

Human Rights Day

Universality of human rights On a crusade against torture

By Mary Robinson

OVER the past half century there has been a gradual but steady advance in the direction of the internationalisation of human rights. There is increasing awareness that human rights must be respected and defended irrespective of whatever nationality a person has or where they live or what place they have in society. In addition, there have been marked advances in the codification of human rights laws and norms. A large body of legal instruments now exists which embody the common understanding of human rights by the international community. And there have been important improvements in the international machinery to monitor human rights situations in all parts of the world and to ensure that human rights are protected as stipulated in the international instruments.

One of the questions that has been raised is whether human rights are truly universal. The implication is that the fundamental rights set out in the Universal Declaration and other human rights instruments may not apply in some countries or societies. If we look at the text of the Universal Declaration we see that the drafters certainly intended the document to be universal. The Preamble describes the thirty articles that follow as: "A common standard of achievement for all peoples and all nations."

The Preamble also declares that: "Recognition of the inherent dignity and of the equal and unalterable rights of all members of the human family is the foundation of freedom, justice and peace in the world." The record shows that the drafters of the UDHR sought to reflect in their work the differing cultural and religious traditions in the world. The result is a distil-

lation of many of the values inherent in the world's major legal systems and religious beliefs including the Buddhist, Christian, Hindu, Islamic and Jewish traditions.

The World Conference on Human Rights which was held in Vienna in 1993 carried out a major review of the state of human rights and gave detailed consideration to the question of universality. The Declaration and Programme of Action, adopted by all of the 171 participating States, gave a ringing endorsement to the full range of rights as set out in the Universal Declaration. Article 1 of the Vienna Declaration says that: "The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for and observance and protection of all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights and international law. The universal nature of these rights and freedoms is beyond question."

All Countries Subject to Scrutiny

For human rights to be universal it follows that the performance of every country in the human rights field must be open to scrutiny. The charge is sometimes made that only weak countries are criticised for human rights abuses while bigger countries get away with serious violations.

The aspiration to a culture of human rights is still very far removed from the reality. If anyone is in doubt about the scale of gross human rights violations in the world they need only read the Report on Civilian in Armed Conflict which

the Secretary General submitted to the Security Council last month. This year alone I have seen some of the worst violations, which are taking place — murder, expulsions, maiming, and rape. I have assumed a burden of listening to the pain and anguish of the victims of violations, to the fears and anxieties of human rights defenders. I intend to go on listening to those who suffer in this way, and to be a voice for them. That applies wherever violations occur.

A promising development in recent years is the movement towards making those guilty of grave human rights violations accountable for their actions. The principle of universality applies here too: all such violations should be accounted for — wherever, whenever and by whomever they were committed. The adoption of the Rome Statute providing for an International Criminal Court is a major step forward. I urge States to ratify the Statute without delay so that the Court can get on with its vital work.

Human Rights for All

As well as being universal, human rights are indivisible. The Universal Declaration refers to "common standards of achievement for all people and all nations." What this means is that civil and political rights, on the one hand, and economic, social and cultural rights, on the other, are both demanding of protection on the same plane. The two sorts of rights are interdependent and interrelated. Economic, social and cultural rights need to be realised with the same degree of affirmation and conviction as civil and political rights. Freedom of speech and belief are enshrined but also freedom from fear and want. Fair trial and the right to participatory and representa-

tive government sit shoulder to shoulder with the right to work, to equal pay for equal work, and the right to education.

I have sought to place more emphasis on economic, social and cultural rights and the right to development because there has been this imbalance over the years in favour of civil and political rights. In fact, I believe that rich countries are sometimes guilty of a kind of double-speak: they are strongly and rightly — critical of human rights abuses in the civil and political field. But they are much less vocal about economic, social and cultural rights. The right to decent living conditions, food, basic healthcare, education, are laid down in the International Covenant on Economic, Social and Cultural Rights and which have been endorsed repeatedly by governments — at the summits in Vienna, Cairo, Beijing and Copenhagen, for example.

