

Committing to the future we want: a High Commissioner for Future Generations at Rio+20

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Note

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Annex A: Future generations and common heritage in international agreements and declarations

Treaty	Text
UN Charter, ¹ 1945 Preamble, opening lines	Preamble <i>"WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war..."</i>
International Convention for the Regulation of Whaling, ² 1946 Preamble, opening lines	Preamble <i>"Recognizing the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks"</i>
UNESCO World Heritage Convention, ³ 1972 Article 4 (obligation)	Article 4 <i>"Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources..."</i>
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), ⁴ 1975 Preamble, opening lines	Preamble <i>"Recognizing that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come"</i>
African Convention on the Conservation of Nature and National Resources ⁵ 1968	

¹ <http://www.un.org/en/documents/charter/>

² <http://iwcoffice.org/commission/convention.htm>

³ <http://whc.unesco.org/en/conventiontext>

⁴ <http://www.cites.org/eng/disc/text.php>

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http://www.au.int/en/sites/default/files/AFRICAN_CONVENTION_CONSERVATION_NATURE_NATURAL_RESOURCES.pdf

	<i>an element of cultural identity and as a source of inspiration and creativity for present and future generations;”</i>
ASEAN Agreement on the Conservation of Nature and Natural Resources ¹⁰ 1985 Preamble	Preamble <i>“RECOGNIZING the importance of natural resources for present and future generations”</i>
Paris Convention for the Protection of the Marine Environment of the North-East Atlantic ¹¹ 1992 Preamble	Preamble <i>“RECOGNISING that concerted action at national, regional and global levels is essential to prevent and eliminate marine pollution and to achieve sustainable management of the maritime area, that is, the management of human activities in such a manner that the marine ecosystem will continue to sustain the legitimate uses of the sea and will continue to meet the needs of present and future generations”</i>
Convention on the Transboundary Effects of Industrial Accidents ¹² 1992 Preamble	Preamble <i>“The Parties to this Convention Mindful of the special importance, in the interest of present and future generations, of protecting human beings and the environment against the effects of industrial accidents”</i>
UN Framework Convention on Climate Change ¹³ 1992 Article 3.1 (principle)	Article 3.1 (principle) <i>“In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following: 1. The Parties should protect the climate system for the benefit of present and future generations of</i>

¹⁰<http://www.aseansec.org/1490.htm>

¹¹http://www.ospar.org/html_documents/ospar/html/OSPAR_Convention_e_updated_text_2007.pdf

¹²<http://www.unece.org/fileadmin/DAM/env/documents/2006/teia/Convention%20E.pdf>

¹³http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf

	<i>humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.”</i>
UN Convention on Biological Diversity ¹⁴ 1992 Preamble	Preamble <i>“Determined to conserve and sustainably use biological diversity for the benefit of present and future generations.”</i>
UNECE Convention on the Protection and Use of Transboundary, Watercourses and International Lakes ¹⁵ 1992 Article 2.5(c) (principle)	Article 2.5(c) <i>“In taking the measures referred to in paragraphs 1 and 2 of this article, the Parties shall be guided by the following principles: ... (c) water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.”</i>
North American Agreement on Environmental Cooperation ¹⁶ 1993 Preamble	Preamble <i>“CONVINCED of the importance of the conservation, protection and enhancement of the environment in their territories and the essential role of cooperation in these areas in achieving sustainable development for the wellbeing of present and future generations.”</i>
Convention to Combat Desertification ¹⁷ 1994 Preamble	Preamble <i>“The Parties to this Convention.. ...Determined to take appropriate action in combating desertification and mitigating the effects of drought for the benefit of present and future generations”</i>

¹⁴ <http://www.cbd.int/convention/text/>

¹⁵ <http://www.unece.org/fileadmin/DAM/env/water/pdf/watercon.pdf>

¹⁶ <http://www.cec.org/Page.asp?PageID=1226&SiteNodeID=567>

¹⁷ <http://www.unep.org/roa/docs/amcen/9eng.pdf>

	<i>well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”</i>
Charter of Fundamental Rights of the European Union ²⁰ 2000 Preamble	Preamble <i>“Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.”</i>
Stockholm Convention on Persistent Organic Pollutants ²¹ 2001 Preamble	Preamble <i>“Aware of the health concerns, especially in developing countries, resulting from local exposure to persistent organic pollutants, in particular impacts upon women and, through them, upon future generations.”</i>
WHO Framework Convention on Tobacco Control ²² 2003 Article 3 (Objective) Annex 1 (World Health Assembly Resolution 56.1)	Article 3 (Objective) <i>“The objective of this Convention and its protocols is to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke”.</i> Annex 1: WHA 56.1 <i>... “Determined to protect present and future generations from tobacco consumption and exposure to tobacco smoke”</i>

