

# Basic concepts in Human Rights

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Convention on the Rights of Persons with Disabilities = The Convention

# 1. Definition and classification of Human rights

➤ The Human rights are law

- Law = collection of rules which are used to organize the life between the humans
- Law ≠ moral principles



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Human Rights is not moral or philosophical principles, it is law. In the event of violation of a rule of law, the society imposes a planned sanction. In case of infringement of human rights, sanctions can be imposed at the national or international level.

But stating human rights is not sufficient to avoid all violations of those (all legal systems punish murder however there are murders in all the societies). Moreover, it is unthinkable to use systematically an international army (UN blue helmets) to force the States to respect human rights. The international treaties are only tools to fight against violations of human rights, but they are essential tools.

➤ Human Rights is international law

- **Domestic law** :

Written Law or case law enforceable within one State



- **International law** :

Treaties and international agreements  
(conventions, covenant...)



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We talk about domestic law = national law, peculiar to each country, in opposition with international law = interstate law.

The international law is law made by States for States. It's a contract between States. The articles of a treaty often begin with : "States Parties undertake to..."

In almost all countries international law has a more important value than the national law. Therefore, if a national law violates an international treaty ratified by the country, this law shouldn't be applied anymore.

- Human Rights aim to promote dignity of the human person :
- Human Rights apply to any human being whatever its nationality, its ethnic or social origins, its religion...
- Nobody can be deprived of Human Rights without being a victim of a serious injustice.
- Human Rights is a “common language to Humanity”.

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- The respect of the human dignity is the objective to be reached.

The value of a human being is not evaluated compared to its utility, but he has value because he is human and thus invaluable (see “Human rights and Disability” Quinn and Degener p11)

- All human beings have fundamental rights simply because they are human.

- Even if in certain countries human rights are not respected, people living in these countries have fundamental rights. (a complaint before the Human Rights council is always possible)

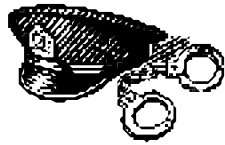
« Human rights are universal because all human beings have fundamental rights that cannot be denied without denying humanity itself. Everywhere, we have to respect the integrity of the human being, everywhere, human beings have the right not to be tortured, killed, mutilated, enslaved, to receive health care, to have access to education, to culture, everywhere, human beings should be able to think and express themselves freely... » Robert Badinter, interview, 1998.

- The International Convention on the rights of Persons with disabilities must become a common language about the disability issue in the whole world. When it enters into force, all States will have a common reference of the definition of disability, of persons with disabilities and of their fundamental rights. It will enable a discussion of equal to equal between all people whatever their nationality.

➤ Human Rights is often classified in 2 categories:

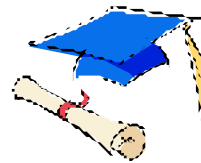
- The civil and political rights : protection against abuses of power

Ex: right to life, right to vote, freedom of association...



- The economic, social and cultural rights : Enable the individual to live a decent life and to fulfill his essential needs

Ex: right to work, right to health...



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•Civil and political rights

Position of the State: to refrain from acting, in order to respect the rights and freedoms of citizens. We talk about **liberty-rights**, or « **right to do something** ».

These rights are easier to implement as they demand the respect of liberties of individuals, and a non-action. There is no interventionist policy in this context. They aim to protect individuals against abuses of power.

In the United Nations system, these rights are protected by the International Covenant on Civil and Political Rights. These rights can also be found in other international texts, such as the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, or the Convention on the rights of persons with disabilities.

•Economic, Social and Cultural Rights

Economic, Social and Cultural Rights are stated in the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966 and in the Convention on the rights of persons with disabilities too.

Position of the State: to take action in order to guarantee the citizens the enjoyment of these rights.

We talk about **credence rights** or « **right to obtain something** »

•Problem: These rights are sometimes considered as complementary (we talk about second generation rights) to civil and political rights, because they imply an action of the State, done in function of the resources of the State.

