

Lakatos, István*

The Historical Legacy of the United Nations Commission on Human Rights**

ABSTRACT

The article provides an overview of the work of the UN Commission on Human Rights, the first intergovernmental human rights body of the United Nations. The author aims to introduce the most important characteristics of the CHR in a way that avoids the trap of overemphasising the critical remarks formulated during the last few years of the most important human rights body in the world. The contribution of the CHR to the international standards-setting activities of the international community in the field of the promotion and protection of human rights and fundamental freedoms was significant, which was duly highlighted in this paper in order to have a balanced portrait of this important body.

KEYWORDS: Commission on Human Rights, Human Rights Council, special procedures, human rights standard-setting

Most of the people in this room work for government or seek to affect the actions of government. That is politics. For some to accuse others of being political is a bit like fish criticising each other for being wet.

Sergio Viera de Mello

former UN High Commissioner for Human Rights¹

* Lakatos, István, career diplomat, former human rights ambassador of the Ministry of Foreign Affairs and Trade of Hungary, currently the senior adviser of the Ministry of Justice, Human and Minority Rights of Montenegro.

** The opinions expressed herein are strictly personal and do not necessarily reflect the position of the Hungarian MFAT.

¹ M. Ignatieff, Rights inflation and role conflict in the Office of the High Commissioner for Human Rights, in F. D. Gaer and C. L. Broecker (eds), *The United Nations High Commissioner for Human Rights: Conscience of the World* (Martinus Nijhoff Publishers, Leiden and Boston, 2014).

I. INTRODUCTION

Very few international bodies or institutions received the amount of criticism as the Commission on Human Rights (CHR) did during its last period of work. These heavy criticisms annulled the enormous results achieved by the CHR since 1946 particularly during the not entirely human-rights-friendly conditions of the Cold War. This article intends to provide a fair and balanced portrait of the first universal human rights body of the world by explaining the reasons that led to its replacement by the Human Rights Council (HRC) in 2006.

II. THE ESTABLISHMENT OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

Most critics tend to forget that the CHR existed for 60 years and, for that time, did the most to advance the international human rights agenda, despite the constraints of the Cold War period. It is not surprising therefore that, in 1945,² then US Secretary of State Edward Stettinius considered the establishment of the CHR as a step which might have become “one of the most important and significant achievements of the San Francisco Conference”.³ This short essay intends to do justice in that context, by highlighting the achievements of the CHR, in addition to its obvious flaws regarding its functioning.

In line with Article 68 of the UN Charter,⁴ The Economic and Social Council (ECOSOC) appointed a preparatory committee consisting of nine highly qualified and experienced individuals, chaired by Eleanor Roosevelt, former First Lady and well-known human rights activist.⁵ Roosevelt chaired the CHR for the first six years as the US representative.⁶ Another important member of the preparatory committee was René Cassin, the French jurist who was one of the main authors of the Universal Declaration of Human Rights (UDHR). He also proposed the creation of the position of an

² The 1945 San Francisco Conference: <https://www.un.org/en/sections/history-united-nations-charter/1945-san-francisco-conference/index.html> (Last accessed: 31 July 2019).

³ P. G. Lauren, “To preserve and build on its achievements and to redress its shortcomings”: The journey from the Commission on Human Rights to the Human Rights Council, (2007) 29 (2) *Human Rights Quarterly*, 310. <https://doi.org/10.1353/hrq.2007.0020>

⁴ Article 68 of the UN Charter: “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.”

⁵ Lauren, “To preserve and build on its achievements and to redress its shortcomings”..., 310.

⁶ K. Boyle, *The United Nations Human Rights Council: Origins, antecedents, and prospects*, in K. Boyle (ed.), *New Institutions for Human Rights Protection*, (Oxford University Press, Oxford, 2009) 22. <https://doi.org/10.1093/acprof:oso/9780199570546.003.0002>

attorney general for human rights,⁷ which could have been the predecessor of the present position of the UN High Commissioner for Human Rights. At that time, however, the international community was not prepared for that innovation. Taking into account the antagonism existing between the international promotion and protection of human rights – in line with Article 1(3) of the Charter⁸ – and the importance of national sovereignty – contained in Article 2(7) of the UN Charter⁹ – the preparatory committee suggested that the CHR would be composed of individual experts and not government representatives.¹⁰ Not surprisingly, this recommendation was not accepted by states. The CHR was created as an intergovernmental body, established by ECOSOC Resolution 5(I), adopted on 16 February 1946.¹¹ The resistance of certain key players concerning a body with independent experts was “understandable” in light of the totalitarian system of the Soviet Union, the racism problem in the USA and the Colonies question affecting the UK.¹² As a consequence of these political considerations, the CHR was not given any investigative power nor, at the beginning, even the capacity to receive or examine communications from individuals. It changed, at least partly, in 1947, when ECOSOC recognised its authority to receive communications. However, Resolution 75 (V) underlined that the CHR had “no power to take any action in regard to any complaints concerning human rights”.¹³