²⁰ http://www.europarl.europa.eu/charter/pdf/text_en.pdf

²¹ <http://chm.pops.int/Portals/0/download.aspx?d=UNEP-POPS-COP-CONVTEXT.En.pdf>

²² http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf

	<i>"The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations...."</i>
UNESCO Universal Declaration on Bioethics and Human Rights ²⁷ 2005 Preamble	Preamble <i>"Noting .. the UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations of 12 November 1997...."</i>
UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations ²⁸ 1997 (Relevant in its entirety; not reproduced here)	Article 1 <i>"The present generations have the responsibility of ensuring that the needs and interests of present and future generations are fully safeguarded"</i> Article 12 <i>"States, the United Nations system, other intergovernmental and non-governmental organizations, individuals, public and private bodies should assume their full responsibilities in promoting, in particular through education, training and information, respect for the ideals laid down in this Declaration, and encourage by all appropriate means their full recognition and effective application"</i>
Treaties referring to the Common Heritage/Interest of all Mankind	
Antarctic Treaty ²⁹ 1959 Preamble (purpose)	Preamble <i>"Recognizing that it is in the interest of all mankind that Antarctica shall continue for ever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord"</i>
Agreement Governing the Activities of States on the Moon and Other Celestial Bodies ³⁰ 1979 Article 4 (1)	Article 4 (1) <i>"1. The exploration and use of the moon shall be the</i>

²⁷ http://portal.unesco.org/en/ev.php-URL_ID=31058&URL_DO=DO_TOPIC&URL_SECTION=201.html

²⁸ <http://www.unesco.org/cpp/uk/declarations/generations.pdf>

²⁹ http://www.antarctica.ac.uk/about_antarctica/geopolitical/treaty/update_1959.php

³⁰ <http://www.unoosa.org/oosa/SpaceLaw/moon.html>

<p>Articles 11 (1) and 11 (5)</p>	<p><i>province of all mankind and shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development. Due regard shall be paid to the interests of present and future generations as well as to the need to promote higher standards of living and conditions of economic and social progress and development in accordance with the Charter of the United Nations”.</i></p> <p>Articles 11 (1) and 11 (5) <i>“1. The moon and its natural resources are the common heritage of mankind, which finds its expression in the provisions of this Agreement and in particular in paragraph 5 or this article...</i></p> <p><i>..5. States Parties to this Agreement hereby undertake to establish an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the moon as such exploitation is about to become feasible. This provision shall be implemented in accordance with article 18 of this Agreement”.</i></p>
<p>United Nations Convention on the Law of the Sea,³¹ 1982</p> <p>Article 136 (Common Heritage of Mankind)</p>	<p>Article 136 <i>“The Area [the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction] and its resources are the common heritage of mankind”</i></p>
<p>Declarations and Resolutions addressing the common heritage of mankind/heritage of humanity</p>	
<p>United Nations General Assembly Resolution 2749, Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction³² 1970</p> <p>Principle 1</p>	<p>Principle 1 <i>“1. The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the area), as well as the</i></p>

³¹ http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

³² <http://www.un-documents.net/a25r2749.htm>

	<i>resources of the area, are the common heritage of mankind “</i>
UNESCO Universal Declaration on the Human Genome and Human Rights ³³ 1997 Article 1	Article 1 <i>"The human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity. In a symbolic sense, it is the heritage of humanity."</i>

³³ http://portal.unesco.org/en/ev.php-URL_ID=13177&URL_DO=DO_TOPIC&URL_SECTION=201.html

Annex B Subjects addressed by references to future generations and the heritage of mankind in international agreements and declarations

Future Generations

Peace and security

Environmental modification techniques

Scientific and technological progress

Cultural and natural heritage

Safeguarding whale stocks

Protection of the climate system

Protection and/or conservation of wild fauna and flora

Conservation and sustainable use of biological diversity/natural resources/nature/habitats

Protection of the marine environment

Health (specifically related to persistent organic pollutants and tobacco)

Industrial accidents

Desertification

Management of radioactive waste and spent fuels

Management of water resources

The right to live in an environment adequate to health and well-being

Fundamental Rights

The right to development

Cultural and religious diversity

Freedom of choice (in relation to political, economic and social systems)

Non-discrimination

Education

'Common heritage' of mankind/all Europeans; 'interest of mankind'
Law of the Sea

Antarctica

Exploration and use of the moon

'Heritage of humanity'
The human genome

Annex C: Office of the United Nations High Commissioner for Refugees

Background

International concern for refugees pre-dated the UN,³⁴ and can be traced back to before the Second World War. In 1946, governments set up the International Refugee Organization (IRO), as a “non-permanent organization” and UN specialized agency.³⁵ Between 1947 and 1951, with its own staff and over forty ships, the IRO relocated over 1 million Europeans to the Americas, Israel, Southern Africa and Oceania. But as the June 1950 date for termination of the mandate of the IRO neared, and the US which contributed about 60% of its costs became unwilling to support it,³⁶ the “refugee problem” was not “solved”.