All Actors should be involved

Embedding human rights in society, calls for the active involvement of all the different players — governments, international organisations, developmental bodies, non-governmental organisations, human rights defenders. We are fortunate to live in an era when respect for human rights is accorded the highest priority by the international community. The challenge we face is to translate that interest and commitment into genuine human rights for all.

The writer, a former Irish President, is UN High Commissioner for Human Rights. This article is the abridged version of his statement presented in a Congress at the former German Parliament organised by Weltachsen 2000 on 11 November 1999.

THE United Nations human rights programme relies increasingly on an independent system of fact-finding outside the treaty framework, which permits a more flexible approach to individual violations. The system of so-called extra-conventional mechanisms refers to special procedures of the UN Commission on Human Rights. The Commission can appoint independent experts of international stature to examine, monitor and publicly report either on the situation of human rights in specific countries or, in case of a thematic mandate, on serious human rights violations related to certain phenomena in various parts of the world, such as torture, extra-judicial executions, arbitrary detention, religious intolerance or use of mercenaries. These experts, acting in their personal capacity, are designated as special rapporteurs, representatives, or when several experts share a mandate, working groups. They take up individual cases directly with governments. They work as an effective communication process between governments and victims of human rights abuses with the authority of the UN behind them.

The response was immediate and Amnesty has grown into the world's largest international voluntary organisation dealing with human rights. In 1973, Amnesty was looking for its first full-time lawyer and Rodley took the challenge.

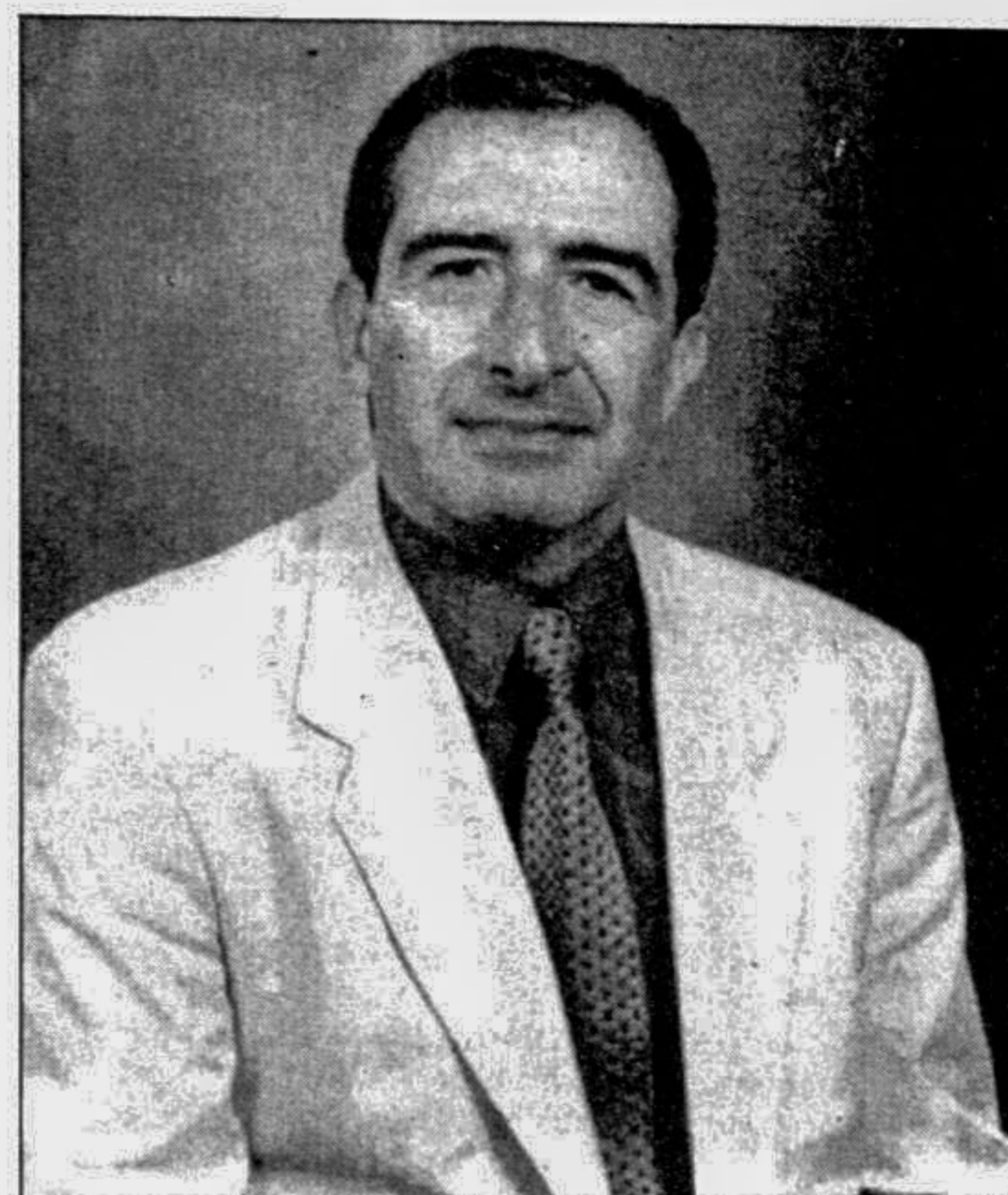
He was there for long 17 years. Nigel headed Amnesty's Legal and Intergovernmental Organisations Office.