To make an objective assessment of the overall performance of the CHR, it should be noted that before 1945 human rights – except for labour and minority rights – were not considered as a “legitimate matter of international legal concern”.¹⁴ However, the horrors of WWII and the Holocaust made it very clear that the policy of absolute sovereignty could not be continued and the cause of human rights could not

⁷ J.-P. Thérien and P. Joly, “All Human Rights for All”: The United Nations and Human Rights in the Post-Cold War Era, (2014) 36 (2) *Human Rights Quarterly*, 389. <https://doi.org/10.1353/hrq.2014.0018>

⁸ Article 1(3) of the UN Charter: “The Purposes of the United Nations are: [...] 3. To achieve international cooperation 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.”

⁹ Article 2(7) of the UN Charter: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

¹⁰ Lauren, “To preserve and build on its achievements and to redress its shortcomings”..., 314.

¹¹ L. S. Sunga, What effect if any will the UN Human Rights Council have on Special Procedures?, in G. Alfredsson, J. Grimheden, B. G. Ramcharan and A. de Zayas (eds), *Essays in Honour of Jakob Th. Möller. International Human Rights Monitoring Mechanisms*, (Martinus Nijhoff Publishers, Leiden and Boston, 2009) 170.

¹² D. P. Forsythe and B. Park, The changing of the guard: From the UN Human Rights Commission to the Council, (2008) 29 (1–5) *Human Rights Law Journal*, 3.

¹³ Sunga, What effect if any will the UN Human Rights Council have on Special Procedures?, 170–171.

¹⁴ *Ibid.* 170.

remain the exclusive subject of domestic political considerations. The fact that many states did not possess a modern human rights approach and lacked natural law traditions often resulted in the conclusion that human rights were tools in the hands of Western imperialism.¹⁵ This cautious and inconsistent approach by member states towards human rights had consequences: all seven provisions of the Charter with references to human rights were general and more promotion than protection-oriented. Key sections of the UN Charter, such as Chapters VI and VII, were completely silent on human rights.¹⁶

Finally, ECOSOC set up the CHR in 1946, under its supervision. With 18 member states, it was the first universal intergovernmental human rights body. In parallel with the enlargement of UN membership, the size of the CHR increased to 21 members by 1962, 32 by 1967, and 43 by 1980. It reached its final scale (53) in 1992.¹⁷ However, the size of the secretariat did not follow these developments and the originally established length of the annual session (six weeks) did not change either.¹⁸

III. THE FIRST TWO DECADES OF STANDARDS-SETTING

The first 20 years of the CHR, between 1947 and 1967, were dominated by Western states and their allies. There were no sub-Saharan African states in the CHR until 1964.¹⁹ During this period, the CHR focused on standards-setting rather than supervising the human rights policy of individual states. Its first and most significant task was to draft an International Bill of Rights, which was to have three components: the declaration of rights, the preparation of a binding convention, and the establishment of specific implementation and enforcement mechanisms.²⁰ This plan was blocked as a result of international disputes over the “role of international bodies in implementation”.²¹ In just two years, the CHR produced the most important contribution to the development of the international promotion and protection of human rights, namely the drafting of the UDHR, which finally became the first pillar of the International Bill of Rights as a non-binding document, declaring the human rights to be recognised at that time by the

¹⁵ R. Freedman, *The United Nations Human Rights Council – A Critique and Early Assessment*, (Routledge, Abingdon, 2013) 10. <https://doi.org/10.4324/9780203074732>

¹⁶ N. Schrijver, The UN Human Rights Council: A new “society of the committed” or just old wine in new bottles?, in T. Skouteris and A. Vermeer-Künzli (eds), *The Protection of the Individual in International Law. Essays in Honor of John Dugard*. (Cambridge University Press, Cambridge, UK and NY, USA, 2007) 82.

¹⁷ *Ibid.* 84.

¹⁸ Freedman, *The United Nations Human Rights Council...*, 15.

¹⁹ Boyle, *The United Nations Human Rights Council...*, 22.

²⁰ Lauren, “To preserve and build on its achievements and to redress its shortcomings”..., 315–316.

²¹ J. A. Mertus, *The United Nations and Human Rights. A Guide for a New Era*, 2nd ed. (Routledge, Abingdon, 2009) 52. <https://doi.org/10.4324/9780203878019>

international community. It was remarkable that the drafters of the UDHR managed to put together a text that was adopted on 10 December 1948 by 48 votes in favour, with 8 abstentions. The absence of “no” votes signalled the strong international consensus behind the Declaration.

