

**Creation of the United Nations**  
**High Commissioner for Human Rights**  
**Making Human Rights a reality:-**

**I. Introduction**

1. The participants at the San Francisco conference in 1945 include “ International cooperation... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”<sup>1</sup> among the fundamental purpose of the United Nations. The economic and social council has been empowered, inter alia to” make recommendation has been for purpose of promoting respect for, and observance of, human rights and fundamental freedom for all “<sup>2</sup> and entrusted with the responsibility of setting up” commission in economic and social fields and for the promotion of human right”<sup>3</sup>. In 1946 the commission of Human right was established <sup>4</sup> and shortly afterwards, in 1947. it created the sub-mission on freedom of Information and of the press (which acted only until 1952) and the sub-Commission on prevention of Discrimination and protection of Minorities. Thus the nucleus of the international machinery to promote and protect human rights was set up.

2. Since the adoption of the Charter of the United Nations, the desire for effective promotion and protection of human rights related activities has been widely shared. Given the historical background, it is not hard to understand, however, that the international community encountered difficulties in making some necessary decisions. The process of creation of the post of High Commissioner for Human Rights, with its ups and down, provides an excellent example of these obstacles. Almost 50 years passed before the General Assembly was able to take the relevant decision. The following sections describe this process and its outcome.<sup>5</sup>

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1. Charter of the United Nations (herein after "Charter") article 1, Para 3.
2. Charter, Article 62, Para 2.
3. Charter, Article 68,
4. See ECOSOC resolution 5 (1) of 16 February 1946 and (II) of 21 June 1946.

## **II. 1947-1973: 26 years of attempts**

3. During the preparation of the Universal Declaration of Human Rights in 1947, the Casein, the French representative, first launched the idea of an attorney General who would be responsible to Government for the defence of the rights of people. This was revolutionary proposal in view of international law and international relations at that time and therefore stood little chance of acceptance.

4. The 1950s debate on the elaboration of international covenants on civil, political, economic, social and cultural rights revived the idea of an organ responsible for human rights in the framework of the covenant implementation measures<sup>6</sup>. At the fifth session of the Commission on Human Rights, in 1950. Australia presented a proposal for the establishment of an international court of human rights which would ensure respect for the specific provisions of the covenant and also for any related general human rights conventions. The proposal was destined to fall, however, due to the fact that not only States, but also individuals, groups of individuals and association, both national and international, would have been permitted as parties in proceedings.

5. The same, year, Uruguay submitted to the General Assembly a proposal for the establishment of a permanent organ of the United Nations ( a High Commissioner or Attorney General), which would function in framework of the international covenant on human rights, the draft of which was under discussion. This new organ was to be endowed with extensive powers "with respect to the implementation of the provisions of 'the' covenant the

supervision of its observance"<sup>8</sup>. The proposal was then presented at the seventh session of the commission on Human Rights but finally rejected, after examination, at the tenth session.

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5. See also B.S. Clark, a United National High Commissioner for Human Rights (The Hague, Martinus Nijhoff- 1972).

6. The implementation measures were to have constituted the third part of a unitary document, the International Bill of Human Rights, including the Universal declaration and a (single) covenant.

6. It was not until 1965 that another Latin American country, Costa Rica, submitted at the twentieth session of the General Assembly a draft resolution entitled " Election of United Nations High Commissioner of Human Rights"<sup>9</sup>, thus ending 15 years of silence on the issue. This was first time that the idea of the creation of a post of High Commissioner was proposed in the frame work of the charter of the United Nations, and the first time that such a proposal survived scrutiny and was approved, albeit with amendments, by both the commission of Human Rights<sup>10</sup> and ECOSOC.<sup>11</sup>

7. A debate concerning the title "High Commissioner" which some countries object to as reminiscent of colonial experiences, prompted the Secretary-General to conduct a study. He concluded.

It appears... that term "High Commissioner" standing alone, does not give any indication as to the tasks, functions and power of the holder of the office.... The only tangible result of using the term would be experience of the General Assembly's intention to be show upon the High Commissioner considerable prestige... (E/CN.4/AC.21/L.1., Para 152).