Amnesty landed me in a weird world where violations of basic human rights were so rampant."

Amnesty was awarded Nobel Peace Prize in 1977 when he was actively involved with it. Rodley obtained his PhD from the University of Essex in 1992. He started as an Assistant Professor of Law at Dalhousie University, Canada. In 1990, he was appointed Reader in Law at the University of Essex and Professor of Law in 1994. He was also the Dean (1992-95) of the School of Law.

Since 1993 he has been Special Rapporteur on Torture by the UN Commission on Human Rights. In 1998 he was knighted in the Queen's New Year's Honours list for services to Human Rights and International Law.

The responsibility of Special Rapporteur is demanding. It takes Sir Rodley away about



United Nations Special Rapporteur on Torture Sir Nigel Rodley

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other ill-treatment, for example, judicially ordered amputations.

The activities include seeking and receiving information; asking governments to comment on information concerning legislation or official practices; forwarding to governments for clarification allegations about urgent cases that fall within my mandate, undertaking such visits; and reporting annually to the Commission.

"It (the report) contains information on all of the above activities, as well as summaries of correspondence, details of meetings with sources of information and governments, descriptions of visits, and general analyses and recommendations."

Does it work?

"Possibly," he said. "It is an indirect mechanism to hold governments accountable. Till now we do not have any direct arrangement with enforcing mechanism to hold governments answerable for what they wronged. It's not the UN that can change things directly. It's groups within the country itself. International monitoring and scrutiny encourage these forces, both non-governmental and within government to stop abuses."

Sir Rodley receives some 400-500 urgent appeals a year. If the allegations are substantial and urgent, the office of the Special Rapporteur responds within 24 hours, by faxing the Foreign Minister of the country concerned to ask for more information. In 1997-98, Nigel sent 64 letters to 59 countries on behalf of 400 individuals and 10 groups involving about 250 persons. About 80 were to be women and about 40 were known to be minors. He also sent 39 letters reminding Governments of a number of cases that had been transmitted in previous years. Together with individual cases Nigel also transmitted to Governments 27 allegations of a more general nature. He transmitted 122 urgent appeals to 41 Governments on behalf of 380 individuals (about 30 of whom were known to be women and 30 were known to be minors) and 20 groups (including one group of 150 women) involving about 1,500 persons with regard to whom fears that they might be subjected to torture and other forms of ill-treatment had been expressed. In addition, 35 Governments provided him with replies on 450 cases submitted during the year review, whereas 17 did so concerning some 300 cases submitted in previous years.

Very few governments dare to challenge or ignore his monitoring wholly. Still, there have been some denials. The amount of responses from different governments Sir Rodley receives every year testifies this.

"Governments don't want to be criticised publicly for its action or omission. They try to avoid international condemnation. Human rights violations have become over the years matters of national concern and no longer simply ones of essentially within the domestic jurisdiction of states."

