary-General and Secretariat* . New York/London: Routledge.
Hehir, Aidan. 2018. *Hollow Norms and the Responsibility to Protect.* Cham, Switzerland: Palgrave Macmillan.
Heinze, Eric. 2008. “Even-handedness and the Politics of Human Rights.” *Harvard Human Rights Journal* 7-46.
Helfer, Laurence R. 2020. “Populism and International Human Rights Law Institutions: A Survival Guide.” In *Human Rights in a Time of Populism*, by Gerald L. Neuman, 218-249. Cambridge: Cambridge University Press.
Human Rights Watch. 2026. *Afghanistan: 5 Years Under Taliban Rule: A Human Rights Crisis, a Humanitarian Crisis.* 3 August. Accessed August 31, 2026. https://www.hrw.org/feature/2026/08/03/afghanistan-5-years-under-taliban-rule/a-human-rights-crisis-a-humanitarian?utm.
Illingworth, Richard. 2020. “Responsible Veto Restraint: a Transitional Cosmopolitan Reform Measure for the Responsibility to Protect.” *Global Responsibility to Protect* 385-414.
International Court of Justice. 1945. “Statute of the International Court of Justice.” *International Court of Justice (ICJ) Official Website.* Accessed 2026. https://www.icj-cij.org/statute.
Joseph, Sarah, and Eleanor Jenkin. 2019. “The United Nations Human Rights Council: Is the United States Right to Leave this Club?” *American University International Law Review* 78-131.

Kälin, Walter, and Jörg Künzli. 2009. *The Law of International Human Rights Protection.* Oxford: Oxford University Press (OUP).
Kaplan, Lawrence Sidney. 2004. *NATO Divided, NATO United: The Evolution of an Alliance.* Westport, Connecticut (CT), USA: Praeger Publishers.
King, Samuel , and Inés M. Pousadela. 2025. *The UN Human Rights Council: Challenges and Opportunities for Reform.* Research Report, ENSURED.
Langford, Malcolm , Bruce Porter, Rebecca Brown, and Julieta Rossi. 2016. *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary.* Pretoria: Pretoria University Law Press (PULP).
League of Nations. 1919. "Covenant of the League of Nations (1919)." *Founding Documents of Australia.* Accessed 2026. https://www.foundingdocs.gov.au/resources/transcripts/cth10_doc_1919.pdf.
Lyons, Gene M., David A. Baldwin, and Donald W. McNemar. 1977. "The "Politicization" Issue in the UN Specialized Agencies." *Proceedings of the Academy of Political Science* 81-92.
Marchisio, Serena. 1987. "Le organizzazioni internazionali non governative (OING): Tipologia, struttura, funzioni, "riconoscimento" nel diritto internazionale." *Pace, diritti dell'uomo, diritti dei popoli* 9–23.
McInnes, Kate. 2025. "Multiple Submissions Before a Fractured Treaty Body System: Lessons in Advocacy from Validity International and Topház Special Home." *Journal of Human Rights Practice.*
Moskowitz, Moses. 1980. *The Roots and Reaches of United Nations Actions and Decisions.* Alphen aan den Rijn; Rockville, Md: Sijthoff & Noordhoff.
Mowell, Brian D. 2025. "The Nature and Degree of NGO Interaction with the United Nations within the ECOSOC: Consultative Status Program." *Estudios Internacionales* 43-84.
Murthy, Y. R. S. n.d. "UN Human Rights Commission: Historical Overview." In *International Fora for the Protection, Promotion and Enforcement of Human Rights*, by INFLIBNET Centre. New Delhi: INFLIBNET Centre.
Nader, Lucia. 2007. "The role of NGOs in the UN Human Rights Council." *SUR – International Journal on Human Rights* 7-18.
Nielsen , Rasmus Kleis , and Richard Fletcher. 2023. "Comparing the platformization of news media systems: A cross-country analysis." *European Journal of Communication.*
Office of the High Commissioner for Human Rights (OHCHR). n.d. *Human Rights Council – Sessions.* Accessed May 31, 2026. https://www.ohchr.org/en/hr-bodies/hrc/sessions.
Office of the United Nations High Commissioner for Human Rights . 2010. *Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process .* 2 July. Accessed August 30, 2026. https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=07ftQWD6mDMEBythMzjjXeUxjl%2BPG2ArMHEHKOMwL42oG%2FMTIl643fERAARpATKZZFKE%2FZ0mCe9Fq5e50YmUwQ==&utm.
Patil, Ashok V. 1992. *The UN veto in world affairs, 1946–1990.* Lanham, Maryland: Univeristy Press of America.
Pennetta, Piero, Susanna Cafaro, Angela Di Stasi, Ivan Igravallo, Gerardo Martino, and Criseide Novi. 2024. *Diritto delle organizzazioni internazionali.* Milano: CEDAM.
Peters, Anne. 2023. "The War in Ukraine and the Curtailment of the Veto in the Security Council." *Revue Européenne du Droit* 87-93.
Piccone, Ted, and Naomi McMillen . 2016. *Country-Specific Scrutiny at the United Nations Human Rights Council: More Than Meets the Eye.* Policy report, Washington, D.C.: The Brookings Institution.
Ramcharan, Bertie George . 2021. *The United Nations High Commissioner for Human Rights: The Challenges of International Protection.* Leiden/Boston: Brill.