This notion of resources is problematic as it makes these rights “optional”, whereas they are compulsory and indivisible from civil and political rights. What is the freedom of expression for without the right to education? (See. “Progressive realization” teaching module 5)

➤ International agreements have not the same significance:

• Legally binding

While agreeing on the text, a State party accepts to:

- change its own laws,
- or create new ones so that they would be in conformity with the international text.

Ex: Convention on the Rights of Child, Convention on the Rights of Persons with disabilities

• Not legally binding

Guidelines that States parties undertake to respect

Ex: Standard Rules, recommendations

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• There is no mean to force a State to ratify a treaty. However, other States can use diplomatic pressures and NGOs can use advocacy.

• The not legally binding texts are close to morals since their violation is not sanctioned. But the moral authority of these texts is sometimes so important that the States feel obliged to respect them. It is the case of the resolutions of the UN General Assembly which express the majority opinion of planet and thus have a very great authority and it is also the case of the Universal Declaration of Human rights.

• The main difference is that States must draft reports periodically to monitoring committees of experts if they ratify a legally binding text. It is not necessary for non binding texts.

• Terms treaty, charter, convention, protocol have the same mean.

• The Universal Declaration of Human Rights of the United Nations **is not** legally binding, and is only a declaration of intentions. It was adopted by the General Assembly on December 10th 1948.

The signature of the Declaration being a precondition for accession to the UN, the founders of the United Nations have deemed necessary not to confer a legally binding character to the Declaration in order to allow the accession of all countries.

In other words, certain countries would have not ratified such a document if it was binding, preventing the UN in having a maximum number of members.

The complementary Covenants are legally binding.

## 2. The UN system of protection of Human rights



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## ➤ The general assembly



- It is the deliberating body of the UN
- Decisions of the general assembly are not legally binding

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It is the main UN deliberation body (except in case of threat to the peace in case of only the Security Council is the competent authority)

The General Assembly (GA) is made up of all UN States member (192) i.e. almost all the States of planet.

The drafting process of the Convention had begun with a resolution of General Assembly (creation of an ad hoc committee) and finished by a resolution of the General Assembly adopting the Convention in December 2006.

All States have only one vote before the General Assembly (Luxembourg or China have both one vote). But decisions are generally taken by consensus, i.e. a decision is taken if nobody advances an objection.

## ➤ The Office of the High Commissioner for Human Rights

- It is the UN secretariat as regards human rights
- Principal role of the promotion of the Human Rights

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The High commissioner for Human rights is in charge of administration of all UN bodies in relation to human rights.

It is in charge of the promotion of human rights too. To do that it can designate a special rapporteur on a subject in particular.

➤ The committees from the international human rights treaties

- There are 7 committees (8 with the committee on the rights of persons with disabilities)
- They check the implementation of the Treaties by the States
- Consideration of individual complaints

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• There is currently one committee by international treaty on human rights legally binding:

- Human Rights committee
- Committee on economics, social and cultural rights
- Committee on the elimination of racial discrimination
- Committee on the elimination of discrimination against women
- Committee against torture
- Committee on the rights of the child
- Committee on migrant workers
- Committee on the rights of persons with disabilities (don't exist yet)