This situation led to the UN General Assembly in December 1949 passing a resolution to establish as of 1st January 1951 a High Commissioner’s Office for Refugees in accordance with the resolution’s annex in order “to discharge the functions enumerated therein and such other functions as the General Assembly may from time to time confer upon it”.³⁷ The resolution requested the Secretary-General to prepare detailed draft provisions for implementation of the resolution and annex, to circulate them to Governments for comments, and to submit them to the Economic and Social Council.

In December 1950, the General Assembly passed a further resolution adopting the Statute of the Office of the HC, set out in the annex of that resolution,³⁸ and calling on governments to cooperate with the HC, especially by (amongst other things) becoming parties to international conventions for refugee protection, admitting refugees to their territories and providing the HC with information concerning the number of refugees, and laws and regulations concerning them.

The paragraphs below describe the main provisions of the Statute (and associated resolutions), grouped in accordance with the three Chapters of the Statute, followed by a discussion of the HC’s supervision powers in practice.

General (scope, policy direction and associated committee)

Paragraph 1 of the Statute provides that the HC for Refugees

³⁴For example, the Minorities Treaties and the League of Nations’ system for the protection of national minorities emerged after the First World War; the Convention on the International Status of Refugees was concluded in 1933, and see also the 1936 Provisional Arrangement concerning the Status of Refugees coming from Germany and the 1938 Convention concerning the Status of Refugees coming from Germany (James A. Hathaway, *The Rights of Refugees under International Law* (Cambridge, 2005)).

³⁵Its Constitution is here: http://avalon.law.yale.edu/20th_century/decad053.asp. A Wikipedia page is here: http://en.wikipedia.org/wiki/International_Refugee_Organization

³⁶James A. Hathaway, *The Rights of Refugees under International Law* (Cambridge, 2005), page 91); Henry G. Schermers & Niels M. Blokker, *International institutional law:unity within diversity* (Martinus Nijhoff, 2011), page 1045.

³⁷Resolution 319 (IV), 3rd December 1949, available from here: <http://www.un.org/depts/dhl/resguide/r4.htm>

³⁸Resolution 428 (V), 14th December 1950, available from here: <http://www.un.org/depts/dhl/resguide/r5.htm>

“acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.”

Paragraph 1 also provided that in exercising his functions:

*“more particularly when difficulties arise, and for instance with regard to any controversy concerning the international status of these persons, the High Commissioner shall request the opinion of an advisory committee on refugees if it is created.”*³⁹

The reference to a possible advisory committee appears to be a reference to an advisory committee which, paragraph 4 of the Statute provides, the Economic and Social Council may decide to establish, consisting of representatives of governments *“selected by the Council on the basis of their demonstrated interest in and devotion to the solution of the refugee problem.”*³⁹

The HC was required to follow policy directives given him by the General Assembly or the Economic and Social Council (paragraph 3); and the General Assembly was required to review, not later than at its eight session, the arrangements for the Office with a view to determining whether it should be continued beyond 31st December 1953. The Office was, in the event, renewed for further periods of five years until 2003 when the General Assembly decided *“to remove the temporal limitation on the continuation of the Office...and to continue the Office until the refugee problem is solved.”*⁴⁰

Functions (including Executive Committee’s functions)

The Statute required (and requires) the HC to provide for the protection of refugees in nine different ways, namely:

“...by:

- (a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;*
- (b) Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;*
- (c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;*
- (d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;*
- (e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;*

³⁹ In 1951 the Economic and Social Council established an advisory committee of government representatives (Resolution 393 (XIII) B, 10th September 1951), as foreseen by paragraph 4 of the Statute. In 1955, this was reconstituted by the Council as the United Nations Refugee Fund (UNREF) Executive Committee (Resolution 565 (XIX), 31st March 1955, following General Assembly Resolution 832 (IX), 21st October 1954)). This was then replaced by the Executive Committee of the High Commissioner’s Programme under E/RES/672 (XXV).

⁴⁰ A/RES/58/153 (paragraph 9), 22nd December 2003, available from here: <http://www.un.org/depts/dhl/resguide/r58.htm>

- (f) Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;*
- (g) Keeping in close touch with the Governments and inter-governmental organizations concerned;*
- (h) Establishing contact in such manner as he may think best with private organizations dealing with refugee questions;*
- (i) Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees,” (paragraph 8)*

The HC is also required to engage in such additional activities as the General Assembly may determine, within the resources placed at his disposal (paragraph 9).