Each and every complaint is addressed with equal attention. "I never prioritise any com-

plaint. I take up every credible communication with equal attention. I try to act immediately on matter of grave urgency. It's an expression of fear that somebody is at risk. I seek to cooperate with holders of other Commission mandates to avoid duplication of activity in respect of country-specific initiatives wish to visit countries where a systematic pattern of gross abuses has been revealed but that is not possible in all cases."

He has to work in difficult situation. It is true that governments do not want to be criticised publicly. But the world is made up of self-interested nation states, which jealously try their best to protect their sovereignty.

Sir Rodley is happy with his mandate but feels there should be more logistic support. "With the authorisation of the UN I have, I can still try to make a modest difference. I wish I had regional offices and efficient staff as well."

Europe, America and Africa have their own regional convention as well as court of human rights. No such regional bill of rights or judicial mechanism has so far been created in Asia.

How far is that absence an obstacle to pro-active human rights compliance monitoring? "I am not strongly convinced that Asia with so many diversities would terribly do well with such regional developments."

Sir Rodley is resolute on the question of trial of war criminals and perpetrators of crime against humanity. Like many families of Bangladesh, his family too had to pay a high price for them.

In 1971, there was a dreadful genocide in Bangladesh causing the death of about 3 millions people by the Pakistani armed forces and their Bangladeshi collaborators. In last 28 years, successive governments have failed to initiate trial of the perpetrators of war crimes and crime against humanity.

"Twenty-eight years is not so long a time compared to Jewish genocide during the Second World War. Still that process of trial of the criminals is going on in many parts of the world. Bangladesh should proceed with such initiative. It's very crucial to start the process of trial to stop the vicious cycle of impunity. The cycle of impunity can be the breeding ground for the cycles of atrocity. There is no limitation in law."

Sir Rodley was extremely busy in writing his report for the UN Commission on Human Rights on his recent visit to East Timor.

"You simply can't imagine the scale of atrocity and devastation that has been committed there. But the people are still surprisingly very optimistic and cheerful."

They are tasting freedom, aren't they? "I think so." Dealing with torture for years is not a soothing experience at all but he Nigel has no option.

"Someone has to take the responsibility. At times it's depressing as I'm in a much more passive posture. I try not to involve with stories emotionally. Sometimes that is not possible."

UN monitoring mechanisms

At the heart of the United Nations monitoring system are the two types of human rights monitoring mechanisms. The so-called conventional mechanisms refer to the specific committees formally established through the principal international human rights treaties. These "treaty bodies" monitor the implementation of the individual conventions by the States parties. Over the years, the extra-conventional mechanisms or "Special Procedures". Independent experts report in their personal capacity as special rapporteurs or

Treaty Bodies (Conventional Mechanisms)

Treaty bodies have been set up for the six core United Nations human rights treaties to monitor States parties' efforts to implement the provisions of the international instruments.

The **Human Rights Committee (HRC)** monitors the implementation of the International Covenant on Civil and Political Rights. Composed of 18 independent experts of recognized competence in the field of human rights, the Committee was established when the Covenant entered into force in 1976. The First Optional Protocol, which entered into force together with the Covenant, authorizes the Committee to consider also allegations from individuals concerning violations of their civil and political rights. The Committee is also concerned with the Second Optional Protocol on the Abolition of the Death Penalty.

The **Committee on Economic, Social and Cultural Rights (CESCR)** monitors the International Covenant on Economic, Social and Cultural Rights. Composed of 18 internationally recognized independent experts in the relevant fields, the Committee was established by the Economic and Social Council in 1985, nine years after the Covenant entered into force. Unlike the other committees, whose members are elected by the States parties to the respective convention and report to the General Assembly, the members of the Committee on Economic, Social and Cultural Rights are elected by ECOSOC, to which they report.

The **Committee on the Elimination of Racial Discrimination (CERD)** monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. Composed of 18 independent experts, the Committee began its work when the Convention entered into force in 1969 and is the oldest treaty body.

The **Committee on the Elimination of Discrimination against Women (CEDAW)**, composed of 23 independent experts, has monitored the Convention on the Elimination of All Forms of Discrimination Against Women since 1981.

The **Committee Against Torture (CAT)** monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Composed of 10 independent experts, the Committee was established in 1987.