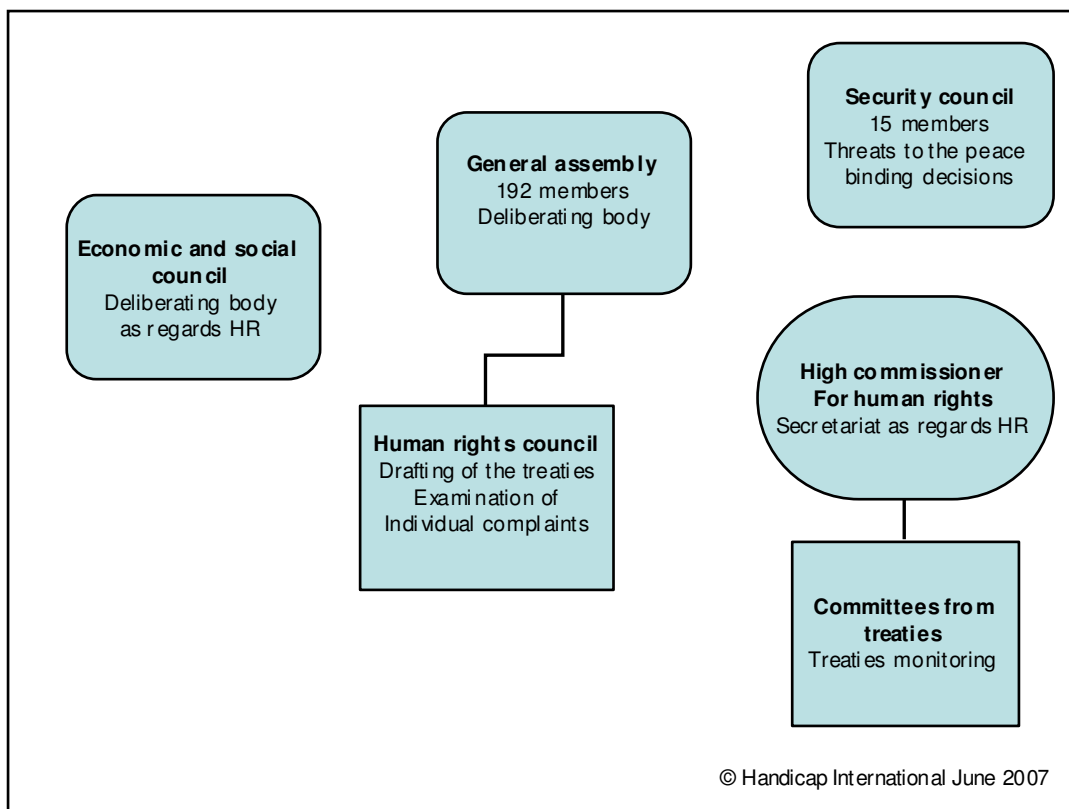
Committees are made up of 10 to 23 experts. These experts are independent and are not supposed to represent their native country.

• Role of interpretation: The Committees publish their interpretations of the provisions of the Covenant, known as "general comments". For example the Committee on economics, social and cultural rights published a general comment n°5 in relation to persons with disabilities.

• The committees consider reports submitted periodically by the States. They conduct inquiries and consider alternative reports submitted by NGO to have an overview of the situation in a country. They can make recommendations to the States (See. Teaching module 7 for the committees' procedure)

• If a State party signs an optional protocol (what is different to the signature or the ratification of the convention it-self), individuals or NGOs can lodge complaints before the committees (See. Teaching module 7 for the details on the complaint mechanism)

A reform project of the committees is currently in progress. All committees would be merged so there would be only one committee and the States would submit only one report which would include several sections (on women, children, persons with disabilities...). The committee would then have an overview of all human rights.



The Economic and Social Council is the usual deliberation body of the UN in the field of human rights (However for important decisions like the adoption of a Treaty, the vote is done before the General Assembly).

The Human rights Council is a body usually in charged of drafting new conventions (However the Convention on the rights of persons with disabilities was drafted by a special body. This procedure allow in particular to include civil society members in an had hoc committee in order to draft a convention including the social development issue). The Human rights council may also receive complaints (individual or of NGOs) in the event of violation of human rights (but this mechanism will not be approached here because it is subsidiary).

The department of economic and social affairs (DESA), which depend on the UN secretariat general, was an important actor in the ad hoc committee. But the role played by the DESA in the drafting process is specific to this convention and will not be approached here. (the objectives were in particular to draft an holistic convention which include social development and to give a main role to the civil society during the drafting process).