The HC is entitled to present his views before the General Assembly, the Economic and Social Council and their subsidiary bodies; must report annually to the General Assembly through the Economic and Social Council, and his report shall be considered as a separate item on the Assembly’s agenda (paragraph 11). This reporting obligation was added to by a General Assembly resolution in 2004, which required the HC also to “make an annual oral report to the Economic and Social Council to keep it informed of the coordination aspects of the work of the Office” and which provided that the annual written report to the General Assembly would continue:

“on the understanding that every ten years...the report will include a strategic review of the global situation of refugees and the role of the Office, prepared in consultation with the Secretary-General and the Executive Committee.”⁴¹

Reference in that resolution to the Executive Committee is a reference to the Executive Committee of the High Commissioner’s Programme that was established initially in 1958 with 24 State members by resolution of the Economic and Social Council,⁴² following a request the previous year from the General Assembly to establish such a committee consisting of “representatives of from twenty to twenty-five States members of the United Nations or members of any of the specialized agencies, to be elected from the Council on the widest possible geographical basis from those States with a demonstrated interest in, and devotion to, the solution of the refugee problem”.⁴³ There were 54 members of the Executive Committee by 1999, and following annual increases every year since, membership now stands at 85.⁴⁴ Although the 1957 General Assembly resolution (Resolution 1166 (XII)) allows membership from the specialized agencies, it does not appear that the Executive Committee has any such members.

Terms of reference for the Executive Committee were set out in the 1957 General Assembly resolution, and expanded on in the 1958 ECOSOC resolution. Its functions include reviewing funds and programmes, authorizing the HC to make funding appeals and approving proposed

⁴¹ A/RES/58/153 (paragraph 10), 22nd December 2003. Available online via <http://www.un.org/depts/dhl/resguide/r58.htm>

⁴² E/RES/672 (XXV), 30th April 1958, available here: <http://www.unhcr.org/3ae69eccc.html>. See also the explanatory note *ante*, note 38.

⁴³ Resolution 1166 (XII), 26th November 1957. Available online via <http://www.un.org/depts/dhl/resguide/r12.htm>

⁴⁴ <http://www.unhcr.org/pages/49c3646c89.html>

biennial budget targets. The Executive Committee also has the function of advising the HC, at his request, on the exercise of his functions under the Statute of his Office.

The UNHCR website describes the Executive Committee as the “governing body” of the “UN refugee agency”, although neither of these terms are used in these resolutions, and the HC remains under the policy direction of the General Assembly or ECOSOC (pursuant to paragraph 3 of the Statute).

The High Commissioner may invite the co-operation of the various specialized agencies (Statute, paragraph 12).

Organization and Finances

The High Commissioner is elected by the General Assembly on the nomination of the Secretary-General; and the terms of appointment are proposed by the Secretary-General and approved by the Assembly. The High Commissioner can appoint for the same term a Deputy HC of a nationality other than his own (paragraph 14).

Within the limits of the budget, the High Commissioner’s staff – who are to be chosen from persons devoted to the purposes of the Office - are appointed by the High Commissioner and are responsible to the High Commissioner in the exercise of their functions (paragraph 15). According to the UNHCR Global Report 2010, there are 6,314 UNHCR regular staff members, of which 5,438 are “in the field” and 876 are at Headquarters in Geneva; and there are 378 UNHCR offices worldwide.⁴⁵

The HC must consult the government of the countries of residence of refugees as to the need for appointing representatives therein (paragraph 16).

The HC and the Secretary-General must make appropriate arrangements for liaison and consultation on matters of mutual interest (paragraph 17) and the latter must provide the former with all necessary facilities within budgetary limits (paragraph 18).

The Office is located in Geneva (paragraph 19). The Office is financed under the budget of the UN and unless the General Assembly decides otherwise no expenditure other than administrative expenditure relating to the functioning of the Office shall be borne on the budget of the UN, and all other expenditures relating to the activities of the HC shall be financed by voluntary contributions (paragraph 20).

According to the UNHCR website,⁴⁶ the size of its budget has risen from \$300,000 in 1950, to more than \$1 billion in the early 1990s and \$3 billion in 2010, compared to US\$1.8 billion in 2008. 93% of its funding comes from voluntary contributions from governments, with the US being easily the largest contributor (\$510 million), followed by the European Commission

⁴⁵ UNHCR Global Report 2010, Introduction, Mission Statement and basic facts. Available online via: <http://www.unhcr.org/4dfdbf340.html>

⁴⁶ <http://www.unhcr.org/pages/49c3646c1a.html>. UNHCR also gets 4% of its funding from inter-governmental organizations and pooled funding mechanisms, and 3% from the private sector, including foundations, corporations and the general public (plus a limited subsidy from the UN regular budget for administrative costs, and “in-kind” contributions, including relief items such as tents, medicines, trucks and air transport).

(US\$130 million), Japan (US\$110 million), Sweden (US\$105 million) and the Netherlands (US\$85 million).

The Financial Regulations of the UN apply to the Office, as do the financial rules promulgated thereunder by the Secretary-General (paragraph 21), and transactions relating to the HC's funds are subject to audit by the UN Board of Auditors (paragraph 22).

Supervisory powers in practice

The High Commissioner for Refugees has in practice extensive supervisory functions.