The first legally binding human rights treaty, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) – also drafted by the CHR – was adopted by the United Nations General Assembly (UNGA) in 1965.²² This was followed a year later by the adoption of two important human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).²³ Originally, the UNGA directed the CHR to draft a single document containing civil, political, economic, social and cultural rights. However, in 1951, after receiving the CHR report containing 73 draft articles, ECOSOC suggested that the UNGA reconsider its decision regarding a single human rights treaty. The UNGA was seriously divided on this issue. A decision was finally adopted, by 29 to 25, with 4 abstentions, to separate civil and political rights from economic, social and cultural rights.²⁴ The reason behind this compromise solution was that certain states were arguing for the primacy of civil and political rights, while others were in favour of the primacy of economic, social, and cultural rights. The resulting two treaties made it possible to join only one of them.²⁵ During this period, referred to by certain experts as the “era of inaction” because of the lack of power to take action regarding individual complaints, the CHR considered itself more a technical than a political body.²⁶ Three other legally binding treaties drafted by the CHR should also be mentioned: the International Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment [commonly known as the United Nations Convention against Torture (UNCAT)] (1984), the Convention on the Rights of the Child (CRC) (1989), and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990). It should be noted that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was negotiated and drafted outside the CHR.²⁷

²² Ibid. 319.

²³ Although ECOSOC already submitted the two drafts to the UNGA in 1954, they were not adopted till 1966.

²⁴ D. Shelton, Standard-setting by the United Nations Commission on Human Rights. An overview from its inception in 1947 until the creation of the Human Rights Council in 2006, (2008) 29 (1–5) *Human Rights Law Journal*, 18.

²⁵ Mertus, *The United Nations and Human Rights...*, 52.

²⁶ J. Gutter, Special Procedures and the Human Rights Council: Achievements and Challenges Ahead, (2007) 7 (1) *Human Rights Law Review*, 96. <https://doi.org/10.1093/hrlr/ngl029>

²⁷ Forsythe and Park, *The changing of the guard...*, 5.

The high expectations of the CHR were well marked by the fact that, between 1947 and 1957, it received nearly 65,000 individual petitions. Later, this number increased, and sometimes even reached 20,000 annually.²⁸ Petitioners asked for help against the human rights violations of their governments and they wanted the human rights paragraphs of the Charter to be applied to them.²⁹ Most members of the CHR were concerned about possible public criticism by their own nationals in front of the eyes of the international community and instructed their delegations to declare that the CHR had no power to take any action regarding these complaints.³⁰

IV. COUNTRY SITUATIONS AND THEMATIC SPECIAL PROCEDURES

The establishment of the Special Committee on the Policies of Apartheid by the UNGA in 1961 served as an important inspiration for the CHR, as this Committee was entitled to review communications too.³¹ ECOSOC Resolution 1235 (XLII) of 6 June 1967 followed this model, by authorising the CHR and the Sub-Commission on the Prevention of Discrimination and Protection of Human Rights “to examine information relevant to gross violations of human rights and fundamental freedoms, as exemplified by the policy of apartheid as practiced in the Republic of South Africa and in the territory of South West Africa [...]”³² There were debates among member states whether this reference intended to “limit the procedure to human rights abuses in South Africa or whether this was merely an illustration of a situation where the Commission should act”.³³ The efforts by those states that wanted to “restrict the reach of the 1235 procedure” failed, making it possible to apply it to any human rights violations.³⁴ This expanded CHR mandate was used shortly after its adoption by Arab states to condemn Israel for

²⁸ Buergenthal T., *Nemzetközi emberi jogok, (International Human Rights)*, (Helikon Kiadó, Budapest, 2001) 78.

²⁹ Lauren, “To preserve and build on its achievements and to redress its shortcomings”..., 314–315.

³⁰ Ibid. 315.

³¹ Sunga, What effect if any will the UN Human Rights Council have on Special Procedures?, 171.

³² ECOSOC Resolution 1235 (XLII). 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 countries and territories. Adopted by ECOSOC on 6 June 1967. <https://biblioteca.iidh-jurisprudencia.ac.cr/index.php/in-english/universal-system-of-human-rights/procedural-norms/ecosoc-1/2168-resolution-1235-xlii-by-the-economic-and-social-council-1967/file> (Last accessed: 31 July 2019).