8. Such success was encouraging, but remained with out follow-up. Due to " lack of time (more precisely due to the lack of political will states Members of the United Nations.)", the general Assembly did not examine the ECOSOC recommendation to create a High Commissioner and only in 1973

did the Assembly again address the issue, merely reaffirming its general conviction as to the need to consider further measures in the field of human rights.<sup>12</sup>

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7. A similar proposal, present by Colombia in 1962 for the establishment of an inter national tribunal on human rights, was withdrawn after falling to received support in the Sixth Committee of the General Assembly.
8. "Uruguay: proposed additional and amendments to the draft International Covenant on Human Rights (Document E/1681) relating to the establishment of the office of the United Nations High Commission for Human rights (Attorney General) " (E/CN/ 549), art. 19, Para 2.
9. See A/5963. -
10. The Commission examined Cost Rica's draft a its twenty second and twenty third sessions, in the 1966 and 1967, and finally recommended a lext, through ECOSOC, for adoption by the General Assembly. (Sec. E/4322, chap. XVII, draft resolution IV).

### **III. The process of achievement**

9. For 20 years on official voice was to break the silence that fell over the movement for the establishment of the High Commissioner for Human Rights. It was not until major political developments and a new emphasis on the protection of human rights changed the international climate in the 1990's that the idea was revived, this time amid conditions more conducive to approval. Advocate of the proposal used the preparatory process for the World Conference on Human Rights, hold at Vienna in June 1993, as a formal frave work to that end. In 1992, Amnesty International reasserted the importance of United Nation coordination of procedures for quick and affective responses to human rights violations world wide through the creation of the new office headed by a high-level United Nations official<sup>13</sup>.

10. However, this time there was a great deal of reluctance. The belief in a radical improvement of the international protection of human rights and fears a " world gendarme" in the field of human rights coexisted. Only of the regional meetings prior to the World Conference on Human Rights, that for

Latin America and the Caribbean, held at San Jose, Costa Rica, in January 1993, took a position on this question in its final declaration.

We propose that the Conference consider the possibility of asking the General Assembly to study the feasibility of establishing a United Nations permanent commissioner for Human Rights<sup>14</sup>.

11. At interregional meeting in Strasbourg in January 1993 on "Human Rights at the dawn of the 21 Century", organized as a Council of Europe contribution to the World Conference preparations, the concept of a High Commissioner was considered and finally strongly supported.

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11. ECOSOC adopted the Commission's draft resolution and recommended the text to the General Assembly for adoption (See ECOSOC resolution 1237 (XLII) of 6 June 1967.

12. See General Assembly Resolution 3136 (XXVIII) of 14 December 1973.

13. See Amnesty International, World Conference on Human Rights- Facing up to the Failures proposals for improving the protection of Human Rights by the United Nations, A I Index IOR/41/16/92 (December 1992).

12. States arrived at the World Conference with a variety of views on the establishment of the post and the eventual role of a High Commissioner for Human Rights. The "draft final outcome of the World Conference on Human Rights", presently by the preparatory Committee<sup>15</sup>, illustrated the disparity of view, "from the repetition of the proposal made during the regional meeting in Costa Rica through the idea of merely upgrading the Director of the UN Centre for Human Rights to the creation of a strong office which would be able to react effectively to gross Human Rights violations".

13. Such a divergence of view was difficult to overcome. Consensus was reached only the last day of the conference when the drafting Committee submitted the draft Vienna Declaration and Program of Action. In the final text adopted by the Conference, the paragraph concerning the High Commissioner appears under the heading "Adaptation and strengthening of

the United Nations machinery for human rights, including the question of the establishment of United Nations High Commissioner for Human Rights”, decision as to the functions and power of the office were left to the General Assembly;

14. The world conference on human rights recognizes the necessary for a continuing adaptation of the United Nations human rights machinery to the current and future need in the promotion and protection of human rights, as reflected in the present declaration and within the framework of a balanced and sustainable development for all people. The world conference on Human Rights recommends to the General Assembly that, when examining the report of the conference at its forty-eight session, it begin, as matter or priority, consideration of the question of the establishment of High Commissioner for Human Rights for the promotion and protection of all human rights.

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14. See Jose Declaration on Human Rights, 22 January 1993 (A/CONF.157/LACRRM/12/Add.1), Para 2.
15. See A/CONF.157/PC/98, Annex II, decision PC. 4/5. proposals that required further debate before approval or rejection were put in brackets. This High Commissioner for Human Rights (See part III of he draft).
16. Vienna Declaration and programme of Action adopted by the World Conference on Human Rights Vienna 2 July 1993 (A/CONF.157/24 (part I), Chap. III), paras 17-18.
15. Later the same year, world Conference’s recommendation was taken up by the Third Committee at the forty eight session of the General Assembly. Consultation carried out by the Committee’s Chairman demonstrated that the problems relating to the creation of High Commissioner too complex to be examined and solved along with the normal work of the Third Committee. Accordingly, an open ended working group was established to consider means of implementing the recommendation of the world conference, including the establishment of a High Commissioner for Human Rights. The working group began its work

in November 1993 under the chairmanship of Mr. Jose Ayala-Lasso, Permanent Representative of Ecuador<sup>17</sup>.