The extent of such supervision can be seen as flowing from:

- (a) the function in the Statute of promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments to them;
- (b) the fact that the 1951 Convention Relating to the Status of Refugees was being negotiated whilst the HC Office was being established; and
- (c) the legal duties on States contained in both the Convention and Protocol⁴⁷ to cooperate with the HC's Office in the exercise of its functions, and in particular to facilitate its duty of supervising the application of the provisions of this Convention; and to provide the HC with requested information and statistical data about the condition of refugees, implementation of the instruments and laws, regulations and decrees relating to refugees.

This context has led to the High Commissioner for Refugees having a distinctive and unique role in international law, amounting to an entitlement to monitor, report on and follow up its interventions with governments regarding the situation of refugees.⁴⁸ Kälin comments that “[m]aking representations to governments and other relevant actors on protection concerns is inherent in UNHCR's supervisory function.” This entitlement extends to cooperation with States in designing operational responses to specific problems and to UNHCR generally being granted at a minimum an advisory and/or consultative role in national asylum or refugee determination procedures (such as being notified of asylum applications, being informed of the course of procedures, having guaranteed access to files and being entitled to intervene and submit observations on cases, including in quasi-judicial institutions or courts in the form of *amicus curiae* briefs, statements or letters). It is granted access to applicants and vice versa by law or administrative practice; is entitled to advise governments and parliaments on legislation and

⁴⁷ See Article 35.1 and 35.2 of the Convention, and Article II.1 and II.2 of the Protocol. The Convention and Protocol are here: <http://www.unhcr.org/3b66c2aa10.html>. An explanatory brochure is here: <http://www.unhcr.org/4ec262df9.html>. The Protocol removed the geographic and temporal application of the Convention (focused on pre-1951 events in Europe).

⁴⁸ See Chapter 10, entitled ‘Supervising the 1951 Convention Relating to the Status of Refugees and beyond’ by Walter Kälin, in *Refugee Protection in International Law* (Feller, Türk and Nicholson, Eds., (Cambridge, 2003), at page 623 (citing the Standing Committee of the Executive Committee of the High Commissioner's Programme's report entitled ‘Progress Report on Informal Consultations on the Provision of International Protection to All Who Need It’, 8th meeting, UN doc. EC/47/SC/CRP.27, 30th May 1997, paragraph 7, and others). According to the UNHCR website, Walter Kälin was appointed Representative of the Secretary-General on the human rights of internally displaced persons in 2004 and former member of the UN Human Rights Committee: <http://www.ohchr.org/EN/Issues/IDPersons/Pages/WalterKalin.aspx>. At the time of writing in 2003 he was Professor of Constitutional and International Law at the University of Bern, Switzerland.

administrative decrees; and plays an important role in capacity-building of relevant authorities, judges, lawyers and NGOs, for example through promotional and training activities.

Kälin states that:

“UNHCR’s advocacy role, including the issuance of public statements, is well acknowledged as an essential tool of international protection and in particular of its supervisory responsibility”.

These intervention powers can be contrasted with those in relation to human rights. Kälin writes (footnotes mostly omitted):

“Although paragraph 8 of the Statute does not refer to the international protection of refugees as individuals when listing the elements of international protection, it was immediately established by State practice that UNHCR could also take up individual cases. Unlike, for example, in the field of human rights where interventions by an international body on behalf of individual victims or visits to the territory of States often raise problems, States do not object if UNHCR intervenes in individual cases or in general issues relevant to refugees, and do not regard such activities as an intervention in their internal affairs. This general acceptance of UNHCR’s protection role is rooted in, among others, the fact that, due to its Statute and Article 35 of the 1951 Convention, ‘UNHCR does not have to be invited to become involved in protection matters’, something that makes ‘UNHCR’s mandate distinct, even unique, within the international system’.”⁴⁹

⁴⁹ These quotations are footnoted as from UNHCR, ‘Note on International Protection’, UN doc. A/AC.96/930, 7th July 2000, paragraph 71.

Annex D: the Office of the United Nations High Commissioner for Human Rights

Background

International concern for human rights is often traced back to the 1919 League of Nations Covenant, and to the establishment of the International Labour Organization in the same year.⁵⁰ After 1945, respect for human rights became a core part of the UN Charter, and the Economic and Social Council was required to set up commissions for the promotion of human rights (Article 68).

This led directly to the establishment of the Commission on Human Rights in 1946, and to the adoption of the Universal Declaration of Human Rights by the General Assembly in 1948.

There have been many developments since aimed at improving the international system for the protection of human rights, in particular:

- establishment of treaty-based Committees of independent experts that monitor implementation by State Parties of the respective treaties;
- setting up of the Office of the High Commissioner (HC) for Human Rights in 1994; and
- replacement of the Commission by the Human Rights Council in 2006.

Establishment

In June 1993, the World Conference on Human Rights adopted the Vienna Declaration and Programme of Action.⁵¹ Paragraph 18 of section II of that Declaration and Programme states:

“The World Conference on Human Rights recommends to the General Assembly that when examining the report of the Conference at its forty-eighth session, it begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.”