³³ F. Cowell, The evolution and design of powers at the UN Commission on Human Rights: The complex legacy of anti-apartheid activism, (2019) 19 (1) *Acta Universitatis Carolinae Studia Territorialia*, 67–77. <https://doi.org/10.14712/23363231.2019.17>

³⁴ Mertus, *The United Nations and Human Rights...*, 54.

the occupation of certain Arab territories during the Six Days War.³⁵ Resolution 1235 was also used in October 1967 to discuss the situations in Greece and Haiti.³⁶ One of the main significances of Resolution 1235 was that the CHR could hold an annual debate on human rights violations occurring in any member state, and thereby paving the way for the creation of country-specific Special Rapporteurs.³⁷ In 1967, the CHR decided to establish an ad hoc Working Group on South Africa with a mandate to investigate and report back on human rights violations occurring in the country.³⁸

The next important step happened in 1970 when ECOSOC passed Resolution 1503 (XLVIII),³⁹ authorising the Sub-Commission to appoint a working group to investigate communications regarding specific allegations of human rights violations. An important feature of the procedure was its strict confidentiality until the investigations had been completed. The CHR could then publicise the findings if it decided to take action under the 1235 procedure.⁴⁰ This resolution, together with ECOSOC Resolution 1235, allowed the CHR to go further than simply human rights standards-setting. It contributed to it becoming the leading world forum concerning urgent human rights issues.⁴¹

The first individual country-specific Special Rapporteur was appointed in 1979, regarding the human rights situation in Chile “after Pinochet overthrew the democratically elected Allende government in 1974”.⁴² This was followed by subsequent appointments in the early 80s related to the human rights situations in El Salvador, Equatorial Guinea, Bolivia and Guatemala, and in 1984 regarding Afghanistan and Iran.⁴³

The first thematic mandate was the Working Group on Enforced or Involuntary Disappearances, established by CHR Resolution 20 of 29 February 1980.⁴⁴ Although it was originally a response to the situation in Argentina, an issue-oriented approach offered a less confrontational way of addressing the problem.⁴⁵ The first individual thematic mandate was on extrajudicial, summary or arbitrary executions (1982)

³⁵ R. Wheeler, The United Nation Commission on Human Rights, 1982–1997: A study of “targeted” resolutions, (1999) 32 (1) *Canadian Journal of Political Science*, 75–76. <https://doi.org/10.1017/S0008423900010106>

³⁶ Cowell, *The evolution and design of powers at the UN Commission on Human Rights...*, 67–77.

³⁷ S. P. Subedi, Protection of Human Rights through the mechanism of UN Special Rapporteurs, (2011) 33 (1) *Human Rights Quarterly*, 206. <https://doi.org/10.1353/hrq.2011.0011>

³⁸ Boyle, *The United Nations Human Rights Council...*, 25.

³⁹ ECOSOC Resolution 1503 (XLVIII) on Procedure for dealing with communications relating to violations of human rights and fundamental freedoms, <http://hrlibrary.umn.edu/procedures/1503.html> (Last accessed: 31 July 2019).

⁴⁰ Wheeler, *The United Nation Commission on Human Rights...*, 75–76.

⁴¹ Sunga, What effect if any will the UN Human Rights Council have on Special Procedures?, 172.

⁴² Subedi, Protection of Human Rights through the mechanism of UN Special Rapporteurs, 207.

⁴³ *Ibid.*

⁴⁴ C. Tomuschat, Origins and history of UN special procedures. An overview from their inception to June 2007, (2007) 29 (1–5) *Human Rights Law Journal*, 28.

⁴⁵ Gutter, Special Procedures and the Human Rights Council..., 98.

followed by the appointment of a Special Rapporteur on Torture (1985).⁴⁶ This second mandate covered all states, irrespective of the ratification of the ICCPR or UNCAT.

By the end of the CHR's mandate (June 2006), there were 28 thematic⁴⁷ and 13 country-specific mandates.⁴⁸ (This number was even higher in 1998 when there were 53 mandates, but a few country-specific mandates were terminated and a few thematic ones combined by 2006.⁴⁹) This significant and rapid increase in the number of special procedures was mainly the result of the very flexible nature of this institution, and its ability to address new challenges within a short period, unlike the treaty-based system.⁵⁰ However, this flexibility also came together in an ad hoc manner. They were created by resolutions adopted by the majority of the CHR. These resolutions were usually drafted in vague terms, so the mandate holders had the relative freedom to determine their own working methods.⁵¹ Until the 90s, most of the special procedures focused on civil and political rights. However, by 2006, numerous mechanisms and mandates were dealing with economic and social rights, including the right to adequate housing, the right to food, the right to education, the question of human rights and extreme poverty and the right to health, just to name a few.⁵²

The World Conference on Human Rights, which took place in 1993 in Vienna, had an important effect on the special procedures system in two ways. It was the first occasion on which the various mandate holders convened to discuss matters of common interest and it was the World Conference that decided to create the post of the High Commissioner for Human Rights and thereby transforming the UN Centre for Human

⁴⁶ Tomuschat, *Origins and history of UN special procedures...*, 28.