The **Committee on the Rights of the Child (CRC)**, composed of 10 independent experts, has monitored the Convention on the Rights of the Child since 1991.

Special Procedures of the Commission on Human Rights (Extra-conventional Mechanisms)

The ad hoc nature of the special procedures of the Commission on Human Rights allows for a more flexible response to serious human rights violations than the treaty bodies. Experts entrusted with special human rights mandates act in their personal capacity and are variously designated as Special Rapporteur, Representative, Independent Expert or when several experts share a mandate, Working Group. They examine, monitor and publicly report to the Commission either on human rights situations in specific countries and territories or on global phenomena that cause serious human rights violations worldwide. Certain special mandates are also entrusted to the Secretary-General or his Special Representatives. While never originally conceived as a system, the nearly 50 country and thematic mechanisms that have been established thus far clearly constitute and function as an effective system of human rights protection.

Country Mechanisms

Currently, some 20 mandates monitor the human rights situation in specific countries, including Afghanistan, Burundi, Cambodia, the Democratic Republic of the Congo (former Zaire), Equatorial Guinea, Haiti, Islamic Republic of Iran, Iraq, Myanmar, Nigeria, Rwanda, Somalia, Sudan, and the former Yugoslavia.

The General Assembly has established a Special Committee to Investigate Israeli Practices affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories.

Thematic Mechanisms

The General Assembly established a Special Representative of the Secretary-General for Children in Armed Conflict.

The Commission on Human Rights established a Special Representative of the Secretary-General on Internally Displaced Persons and has created a number of important thematic mandates on: Arbitrary detention Contemporary forms of racism, racial discrimination, xenophobia, and related intolerance Effects of foreign debt on the full enjoyment of economic, social and cultural rights, Effects of illicit dumping of toxic wastes and dangerous products on the enjoyment of human rights, Enforced or involuntary disappearances, Extrajudicial, summary or arbitrary executions, Freedom of opinion and expression, Human rights and extreme poverty, Independence of judges and lawyers, Religious intolerance, Right to development, Right to education, Sale of children, child prostitution and child pornography, Structural adjustment policies, Torture, Use of mercenaries and the right to self-determination. Violence against women. The Subcommission on Prevention of Discrimination and Protection of Minorities has also established a number of thematic mechanisms:

There are Working Groups on: Communications (the 1503 Procedure reviewing individual complaints), Contemporary forms of slavery Indigenous populations, Minorities.

The Subcommission has also appointed Special Rapporteurs and Independent Experts to conduct studies, including: Impunity

concerning economic, social and cultural rights, Impunity concerning civil and political rights, Human rights dimension of population transfer, Human rights and income distribution, Traditional practices affecting the health of women and the girl child, Systematic rape and sexual slavery during armed conflict, Treaties, agreements and other arrangements between States and indigenous populations, Human rights and states of emergency, Privatization of prisons, Freedom of movement, Human rights and terrorism, Human rights and scientific progress.

Thematic mandates are also entrusted to the Secretary-General, at the level either of the Commission on Human Rights or the Subcommission, including: Human rights in the context of HIV/AIDS, Human rights and forensic science, Human rights and mass exoduses, Human rights and terrorism, Rape and abuse of women in the areas of armed conflict in the former Yugoslavia, Reprisals against persons cooperating with United Nations human rights bodies.