Following this recommendation, non-governmental organisations identified four challenges for such a High Commissioner:⁵²

- the need for strategic direction and proper coordination of existing bodies and programs concerned with human rights;
- the need for a senior official to ensure that promotion and protection of human rights is integrated into the work of all relevant aspects of the UN system;
- the need to ensure that human rights becomes a central, system-wide priority in all UN activities rather than continue as a marginalized subject assigned to Geneva alone; and

⁵⁰ Brownlie, *Principles of Public International Law*, 7th edition, 2008

⁵¹ Available online at: <http://www.unhchr.ch/huridocda/huridoca.nsf/%28symbol%29/a.conf.157.23.en>

⁵² 'A High Commissioner for Human Rights,' Joint Statement by Amnesty International, Human Rights Watch, International Federation for Human Rights, International Human Rights Law Group, International League for Human Rights, Lawyers for Human Rights, October 1993, reprinted as 'In Brief: A High Commissioner for Human Rights: Answering Questions', International League for Human Rights, In Brief, No. 55, cited by Professor Roger Clarke in his Foreword (p. xviii) to Bertrand G. Ramcharan's book *The United Nations High Commissioner for Human Rights: The Challenges of International Protection* (Kluwer, 2002)

- the necessity of ensuring that the UN's response to human rights problems is 'early, efficient, effective and comprehensive'.

In December 1993, the General Assembly decided to create the post of the High Commissioner for Human Rights, appointed by the Secretary-General and approved by the Assembly for a fixed four year term, renewable once for the same period.⁵³ The resolution provides that the High Commissioner, € shall be a person of high moral standing and personal integrity with expertise, including in the human rights field, and the general knowledge and understanding of diverse cultures necessary for impartial, objective, non-selective and effective performance of his or her duties (paragraph 2(a)).

The Resolution provides that the High Commissioner shall be “the United Nations official with principal responsibility for United Nations human rights activities under the direction and control of the Secretary-General” (paragraph 4), with its office in Geneva and a liaison office in New York (paragraph 6).

In paragraph 5, the General Assembly: *“Requests the High Commissioner for Human Rights to report annually on his/her activities, in accordance with his/her mandate, to the Commission on Human Rights [now the HR Council] and, through the Economic and Social Council, to the General Assembly”*⁵⁴

The Assembly requested the Secretary-General to provide appropriate staff and resources within regular UN budgets and without diverting resources from UN development programmes and activities (paragraph 7).

In December 2010, OHCHR employed more than 994 staff in Geneva, New York, 12 country and 12 regional offices, including some 235 international human rights officers serving in UN peace missions. It receives about one third of its funding needs from the UN regular budget which is approved by the General Assembly every two years.

The amount of regular budget funding appropriated for use by OHCHR has increased gradually since 2005, when leaders attending the World Summit supported a commitment to double funding for the Office over five years. Nevertheless, despite this recent increase, the proportion of the overall UN regular budget devoted to human rights remains small, at just 2.8 per cent, or US\$ 142,743,800, of the total 2010-2011 biennium budget. The other two thirds of OHCHR's budget needs are met from voluntary contributions by Member States and other donors.

The level of voluntary funding increased strongly between 2005 and 2009. In 2010 however there was a noticeable decrease in voluntary contributions – from US\$ 118 million in 2009 to US\$ 109 million in 2010.⁵⁴

Guiding principles

Paragraph 3 of the GA resolution sets out what might be regarded as guiding principles:

⁵³ A/RES/48/141, 20th December 1993, available here; <http://www.un.org/documents/ga/res/48/a48r141.htm>

⁵⁴ This is taken almost verbatim from the OHCHR website: <http://www.ohchr.org/EN/AboutUs/Pages/HowWeDoIt.aspx>

“[T]he High Commissioner for Human Rights shall:

(a) Function within the framework of the Charter of the United Nations, the Universal Declaration of Human Rights, other international instruments of human rights and international law, including the obligations, within this framework, to respect the sovereignty, territorial integrity and domestic jurisdiction of States and to promote the universal respect for and observance of all human rights, in the recognition that, in the framework of the purposes and principles of the Charter, the promotion and protection of all human rights is a legitimate concern of the international community;

(b) Be guided by the recognition that all human rights - civil, cultural, economic, political and social - are universal, indivisible, interdependent and interrelated and that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms;

(c) Recognize the importance of promoting a balanced and sustainable development for all people and of ensuring realization of the right to development, as established in the Declaration on the Right to Development;”

Responsibilities of the High Commissioner for Human Rights

The Resolution sets out 11 responsibilities of the High Commissioner for Human Rights. Prefaced by “within the framework of the overall competence, authority and decisions of the General Assembly, the Economic and Social Council and the Commission on Human Rights [since 2006, the Human Rights Council⁵⁵]”, the Resolution sets out these responsibilities in paragraph 4 as follows:

“...the High Commissioner's responsibilities shall be:

(a) To promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights;