⁴⁷ Enforced or involuntary disappearances (established in 1980), extrajudicial, summary or arbitrary executions (1982), torture (1985), freedom of religion or belief (1986), sale of children, child prostitution and child pornography (1990), arbitrary detention (1991), freedom of opinion and expression (1993), racism, racial discrimination (1993), independence of judges and lawyers (1994), violence against women (1994), toxic waste (1995), right to education (1998), extreme poverty (1998), migrants (1999), right to food (2000), adequate housing (2000), human rights defenders (2000), economic reform policies and foreign debt (2000), indigenous people (2001), people of African descent (2002), physical and mental health (2002), internally displaced persons (2004), trafficking in persons (2004), mercenaries (2005), minority issues (2005), international solidarity (2005), countering terrorism (2005) and transnational corporations (2005).

⁴⁸ Myanmar (in operation since 1992), Cambodia (1993), Palestinian Occupied Territories (1993), Somalia (1993), Haiti (1995), Cuba (2002), Liberia (2003), Belarus (2004), Burundi (2004), DPRK (2004), Democratic Republic of the Congo (2004), Sudan (2005) and Uzbekistan (2005).

⁴⁹ Sunga, *What effect if any will the UN Human Rights Council have on Special Procedures?*, 173.

⁵⁰ Subedi, *Protection of Human Rights through the mechanism of UN Special Rapporteurs*, 225.

⁵¹ E. Domínguez-Redondo, *The history of the Special Procedures, A 'learning-by-doing' approach to human rights implementation*, in A. Nolan, R. Freedman and T. Murphy (eds), *The United Nations Special Procedures System*, (Brill Nijhoff, Leiden, 2017) 36.

⁵² Sunga, *What effect if any will the UN Human Rights Council have on Special Procedures?*, 173.

Rights into the Office of the High Commissioner for Human Rights (OHCHR), providing the secretarial background of special procedures.⁵³

Unfortunately, cooperation with mandate holders, especially with country-specific ones, was not always easy. For example, Cuba, Belarus and Sudan refused to cooperate with the Special Rapporteur entrusted with examining the human rights situation in their given country. They did not allow Special Rapporteurs to enter their country, so they had to collect information outside it.⁵⁴

V. ASSESSMENT OF THE WORK OF THE COMMISSION ON HUMAN RIGHTS

The CHR had a relatively weak mandate, reflecting the political considerations of UN member states. It was known by certain experts as a “moral talk-shop”.⁵⁵ During the first period of the CHR (1947–1967), the body was dominated by Western states and its focus was standards-setting. During this period, not one Chair of the CHR came from the Eastern Bloc and the participation of African countries was minimal.⁵⁶ Its supervising role began to be established during the second period (1967–1979), with the adoption of ECOSOC Resolutions 1235 and 1503. During the following cycle between 1979 and 1991, CHR members tried to enhance its policy supervising functions, despite the political limitations of the Cold War. The first part of the post-Cold-War period was marked by the dominance of nearly consensus-like resolutions, while in its last years, between 2001 and 2006, inter-regional clashes strengthened, leading to the replacement of the CHR with the HRC.⁵⁷

Jack Donnelly, in his study on the period between 1955 and 1985, indicated that almost 30% of the CHR’s meeting time was devoted to civil and political rights while social and cultural rights were only discussed in 5.5% of the meeting time. However, these figures look a bit different if we take into consideration that almost half of the 30% devoted to discussing civil and political rights was related to the question of racial discrimination, the number one priority for the Third World in this period, besides the issue of the right to self-determination (10%).⁵⁸

Economic and social rights only started to be discussed after 1965, and even if we accept the argument that they can be implemented gradually, this does not explain

⁵³ Gutter, *Special Procedures and the Human Rights Council...*, 99–100.

⁵⁴ Tomuschat, *Origins and history of UN special procedures...*, 29.

⁵⁵ Forsythe and Park, *The changing of the guard...*, 4.

⁵⁶ Boyle, *The United Nations Human Rights Council...*, 26.

⁵⁷ Forsythe and Park, *The changing of the guard...*, 4.

⁵⁸ J. Donnelly, *Human Rights at the United Nation 1955–85. The question of bias*, (1988) 32 (3) *International Studies Quarterly*, 279. <https://doi.org/10.2307/2600444>

their very low share of the CHR agenda. Donnelly was of the view that it was partly because developing countries also had a lot to hide regarding their performance on economic and social rights, as not all the problems could be explained exclusively by external factors.⁵⁹

Donnelly was perfectly right in highlighting that while there were serious human rights violations committed by Israel, they were certainly not the worst and there were several counties in Africa, Asia, and Latin America – not to mention the members of the Soviet Bloc – with similar human rights problems, which were never named by any CHR resolution. The most visible bias regarding country situations was that only three states, namely South Africa, Israel and Chile, received a separate agenda item both in the CHR and in the UNGA Third Committee.^{60,61}