16. After intense negotiations lasting several weeks, the Working Group was able to reach a consensus and present a draft resolution to the Third Committee, which approved it without amendment. On 20 December 1993, the General Assembly adopted, without a vote, resolution 48/141, creating the post of United Nation High Commissioner for Human Rights and putting an end to almost 50 years of alternate hope and disappointment. The importance of achieving consensus resolution should be emphasized. The creation of the post by unanimous approval of the General Assembly endowed the institution of the United Nation High Commissioner with a high degree of moral authority, necessary to implement its difficult mandate.

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17. The Third Committee's Summary record State:

" 101. The CHAIRMAN proposed that the Third Committee an open ended working group with the talk of considering, as a matter of priority, the question of establishing the post of a United Nation High Commissioner for Human Rights. The working group would hold its first meeting on 15 November, would conclude its work at the end of the current session of the Committee and would subsequently consider other aspects of applying the recommendations of the Vienna Declaration and programme of section. The working group world be chaired by Mr. Jose Ayala-Lasso, permanent representative of Ecuador.

" 102. It was so decided."

(A/C.3/48/SR.32, para 101-102) See also A/48/632/Add.

#### **IV. Resolution 48/141**

17. General Assembly Resolution 48/141 was the result of compromise. As such it is not a text containing a careful and precise delineation of powers, function and action. However.

One wonders whether this is a disadvantage at all. For the post of a High commissioner was to be created for the first time without any larger international comparative experience. Perhaps an attempt to define his or her mandate very precisely, if possible at all, would have led to a counter-productive limitation of his or her activity.

After a long and complex preamble, the resolution defines the conditions of the appointment, status and mandate of the High commissioner.

The preamble refers, inter alia, to: the general Assembly's commitment to the purposes and principles of the Charter of the United Nations; the need to observe international human rights standards; the right to development; the promotion of all human rights as one of the priorities of the international community, the principles of impartiality, objectivity and non-selectivity and the spirit of constructive international cooperation as the framework for the promotion and protection of all human rights; the principle that human rights are the basis of the Vienna Declaration and Programme of Action; the Assembly's determination to reform the existing mechanisms in the field of human rights and its recognition of the need to rationalize and enhance the activities of the United Nations in this field; the responsibility of the General Assembly, the Economic and Social Council and the Commission on Human Rights for decision- and policy-making in the field of human rights; and the necessity for continued adaptation of United Nations machinery to current and future needs in the field of human rights.

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**18. MANDATE OF THE HIGH COMMISSIONER ARE  
AS FOLLOWS:-**

(a) Promotion and protection of all human rights;

- (b) International cooperation for the promotion and protection of human rights;
- (c) Resection to situations challenging human rights ;
- (d) Adaptation of the united nation human rights machinery to the evolving needs;

## **V. conclusions**

19. The general assembly resolution establishing the post of United Nation High Commissioner for Human Rights was a result of a broad based compromise, achieved in the context of the 1993 world Conference on Human Rights in Vienna. Although probably few people would have predicted its approval before the end of the Assembly's forty-eight session, this decision is often considered one the moor achievements of the World Conference. The consensus which finally dominated the debate has provided a strong basis for the new institution. Since the stipulations of the resolution are often general, the real position of the High Commissioner in still being defined through his action, examples of the implementation of the High Commissioner's mandate are: bilateral and multilateral diplomacy: co-operation within and outside the Nited Nations system, including with international and regional organizations, national human rights institutions and non-governmental organizations: preventive and responsive human rights diplomacy: technical co-operation and advisory services for countries in transition: and establishment of a human rights presence in various part of the world.

20. The solution 48/141 expressed a real desire of the international community to endorse efficient and effective action in the field of human rights. In his report to the General Assembly at its fiftieth session, the High Commissioner stated:

The success of the activities of the human rights programe and of the High Commissioner in the future will depended upon the support and

understanding of the international community and on the cooperation received from Governments, international organizations non-governmental organizations people throughout the world. Thus must include adequate human and financial resources for the implementation of the Vienna declaration and programme of Action, activities of the High Commissioner and the Center for Human Rights. That support will help in responding to the hope and expectations generated by the world Conference on Human Rights and the establishment of the post of High Commissioner for Human Rights in promoting international peace and security and better standards of life in larger freedom as embodied in the Charter of the United Nations.