(b) To carry out the tasks assigned to him/her by the competent bodies of the United Nations system in the field of human rights and to make recommendations to them with a view to improving the promotion and protection of all human rights;

(c) To promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for this purpose;

(d) To provide, through the Centre for Human Rights of the Secretariat and other appropriate institutions, advisory services and technical and financial assistance, at the request of the State concerned and, where appropriate, the regional human rights organizations, with a view to supporting actions and programmes in the field of human rights;

(e) To coordinate relevant United Nations education and public information programmes in the field of human rights;

(f) To play an active role in removing the current obstacles and in

⁵⁵ Paragraph 5(g) of the GA resolution establishing the Human Rights Council (A/RES/60/251, 3 April 2006) provides that the Council shall assume the role and responsibilities of the Commission in relation to the work of the HC for Human Rights under resolution 48/141.

meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world, as reflected in the Vienna Declaration and Programme of Action;

(g) To engage in a dialogue with all Governments in the implementation of his/her mandate with a view to securing respect for all human rights;

(h) To enhance international cooperation for the promotion and protection of all human rights;

(i) To coordinate the human rights promotion and protection activities throughout the United Nations system;

(j) To rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness;

(k) To carry out overall supervision of the Centre for Human Rights;”

The Resolution provides a clear basis for State-level work. For example, paragraph 3(b) says that:

“the High Commissioner for Human Rights shall....(b) Be guided by the recognition that all human rights - civil, cultural, economic, political and social - are universal, indivisible, interdependent and interrelated and that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms;”

Paragraphs 4(d) (f) and (g) further support the state level roles of the High Commissioner. The presence of the High Commissioner for Human Rights in the field is important, offering a strategic entry point for promotion and protection of human rights at the country level; integrating human rights into the work of UN Country Teams, and helping to strengthen national institutions and civil society, among other roles.⁵⁶

The Human Rights Council

The 2005 World Summit Outcome document set the broad parameters for the work of the Human Rights Council:

“Human Rights Council

157. Pursuant to our commitment to further strengthen the United Nations human rights machinery, we resolve to create a Human Rights Council.

158. The Council will 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.

159. The Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote effective coordination and the mainstreaming of human rights within the United Nations system.

160. We request the President of the General Assembly to conduct open, transparent and inclusive negotiations, to be completed as soon as possible during the sixtieth

⁵⁶ <http://www.ohchr.org/EN/Countries/Pages/WorkInField.aspx>

session, with the aim of establishing the mandate, modalities, functions, size, composition, membership, working methods and procedures of the Council.

According to the website of the High Commissioner for Human Rights: *"In addition to assuming mandates and responsibilities previously entrusted to the [Human Rights] Commission, the newly created Council, reporting directly to the General Assembly, has expanded mandates. These include making recommendations to the General Assembly for further developing international law in the field of human rights, and undertaking a Universal Periodic Review of the fulfilment by each State of its human rights obligations and commitments".*⁵⁷

Reporting

The High Commissioner must report annually to the Human Rights Council "and, through the Economic and Social Council, to the General Assembly". The Human Rights Council must report annually to the GA.

General Discussion

In a Handbook for Civil Society, the Office of the High Commissioner for Human Rights describes itself as *"the global authority on human rights"* which *"is responsible for leading the United Nations human rights programme and for promoting and protecting all human rights established under the Charter of the United Nations and international human rights law."*⁵⁸

The role of the Office is described further as follows:

"OHCHR seeks to offer the highest quality research, expertise, advice and administrative services to the main United Nations human rights bodies and mechanisms as they discharge their standard-setting and monitoring duties, contributing to the development of international human rights law and jurisprudence, and working to ensure the implementation of agreed human rights standards. These bodies and mechanisms include:

- * The Human Rights Council and its mechanisms, e.g., the special procedures, the universal periodic review mechanism, the complaint procedure, the Advisory Committee, the Social Forum, the Forum on Minority Issues, and the Expert Mechanism on the Rights of Indigenous Peoples; and*
- * The human rights treaty bodies."*

The Office of the High Commissioner for Human Rights plays an important role in relation to the human rights bodies, providing a wide range of secretariat functions. The Handbook for Civil Society states:

"All human rights treaty bodies are serviced by the Treaties and Follow-up Unit of the Human Rights Treaties Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR), which receives submissions, reports and correspondence for the treaty bodies, prepares reports, carries out research, provides technical cooperation,

⁵⁷ http://www.ohchr.org/Documents/AboutUs/IK_What_we_do_En.pdf. See Making Human Rights a Reality: the Human Rights Mechanisms, available here: http://www.ohchr.org/Documents/AboutUs/IK_HR_mechanisms_En.pdf

⁵⁸ Working with the United Nations Human Rights Programme: A Handbook for Civil Society, e-page 12, available online at http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

guidance and advice to States parties, organizes meetings and undertakes any other logistical work required by the treaty bodies.”