According to Donnelly's survey, Africa was almost completely absent from critical comments during this period. Asia and the Middle East were covered slightly better, with the situation in Afghanistan, Iran, Kampuchea and East Timor all discussed. However, the human rights situations in Vietnam, North and South Korea, and the Philippines are certainly missing from the list of issues which should have been discussed by the CHR. Donnelly was of the view that probably, Latin America received the most balanced treatment among all the regions, with resolutions on Bolivia, El Salvador, Guatemala and Nicaragua. However, the absence of Argentina, Cuba and Uruguay from this list is striking.⁶²

Frederick Cowell eloquently demonstrated the important role the campaign against apartheid played in the institutional changes, empowering the body to investigate human rights violations in different countries.⁶³ Important work by Ron Wheeler on the targeted resolutions of the CHR shows that, before 1982, specific country situations could not be discussed publicly before the confidential procedures had been completed.⁶⁴ During the 16-year period (1982–1997) he examined, the CHR considered 1216 draft resolutions. Of these 1196 were passed, 3 failed and, in the case of 17, the CHR voted either to take “no action” or decided to suspend the debate. Of the resolutions, 68% were thematic, not addressing any special human rights violation in a given country. During the period examined, 391 draft resolutions focused on the human rights violations committed by specific actors. The number of targeted resolutions gradually increased from 1982 to 1997. There were only three country-specific drafts which were not adopted during the examined period (USA, China, and

⁵⁹ Ibid. 281.

⁶⁰ Ibid. 290–292.

⁶¹ One of six main committees at the UNGA, it deals with human rights, humanitarian affairs and social matters.

⁶² Donnelly, *Human Rights at the United Nation 1955–85...*, 293.

⁶³ Cowell, *The evolution and design of powers at the UN Commission on Human Rights...*, 69.

⁶⁴ Wheeler, *The United Nation Commission on Human Rights...*, 75–76.

Nigeria in 1995).⁶⁵ It is clear from the list of adopted targeted resolutions, that they were focusing on a few “regional outcasts”, such as South Africa and Israel, and other unpopular regimes, for example Guatemala, Iran and Iraq.

Wheeler manifested the regional imbalances regarding targeted countries during the period between 1982 and 1997 when 294 resolutions, representing 76% of the total, named African, Asian and Latin American states. This was not surprising, since the most serious human rights violations occurred in these three regions and the resolutions focused on civil and political rights, which were lacking in many Third World countries. Without the extreme number of resolutions addressing the human rights situation of Israel and South Africa, the percentage for Asia would drop to 20% from 44%, and in the case of Africa, it would be 17% instead of 35%.⁶⁶ It is interesting to note that no African members of the CHR – except for targeted countries – voted against resolutions (66 altogether) adopted regarding the human rights situation of other African states (Equatorial Guinea, Western Sahara, Rwanda, Nigeria, Burundi and Angola). This was the result of the very soft and moderate language of these initiatives, aimed at obtaining the support of African states.

Between 1982 and 1997, 63 CHR resolutions addressed the human rights situation in 7 Latin American countries (Bolivia, Chile, Cuba, El Salvador, Guatemala, Haiti and Paraguay). Most of the resolutions were co-sponsored or sometimes even drafted by Latin American states but, as was the case with the other regions, major players such as Mexico and Brazil were never mentioned in these drafts.⁶⁷

If we do not count the resolutions adopted on Israel, the CHR rarely targeted west Asian states. Only 10 resolutions were adopted during the examined period, 9 of which were on Iraq, the tenth on Cyprus (which belongs to the Asian Group within the UN system). From South and East Asia, just a few states were named by CHR resolutions: Sri Lanka, Afghanistan, Iran, Vietnam, Cambodia, Myanmar and Indonesia.⁶⁸

Wheeler’s survey indicates that no resolution was adopted regarding the human rights situation in Western European states. The exceptional case was when Portugal was held partly responsible for the human rights violations occurring in East Timor and there were also a few resolutions condemning certain Western states for aiding South Africa. The situation in Northern Ireland was discussed, for example, but it never became subject to a resolution. The USA was targeted on five occasions, mostly implicitly, for instance regarding its strategic cooperation with Israel and its military actions in Panama or Grenada. Two resolutions accused the USA of racism and other

⁶⁵ Ibid. 78–81.

⁶⁶ Ibid. 86–88.

⁶⁷ Ibid. 88–89.