Since “ promotion and protection of human rights” means dignity and freedom for us all and for the children of the future, no price can be considered too high to ensure the realization of those rights.

21. The promotion and protection of human rights is a legitimate concern of the international community. The primary responsibility for the promotion and protection of human rights rests with Government of different nations. The United Nations human rights Agencies can only support them from all respect. It can supervise them. It can persuade others to follow human rights principles but it can not take up entire responsibility. There is always room to improve human rights records. We must expect improvement with a rapid speed. It is also important that there should be provision for Voluntary Fund and Technical Cooperation in the Field of Human Rights:

United Nations all alone can not take all responsibilities. It can not be discharge all functions. United Nations has so much work which can not be easily executed. The real work of the United Nations is to chalk out policies and supervision the implementation of all those policies.

It is vital to move from theoretical and political discussion to practical measures. States should look for concepts and solutions which would allow

the benefits resulting from sustainable development to be granted directly to the member of their societies. This translation of the rights to development to the domestic level is the current challenge. The concept of the right to development should help us in combating social, economic and political exclusion and alienation, participation in development should also be a vehicle for the individual to identify with the community in which he or she lives. To achieve these goals, however, it is indispensable that the right to development be placed in the context of the famous “triad” proclaimed by the World conference, namely democracy, development and respect for human rights.

In July 1996, in New York, I arranged a meeting with the Executive Secretary of the United Nations regional economic commissions in order to discuss how the United Nations human rights programme and the work of the regional commissions could be mutually reinforcing in order effectively to promote the implementation of the right to development. The same month, at a workshop in Washington, D.C., the World Bank and the Office of the High Commissioner/ Center for Human Rights began a dialogue on human rights and sustainable development in the context of cooperation between the two institutions. These are only examples of the broader programme of my office aimed at giving the right to development a practical dimension and supporting economic, social and cultural rights. The eradication of racism, racial discrimination, xenophobia, so called ethnic cleansing “ and religious and other forms of intolerance requires concerted efforts by the entire international community: Governments, United Nations programmes and agencies, national human rights institutions and regional and non-Government organizations, International norms and rules provide a useful tool for preventing and combating discrimination.

**Equally does not mean conformis :**

National legislation should be guided by them. However, legislation against racial discrimination is insufficient to prevent violations of human rights in this area. Appropriate education and the creation of a climate of tolerance and understanding between different communities can have a significant impact on combating discrimination. It needs to be perceived by all members of society that different cultures constitute the common heritage of all: cultural multiplicity should be seen as a means of enriching human value and strengthening human rights standards, not as an obstacle to the universality of those rights. Institutional arrangements which could enhance inter-group understanding, with the participation of vulnerable groups, should be promoted. Experience with existing "community-relations commissions" in various countries has proved that they can contribute to the prevention of conflicts and, when required, have a positive impact on their resolution.

Voices concerned by gender discrimination continue to be raised all over the world. Is this question high on the agenda of the human rights programme? The struggle in the United Nations for women's equality began when Eleanor Roosevelt, at the first General Assembly, launched her historic appeal to all women and requested Government to end all forms of discrimination against women and amend their constitutions in order to grant women full and equal rights. Although significant results have been achieved, 50 years later the struggle is far from won. The international community is continually concerned by gender based violence of human rights such as sex slavery, prostitution, pornography and trafficking in women and girls, as well as other forms of sexual violence, including rape and genital mutilation.

Major problems persist also in the areas of employment and education. Calls for wide equality have come from conferences, meetings, United Nations

organs and bodies, Government and non- Governmental organizations. In the Vienna declaration and programme of action <sup>38</sup> and in the final document of the fourth World Conference on Women<sup>39</sup>, the international community reaffirmed that the human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights.

A great deal of work remains to be done. Problems relating to the equal status and rights of women must be systematically analyzed by Governments and non- Governmental organizations, with attention being paid, inter alia, to the impact of economic adjustment or transitional policies on the rights of women. Children as a group are particularly vulnerable. What does the international community do to defend their rights ?

The World Conference on Human Rights stressed the importance of major international efforts aimed at promoting respect for the child's right to survival, protection and development. Within the United Nations system numerous bodies and organs have important responsibility for the promotion and protection of the human rights of children, UNICEF, ILO: the committee on the Rights of the Child, the special reporters of the Commission on Human Rights on the sale of children, child prostitution and child pornography, the Center for Human Rights, the expert preparing a study on the situation of children affected by armed conflicts, the working group on contemporary forms of slavery of the Sub- Commission on prevention of discrimination and protection of Minorities.