Redazione. 2025. *L'Italia in Etiopia. 1935–1941. Una sintesi.* 4 July. Accessed 2026. https://www.isrlaspezia.it/litalia-in-etiopia-1935-1941-una-sintesi/.
Richardson-Little, Ned. 2019. "From Tehran to Helsinki: The International Year of Human Rights 1968 and State Socialist Eastern Europe ." *Diplomatica: A Journal of Diplomacy and Society.*
Riddell-Dixon, Elizabeth. 2008. "Facilitating NGO Participation: An Assessment of Canadian Government-Sponsored Mechanisms for the Copenhagen Summit for Social Development and the Beijing Conference on Women." In *Critical Mass: The Emergence of Global Civil Society*, by James William Saint George Walker and Andrew S. Thompson, 89-108. Waterloo, Ontario: Wilfrid Laurier University Press.
Roosevelt, Franklin D., and Winston Churchill. 1941. "The Atlantic Charter." *The Atlantic Charter.* 14 August. Accessed 2026. https://www.nato.int/en/about-us/official-texts-and-resources/official-texts/1941/08/14/the-atlantic-charter.
Rowe, Edward T. 1970. "The United States, the United Nations, and the Cold War." *International Organization* 60-76.
Schmalz, Dana. 2025. "The population growth discourse in the first decades of the United Nations: Interpretations of global economic inequality and the struggles for a just international legal order." *Leiden Journal of International Law* 131-147.
Schoner, Rachel J. 2026. "Naming and shaming in UN treaty bodies: Individual petitions' effect on human rights." *The Review of International Organizations* 163-202.
Secretary-General's High-level Panel on Threats, Challenges and Change. 2004. "A more secure world: Our shared responsibility: Report of the High-level Panel on Threats, Challenges and Change." *United Nations Peacebuilding / United Nations.* 2 December. Accessed 2026. https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/hlp_more_secure_world.pdf.
Security Council Report. 2022. *In Hindsight: Challenging the Power of the Veto.* 29 April. Accessed August 22, 2026. https://www.securitycouncilreport.org/monthly-forecast/2022-05/in-hindsight-challenging-the-power-of-the-veto.php.
—. 2026. *In Hindsight: Living with the Veto - April 2026 Monthly Forecast.* 1 April. Accessed August 21, 2026. https://www.securitycouncilreport.org/monthly-forecast/2026-04/in-hindsight-living-with-the-veto.php?print=true&utm.
Selassie I, Haile. 1936. "Appeal to the League of Nations." *Montclair State University.* 30 June. Accessed 2026. https://msuweb.montclair.edu/~lebelp/HaileSelassie1936AppealToTheLeague2009Wikipedia.pdf.
Shah, Sangeeta, and Sandesh Sivakumaran . 2024. "Complementing UN Human Rights Efforts Through Universal Periodic Review." *Journal of Human Rights Practice.*
Siniscalco, Elena. 2025. *Il numero dei morti palestinesi nella Striscia di Gaza è sottostimato?* 28 February . Accessed 2026. https://irpimedia.irpi.eu/numero-morti-palestina-striscia-di-gaza/ .
Sommario, Erika. 2012. "Derogation from Human Rights Treaties in Situations of Natural or Man-Made Disasters." In *International Disaster Response Law*, by Andrea de Guttry, Marco Gestri and Gabriella Venturini, 323–352. The Hague: Springer.
Splinter, Peter. 2017. *Election without choice: clean slates in the Human Rights Council.* 12 October. Accessed 2026. https://www.openglobalrights.org/election-without-choice-clean%20slates-in-the-human-rights-council/.
—. 2018. *Human Rights Council Elections: clean slates continue to undermine the Council.* 25 September. Accessed 2026. https://www.universal-rights.org/human-rights-council-elections-clean-slates-continue-to-undermine-the-council.
Strang, Geoffrey Bruce. 2008. "The Worst of all Worlds: Oil Sanctions and Italy's Invasion of Abyssinia, 1935–1936." *Diplomacy & Statecraft* 210-135.