⁶⁸ Ibid. 89.

systematic human rights violations. The first was not adopted, as a no-action motion was initiated, while the second was defeated by a large margin.⁶⁹

From Eastern Europe, the first country named by a CHR resolution was Poland in 1982 and 1983, because of the implementation of martial law measures, followed by Albania in seven resolutions between 1988 and 1994. Romania was the subject of five resolutions between 1989 and 1993, and then it was the former Yugoslavia, which had a permanent place on the CHR's agenda with ten resolutions passed on it between 1993 and 1997. The Soviet Union was condemned by several resolutions because it intervened in Afghanistan and there were several attempts to condemn Soviet policy in Chechnya, but there was finally not one resolution adopted on that issue.⁷⁰

Altogether 37 states (including Croatia and Bosnia-Herzegovina, separately) were targeted by the CHR during this period, which indicated a substantial improvement compared to the previous period, when only Israel and South Africa were highlighted.⁷¹

In their research, James H. Lebovic and Erik Voeten found that, in the post-Cold War era, the Commission's targeting and punishment of countries "was based less on partisan ties, power politics, and the privileges of membership, and more on those countries' actual human rights violations, treaty commitments, and active participation in cooperative endeavours such as peacekeeping operations".⁷²

Steven Seligman examined the post-Cold War period of the CHR and the first few years of the HRC, regarding country-specific resolutions. Based on the examination of the 330 resolutions regarding 34 different states adopted by the CHR between 1992 and 2005, he found that democratic states were more likely to support resolutions targeting states other than Israel. He also concluded that Western democracies were more willing to support targeted resolution than non-Western democracies. Not surprisingly non-democratic states were the least supportive of country-specific resolutions. However, Seligman also found that, contrary to expectations, democracies were not more supportive than non-democracies of resolutions condemning Israel.⁷³ He concluded that the CHR was used by many states to protect friends and criticise enemies and, in this context, the resolutions regarding Israel were usually drafted in a "one-sided manner", while concerning other states such as Sudan, they "were designed to minimise criticism".⁷⁴ The disproportionate focus of the CHR was underlined by the fact that, during the examined period, 24% of the country-specific resolutions targeted Israel.

⁶⁹ Ibid. 90–91.

⁷⁰ Wheeler, *The United Nation Commission on Human Rights...*, 91–92.

⁷¹ Ibid. 98.

⁷² J.H. Lebovic and E. Voeten, *The Politics of shame: The condemnation of country Human Rights Practices in the UNCHR*, (2006) 50 (4) *International Studies Quarterly*, 861. <https://doi.org/10.1111/j.1468-2478.2006.00429.x>

⁷³ S. Seligman, *Politics and principle at the UN Human Rights Commission and Council (1992–2008)*, (2011) 17 (4) *Israel Affairs*, 538. <https://doi.org/10.1080/13537121.2011.603519>

⁷⁴ Ibid. 538.

VI. MAIN FACTORS LEADING TO THE REPLACEMENT OF THE COMMISSION ON HUMAN RIGHTS

Before starting to address the most important elements contributing to the discreditation of the CHR, it should be noted that the CHR did more than any UN body to involve representatives of civil society in international human rights diplomacy.⁷⁵ This transparency continued with the HRC, too. Despite all these achievements during the last years of its existence, the CHR became the target of severe criticism from different circles. The first sign, the one that made the problem visible for the outside world too,⁷⁶ was the 2004 report of the UN Secretary-General's High-level Panel on Threats, Challenges and Change, entitled *A more secure world: our shared responsibility*,⁷⁷ and Kofi Annan's response to it, entitled *In larger freedom: towards development, security and human rights for all* (2005).⁷⁸

However, the process which led to the replacement of the CHR by the HRC had started several years earlier. An important moment was in May 2001, when the USA lost its seat on the CHR for the first time in history. That year, there were four contenders for the three seats available for Western European and Others Group (WEOG), three European candidates and the USA, with the majority of the developing world supporting the Europeans. In 2003, when the USA was again elected to the CHR, Washington intensified its fight against the practice of electing countries with a deplorable human rights record. That year the Libyan ambassador was elected as Chair of the CHR despite the protest from Washington, which lost the vote on the issue.⁷⁹

The political vacuum created as a result of the end of the Cold War had been filled by regional confrontations instead of the East-West divide. The growing CHR membership was followed by an expanding agenda, containing more and more country-specific resolutions contributing to the so-called politicisation of the CHR. As a result, it was increasingly accused of applying double standards in the course of reviewing the human rights record of UN member states.⁸⁰ The main human rights body of the UN

⁷⁵ Lauren, "To preserve and build on its achievements and to redress its shortcomings"..., 324.

⁷⁶ P. Scannella and P. Splinter, The United Nations Human Rights Council: A promise to be fulfilled, (2007) 7 (1) *Human Rights Law Review*, 42. <https://doi.org/10.1093/hrlr/ngl036>

⁷⁷ The Secretary-General's High-level Panel Report on Threats, Challenges and Change, *A more secure world: our shared responsibility*, <https://www.un.org/ruleoflaw/blog/document/the-secretary-generals-high-level-panel-report-on-threats-challenges-and-change-a-more-secure-report-our-shared-responsibility/> (Last accessed: 31 July 2019).