38. See footnote 16 above.

39. Beijing, 4-15 September, 1995 (see A/Conf.177/20 and addl. 1, chap.I).

Nor should one forget the fundamental role played by NGOs in the protection of Children.

22. The problem of cultural differences becomes particularly important in the case of minorities. What, in your view, is the situation of these groups in society. ?

National and regional particularities and different historical, cultural and religious back grounds should be recognized as a source of the development of mankind: the colours of multiculturalism are bright, majorities need minorities to keep societies lively and progressing through the continuous dialectic of cultural difference. An analogous observation can be made for the rich contributions of indigenous people to society. The pursuit of harmony and dialogue should therefore society's internal relation. However unsolved problems relating to national, ethnic, religious or linguistic minorities, or to indigenous people, can be one of the major sources of international and internal conflicts involving widespread human rights violations.

23. Tolerance is indispensable to bridge the abyss that difference too often create between people. And indigenous people ?

Indigenous people must be protected by human rights like everyone also. This is the basis. But let me stress that the whole international community bears the responsibility for creating a universal understanding that protection of indigenous people also means maintaining the irreplaceable, diversified human culture. Violation of the rights of indigenous people impoverishes the over all heritage of mankind as well. The International Decade of the world's Indigenous people<sup>44</sup>, which began in December 1994, provides the frame work for action in this area. Extra judicial, summary or arbitrary executions, torture, enforced disappearances and enforced displacements of people to attract international attention by their arbitrary character and by the crude brutality with which they are perpetrated. What is being done to prevent these violations <sup>46</sup>.

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41. See General Assembly resolution 43/135 of December 1999 annex.

42. See General Assembly resolution 49/192 of 23 December 1994, para 8.

43. Commission of Human Rights resolution 1995/ 24 of March 1995, para 5.

44. See General Assembly resolution 48/163 of 21 December 1993.

The uneasy struggle against extrajudicial summary or arbitrary executions is a matter of the highest priority. The obligation of all governments to conduct exhaustive and impartial investigation into all alleged extrajudicial, summary or arbitrary execution, to identify and bring to justice those responsible, to grant adequate compensation to the families of victims and to adopt all necessary measures to prevent.

24. The recurrence of such executions should be considered of the utmost importance, particularly in the context of the fundamental rights to life. The commission on Human Rights has urged the special rapporteur on extrajudicial, summary or arbitrary executions to draw my attention as High commissioner to situation of particularly serious concern or where early action might prevent further deterioration <sup>47</sup>.

Torture remains one of the most atrocious and shameful violations against human dignity. The call by the world conference on Human Rights for its eradication is not only a political objective but, first and foremost, a fundamental moral imperative. Human Rights organs and treaty-based bodies have undertaken numerous steps to implement the recommendations contained in the Vienna Declaration and Programme of Action <sup>48</sup> (part II, para 54-61). However, torture and other cruel, inhuman or degrading treatment or punishment are still tolerated in many parts of the world. Full support should be given by Governments, relevant United Nations organs and bodies, and international and non-Government organizations to the specific measures outlined in this context by the Commission on Human Rights. It also calls for increased contributions to the United Nations Voluntary Fund for Victims of Torture, which is the main vehicle for providing concrete assistance to victims and their families.

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46. "..... the High Commissioner's responsibilities shall be:

" To play an active role in ..... Preventing the continuation of human right violations throughout the world , as reflected in the Vienna Declaration and programme of Action: "(Resolution 48/141, para 4 (f).

25. **Financial resources are wood for the human rights flam**

The recent increase of the share of the human rights programme in the overall United Nations. programme budget to about 1.8 percent is an important step to address this issue. However, a future increase of the regular budget for human rights is necessary to meet the basic needs of the expanding mandate. At the same time, while tribute should be paid to those countries that do make contributions to the voluntary human rights funds, all countries should be urged to contribute to them. Voluntary funds constitute an indispensable component of the overall human rights budget.

In conclusion, it may be said that creation of the United Nations High Commissioner for Human rights. I also hope that it shall continue to do a lot in this direction in future also. Let us hope that various Governments and United Nations have to take special care for human rights. Various impediments have to be shorted out, proper care and attention shall be required to achieve the desired goal. Let us hope for the Best.

Gokulesh