Stubbs, Holly, Allison Corkery, and Sciences Po Human Rights Clinic students Sciences Po . 2016. *The Universal Periodic Review: A Skewed Agenda? Trends analysis of the UPR's coverage of economic, social and cultural rights.* Research report, New York: Center for Economic and Social Rights (CESR) and Sciences Po.

Sweeney, Caroline. 2022. "The United Nations Human Rights Council at 16: a creature of compromise or a compromised creature?" *The International Journal of Human Rights.*

Türk, Volker. 2026. *Mid-year press conference by UN High Commissioner for Human Rights Volker Turk.* 10 June. Accessed June 2026. https://www.ohchr.org/en/statements-and-speeches/2026/06/mid-year-press-conference-un-high-commissioner-human-rights-volker.

Takata, Hinako. 2024. "Dissecting Stakeholder Participation in UN Human Rights Treaty Body Activities with Normative and Empirical Approaches: A Comparison of NGO and NHRI Participation." *German Law Journal* 237-261.

Tomuschat, Christian. 2008. ""Uniting for Peace"." *United Nations Audiovisual Library of International Law.* Accessed 2026. https://legal.un.org/avl/pdf/ha/ufp/ufp_e.pdf.

Tufa, Getnet. 2024. "The African Court on Human and Peoples' Rights: Assessing its effectiveness." *African Human Rights Yearbook.*

Tuominen, Heli. 2025. "A louder voice for human rights: The Nordic–Baltic group at the UN Human Rights Council." *Cooperation and Conflict.*

Ullmann, Andreas J., and Andreas von Staden. 2024. "A Room Full of 'Views': Introducing a New Dataset to Explore Compliance with the Decisions of the UN Human Rights Treaty Bodies' Individual Complaints Procedures." *Journal of Conflict Resolution* 534-561.

Ullmann, Andreas J., and Andreas von Staden. 2020. "Challenges and Pitfalls in Research on Compliance with the 'Views' of UN Human Rights Treaty Bodies: A Reply to Vera Shikhelman." *European Journal of International Law.*

United Nations. 2019. *25th anniversary of the suspension of Trusteeship Council.* 7 November. Accessed 2026. https://archives.un.org/en/content/25th-anniversary-suspension-trusteeship-council.

—. 1945. "Charter of the United Nations." *United Nations.* San Francisco: United Nations, 26 June.

United Nations Economic and Social Council (ECOSOC). 1967. " Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid in all countries, with particular reference to colonial and other dependent cou." *ECOSOC Resolution 1235 (XLII).* New York: United Nations Economic and Social Council, 6 June.

—. 1956. "Resolution 624 B (XXII): Report of the Commission on Human Rights (Twelfth Session)." *United Nations Digital Library.* 1 August. Accessed 2026. https://digitallibrary.un.org/record/213076?v=pdf&utm.

United Nations. 2025. *Gaza genocide: A crime Israel did not commit alone, says Special Rapporteur Francesca Albanese.* 28 October. Accessed 07 19, 2026. https://www.un.org/unispal/document/fancesca-albanese-press-release-28oct25/.