Ten such treaty bodies - nine Committees and one sub-Committee - are listed on the OHCHR website. Membership ranges from 10 – 24 individual experts.⁵⁹

Complaints and communications from individuals or groups of individuals who claim their rights have been violated by a State party can be made to most of these treaty bodies. In addition, inquiries may be initiated by some if they have received reliable information containing well-founded indications of serious, grave or systematic violations of the treaties in a State party; and some have procedures for addressing either inter-State complaints or disputes. The Committee on the Elimination of Racial Discrimination has developed procedures relating to early warning measures and urgent action.⁶⁰

Alongside these treaty-based monitoring and compliance processes, the Human Rights Council is able to adopt ‘special procedures’, which include the appointment of ‘special rapporteurs’ (a term that is used in some of the submissions to the Rio + 20 zero draft). According to the Handbook for Civil Society:

“Special procedures is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to examine, monitor, advise and publicly report on human rights situations in specific countries or territories (country mandates), or on major phenomena of human rights violations worldwide (thematic mandates).

By September 2008 there were 38 special procedures (30 thematic mandates and 8 country mandates) in operation. Persons appointed to the special procedures are independent experts (mandate-holders) and may be known as special rapporteurs, representatives, special representatives, independent experts or members of working groups.”⁶¹

Schermers & Blokker write that:

“Some organs have been created in order to carry out a task that is not strictly judicial, but which is rather a more general supervisory task, to be performed independently. In this context,

⁵⁹ The titles, number of members and treaties are as follows: Human Rights Committee (18; 1966 International Covenant on Civil and Political Rights); Committee on Economic, Social and Cultural Rights (18; 1966 International Covenant on Economic, Social and Cultural Rights); Committee on the Elimination of Racial Discrimination (18; 1965 Convention on the Elimination of All Forms of Racial Discrimination); Committee on the Elimination of Discrimination against Women (23; 1979 Convention on the Elimination of All Forms of Discrimination against Women); Committee against Torture (10; 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment); Subcommittee on Prevention of Torture (25; 2002 Optional Protocol of the Convention against Torture); Committee on the Rights of the Child (18; 1989 Convention on the Rights of the Child, and two optional protocols to the Convention adopted in 2000, on involvement of children in armed conflict and on sale of children, child prostitution and child pornography); Committee on Migrant Workers (14; 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families); Committee on the Rights of Persons with Disabilities (18; 2006 Convention on the Rights of Persons with Disabilities); Committee on Enforced Disappearance (10; 2006 International Convention for the Protection of All Persons from Enforced Disappearance).

⁶⁰ See further <http://www2.ohchr.org/english/bodies/petitions/index.htm>

⁶¹ <http://www.ohchr.org/EN/AboutUs/CivilSociety/Pages/Handbook.aspx>

*particular reference should be made to organs performing preventive functions, such as the UN human rights special rapporteurs ... These are the products of an increasing awareness that, particularly (but not exclusively) in the human rights area, the formulation of rules and the ex post facto supervision of compliance with these rules is not sufficient”.*⁶²

Special Rapporteurs may go further than simply studying problems to receive complaints. For example, according to David Weissbrodt, writing in an article published in 1986,⁶³ the first thematic Special Rapporteur, the Special Rapporteur on Summary or Arbitrary Executions, *“has done far more than merely study that grave human rights problem; he has received complaints about impending and past executions, issued appeals to governments about threatened executions and the need to investigate past killings, and reported publicly on much of his activity.”*

Weissbrodt adds that a *“resolution of the Commission on Human Rights which established the Working Group on Enforced or Involuntary Disappearances gave that body of five members authority (1) to examine questions relevant to enforced or involuntary disappearances; (2) to seek and receive information from governments, intergovernmental organizations, humanitarian organizations and other reliable sources; and (3) to bear in mind the need to be able to respond effectively to information that comes before it and to carry out its work with discretion. It was directed to report to the Commission’s next session”.*

Weissbrodt considers that *country* investigators (such as special rapporteurs or special representatives on human rights situations in Afghanistan, Chile, El Salvador, Guatemala and Iran, who delivered fact-finding reports to the Commission on Human Rights in 1986), can:

“provide thorough, relatively detailed, well-analyzed reports that establish what the international community knows about particular situations...They are necessarily less balanced and less global than the theme special rapporteurs who look at a human rights phenomenon wherever it appears around the world”.

On occasion, the General Assembly itself has intervened and requested Special Rapporteurs to undertake particular activities. For example, in 1985 the General Assembly asked the Special Rapporteur on Summary and Arbitrary Executions to consider in his next report possible measures to be taken by the appropriate authorities when a death occurs in custody, including adequate autopsy.’

⁶² Schermers & Niels M. Blokker, *International institutional law: unity within diversity* (Martinus Nijhoff, 2011), page 477

⁶³ “The Three Theme Special Rapporteurs of the UN Commission on Human Rights”, 80 AJIL 685-699 (1986)