Courtesy: United Nations

Landmarks in human rights

- June 26, 1945 : Signing of the Charter of the United Nations and Statute of the International Court of Justice, in San Francisco.
- June 21, 1946 : The Economic and Social Council (ECOSOC) establishes the Commission on Human Rights and the Commission on the Status of Women.
- December 9, 1948 : The General Assembly adopts the Convention on the Prevention and Punishment of the Crime of Genocide (entered into force 1951).
- December 10, 1948 : The General Assembly adopts the Universal Declaration of Human Rights.
- August 12, 1949 : The Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War adopts four Geneva Conventions, relating to the Amelioration of the Condition of Wounded and Sick Members of Armed Forces in the Field and at Sea, the Treatment of Prisoners of War and the Protection of Civilians in Wartime (into force 1950).
- December 20, 1952 : The General Assembly adopts the Convention on the Political Rights of Women (into force 1954).
- August 1, 1956 : ECOSOC calls for periodic reports (every three years) on human rights and studies of specific rights or groups of rights. This resolution represents the first call for reports from Member States, and was a precursor to the reporting requirements contained in the many subsequent human rights covenants.
- November 20, 1959 : The General Assembly adopts the Declaration of the Rights of the Child (see also November 20, 1989).
- December 21, 1965 : The General Assembly adopts the International Convention on the Elimination of All Forms of Racial Discrimination (into force 1969). This Convention provides for the establishment of the Committee on the Elimination of Racial Discrimination.
- December 16, 1966 : The General Assembly adopts the International Covenant on Economic, Social and Cultural Rights (into force January 3, 1976) and the International Covenant on Civil and Political Rights with an Optional Protocol (into force March 23, 1976). This Covenant provides for the establishment of the Human Rights Committee (see also May 28, 1985).
- June 6, 1967 : ECOSOC adopts resolution 1235 (XLII), authorising the Commission on Human Rights and the Sub-commission on Prevention of Discrimination and Protection of Minorities to examine information relevant to gross violations of human rights and fundamental freedoms.
- November 7, 1967 : The General Assembly adopts the Declaration on the Elimination of Discrimination against Women.
- May 13, 1968 : The International Conference on Human Rights adopts the Proclamation of Tehran.
- November 26, 1968 : The General Assembly adopts the Convention on the Non-Applicability of Statutory Limitations to War Crimes against Humanity (into force 1970).
- December 11, 1969 : The General Assembly adopts the Declaration on Social Progress and Development.
- November 30, 1973 : The General Assembly adopts the International Convention on the Suppression and Punishment of the Crime of Apartheid (into force 1976).
- December 9, 1975 : The General Assembly adopts the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- March 23, 1976 : With entry into force of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, 10 years after being originally opened for signature (see December 16, 1966), the International Bill of Human Rights becomes a reality (see also December 10, 1948).
- December 18, 1979 : The General Assembly adopts the Convention on the Elimination of All Forms of Discrimination against Women (into force 1981). The Convention provides for the establishment of the Committee on the Elimination of Discrimination against Women.
- November 25, 1981 : The General Assembly adopts the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.
- December 10, 1984 : The General Assembly adopts the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (into force 1987). The Convention provides for the establishment of the Committee against Torture.
- May 28, 1985 : ECOSOC establishes the Committee on Economic, Social and Cultural Rights, responsible for monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights.
- December 4, 1986 : The General Assembly adopts the Declaration on the Right to Development.
- December 9, 1988 : The General Assembly adopts the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- May 24, 1989 : ECOSOC adopts the Principles on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions.
- November 20, 1989 : The General Assembly adopts the Convention on the Rights of the Child (into force 1990). The Convention provides for the establishment of the Committee on the Rights of the Child.
- December 18, 1990 : The General Assembly adopts the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- December 18, 1992 : The General Assembly adopts the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
- May 25, 1993 : The Security Council adopts resolution 827 (1993), establishing an International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, with its seat at The Hague in the Netherlands.
- June 25, 1993 : The World Conference on Human Rights adopts the Vienna Declaration and Programme of Action.
- December 20, 1993 : The General Assembly adopts resolution 48/141, establishing the post of United Nations High Commissioner for Human Rights.
- April 5, 1994 : Mr. José Ayala Lasso of Ecuador assumes the post of first United Nations High Commissioner for Human Rights.
- November 8, 1994 : The Security Council adopts resolution 955 (1994), establishing an International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Crimes against Humanitarian Law Committed in Rwanda during 1994, with its seat in Arusha, Tanzania.
- December 23, 1994 : The General Assembly proclaims the United Nations Decade for Human Rights Education (1995-2004).
- September 12, 1997 : Ms. Mary Robinson of Ireland becomes the second United Nations High Commissioner for Human Rights.
- July 17, 1998 : The Diplomatic Conference of Plenipotentiaries adopts the Rome Statute of the International Criminal Court, establishing the International Criminal Court, with its seat at The Hague.