United Nations General Assembly. 2005. *2005 World Summit Outcome.* United Nations General Assembly Resolution - official document, New York: United Nations.

—. 1950. "Draft International Covenants on Human Rights and Measures of Implementation." *Resolution 421 E (V).* New York: United Nations, 4 December.

—. 1993. "High Commissioner for the promotion and protection of all human rights." *UN Digital Library / Official Document System (ODS).* 20 December. Accessed 2026. https://docs.un.org/en/A/RES/48/141.

—. 2006. "Human Rights Council." *United Nations General Assembly Resolutions: A/RES/60/251.* New York: United Nations, 15 March.

—. 1952. "Preparation of Two Draft International Covenants on Human Rights." *Resolution 543 (VI).* New York: United Nations, 5 February.

—. 1950. “Resolution 377 (V), “Uniting for Peace”.” *United Nations Audiovisual Library of International Law.* 3 November. Accessed 2026. https://legal.un.org/avl/ha/ufp/ufp.html.
United Nations General Assembly. 2022. *Standing mandate for a General Assembly debate when a veto is cast in the Security Council.* General Assembly Resolution , New York: United Nations.
—. 2000. “United Nations Millennium Declaration (A/RES/55/2).” *United Nations Digital Library / UN Documents.* 18 September. Accessed 2026. https://docs.un.org/en/a/res/55/2.
—. 1948. “Universal Declaration of Human Rights.” *United Nations.* Accessed 2026. https://www.un.org/en/about-us/universal-declaration-of-human-rights.
United Nations. n.d. *History of the Declaration.* Accessed 2026. https://www.un.org/en/about-us/udhr/history-of-the-declaration.
United Nations Human Rights Office of the High Commissioner (OHCHR). n.d. *Human Rights Committee (CCPR).* Accessed 2026. https://www.ohchr.org/en/treaty-bodies/ccpr.
United Nations. 1966. “International Covenant on Civil and Political Rights.” *International Covenant on Civil and Political Rights.* Geneva: Office of the United Nations High Commissioner for Human Rights (OHCHR), 16 December.
—. 1966. “International Covenant on Economic, Social and Cultural Rights.” *International Covenant on Economic, Social and Cultural Rights.* Geneva: Office of the United Nations High Commissioner for Human Rights (OHCHR), 16 December.
United Nations News. 2022. *UN General Assembly votes to suspend Russia from Human Rights Council.* 7 April. Accessed 2026. https://news.un.org/en/story/2022/04/1115782.
United Nations Office of the High Commissioner for Human Rights (OHCHR). 2008. “Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.” *OHCHR (Office of the United Nations High Commissioner for Human Rights).* New York: Office of the United Nations High Commissioner for Human Rights (OHCHR), 10 December. Accessed 2026.
United Nations. n.d. *United Nations Treaty Collection.* Accessed 2026. https://treaties.un.org/Pages/Home.aspx?clang=_en.
United Nations, Department of Public Information. 1995. *The United Nations and Human Rights, 1945–1995.* New York: United Nations.
Valenti, Serena. 2025. “The Drafting Process of Human Rights Soft Law: A Tool Facilitating Cooperation among States and Beyond States.” *Peace Human Rights Governance.* 1 June. Accessed 2026. https://phrg.padovauniversitypress.it/system/files/papers/Valenti-2025.pdf.
von Staden, Andreas. 2018. “Monitoring Second-Order Compliance: The Follow-Up Procedures of the UN Human Rights Treaty Bodies.” *Czech Yearbook of International Law* 392-356.
Webb, Philippa. 2014. “Deadlock or Restraint? The Security Council Veto and the Use of Force in Syria.” *Journal of Conflict and Security Law.*
Weiss, Thomas G. . 2008. *What's Wrong with the United Nations and How to Fix It.* Cambridge: Polity Press.
Xiang, Ah. 2011. “Communists & The Japanese Invasion of Manchuria.” *Republican China.* Accessed 2026. https://republicanchina.org/COMMUNISTS-AND-JAPAN-INVASION-MANCHURIA.pdf.
Yıldız, Adil. 2024. “Political Polarization and Human Rights Violations.” *Journal of Humanity, Peace and Justice* 1-17.