⁷⁸ *In larger freedom: towards development, security and human rights for all: Report of the Secretary-General*, <https://www.un.org/ruleoflaw/blog/document/in-larger-freedom-towards-development-security-and-human-rights-for-all-report-of-the-secretary-general/> (Last accessed: 31 July 2019).

⁷⁹ Boyle, *The United Nations Human Rights Council*..., 27.

⁸⁰ M. Spohr, United Nations Human Rights Council. Between institution-building phase and review of status, in A. Von Bogdandy and R. Wolfrum (eds), *Max Planck Yearbook of United Nations Law*, Vol. 14., (Brill, Leiden, 2010) 173. <https://doi.org/10.1163/18757413-90000052>

devoted more and more time to procedural debates and the practice of the so-called no-action motions, by which procedural motion powerful member states, such as China, blocked the CHR from taking action on certain country-specific resolutions. There were several attempts to reform the body substantially but, finally, only limited reforms took place, affecting the agenda and the working methods. The “institutional jacket” of the CHR, as a result of being the functional committee of ECOSOC, the limited working time, and the facilities allocated to it were not addressed.⁸¹

Despite the unique privileges enjoyed by NGOs in the CHR, civil society increasingly criticised the Commission for not addressing important human rights issues as a result of applying double standards. Many states were also critical of the fact that the human rights problems involving the five permanent members of the UN Security Council (the P5 countries), such as the situation in Tibet (China), Chechnya (Russia), and Guantanamo Bay (USA) were never on the CHR’s agenda. Kofi Annan described this situation as a “credibility deficit”.⁸²

This credibility deficit was also because many states with deplorable human rights records were mainly motivated to join the CHR to protect themselves against international criticism and to criticise their political enemies. Given the loose membership criteria, it was relatively easy to secure 28 votes within ECOSOC.⁸³

Kofi Annan explicitly stated that politicisation and selectivity had undermined the credibility of the CHR and had had a negative effect on the reputation of the UN as well. Consequently, he suggested the establishment of a new institution, the HRC.⁸⁴

As a result, the international community began to prepare to replace the CHR with a new institution, to extend the working time, enhance the quality of membership, make it easier to address crises outside the main sessions, and upgrade the status of the institution.⁸⁵ The international community intended for the HRC to overcome the selectivity, politicisation and practice of double standards of the CHR.⁸⁶ The political decision to replace the CHR with the HRC was taken in September 2005 at the World Summit.⁸⁷

⁸¹ Schrijver, *The UN Human Rights Council...*, 84.

⁸² Y. Terlingen, *The Human Rights Council: a new era in UN human rights work?*, (2007) 21 (2) *Ethics and International Affairs*, 169. <https://doi.org/10.1111/j.1747-7093.2007.00068.x>

⁸³ M. Davies, *Rhetorical Inaction? Compliance and the Human Rights Council of the United Nations*, (2010) (35) *Alternatives*, 452. <https://doi.org/10.1177/030437541003500406>

⁸⁴ L. Rahmani-Ocora, *Giving the Emperor real clothes: The UN Human Rights Council*, (2006) (12) *Global Governance*, 15. <https://doi.org/10.1163/19426720-01201003>

⁸⁵ *Ibid.* 16.

⁸⁶ L. K. Landolt, and B. Woo, *NGOs invite attention: From the United Nations Commission on Human Rights to the Human Rights Council*, (2017) 16 (4) *Journal of Human Rights*, 407. <https://doi.org/10.1080/14754835.2016.1153411>

⁸⁷ N. Ghanea, I. *From UN Commission on Human Rights to the UN Human Rights Council: one step forward or two steps sideways?*, (2006) 55 (3) *International and Comparative Law Quarterly*, 697. <https://doi.org/10.1093/iclq/lei112>

VII. CONCLUSION

The six decades of the CHR cannot be assessed based on the criticisms formulated during the last few years of the most important human rights body in the world. The contribution of the CHR to the international standards-setting activities of the international community in the field of the promotion and protection of human rights and fundamental freedoms was enormous. Such a contribution cannot be negated by criticisms related to politicisation or double standards. These are unfortunate but normal signs of an intergovernmental body, influenced by the political aspirations and agendas of the member states. The CHR did what it could within the confines of Cold War realities, which were replaced by the North-South confrontation in the 90s. Despite these political hurdles, the CHR managed to establish a sophisticated system of special procedures, covering a wide range of thematic issues and numerous country situations. This database, however, is not used enough. This is one of the areas where the international community could do much more in the interests of more effective prevention or management of human rights crises. The Country offices of the OHCHR should have a pivotal role in this context.

A political body like the CHR cannot do more than it is allowed to do by member states and cannot be blamed for being political. The international community decided to replace the CHR with another organ, as many member states thought that a new institutional framework could cure its political deficiencies. It was not surprising therefore that the new body of almost the same size, with the same players and similar political conditions, could not bring about a breakthrough in the international fight against human rights violations.

