



“MANDATE AND RESPONSIBILITIES OF SPECIAL PROCEDURES AND HUMAN RIGHTS COUNCIL: A STUDY”

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Introduction

I have been observed the protection of human rights implementation mechanisms of United Nations and thought of to review the mandate and responsibilities of independent experts and special rapporteurs for the purpose. The United Nations' independent human rights experts who otherwise are identified as mandate given under the 'Special Procedures' are considered the 'crown jewel'¹ of the international human rights system², in the words of the then United Nations Secretary-General Kofi Annan. In the early days of the United Nations, the Commission on Human Rights, the predecessor of the Human Rights Council, focused on expounding the human rights standards.³ The Economic and Social Council (ECOSOC) had passed a resolution and stating that the Commission had "no power to take any action in regard to any complaints concerning human rights". This resolution of ECOSOC was passed on 23rd of October 1947 with number 75 (V) (1947).⁴ However in 1965, the Commission on Human Rights was faced with several individual petitions from South Africa and came under considerable pressure to deal with

¹Secretary-General's message to the Third Session of the Human Rights Council [delivered by Mrs Louise Arbour, High Commissioner for Human Rights], 29 November 2006.

² Marc Limon & Hilary Power, '*HISTORY OF THE UNITED NATIONS SPECIAL PROCEDURES MECHANISM Origins*', Evolution and Reform, Universal Rights Group, 2014, p 3

³ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>, (22nd August 2017)

⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/GL9/000/35/PDF/GL900035.pdf?OpenElement> , (22nd August 2017)

those complaints.⁵ As a result, in 1967 the Commission departed from previous practice and established an ad-hoc working group of experts to investigate the situation of human rights in Southern Africa (CHR resolution 2 (XXIII)). The ad-hoc working group can be considered as the first Special Procedure of the Commission on Human Rights. Following the 1973 coup in Chile against President Allende by General Augusto Pinochet, the Commission established an ad-hoc working group in 1975 to inquire into the situation of human rights in Chile.⁶ In 1979, this working group was replaced by a special rapporteur and two experts to study the fate of the disappeared in Chile.⁷ This led to the establishment of the first thematic Special Procedure in 1980, the Working Group on Enforced Disappearances to deal with the question of enforced disappearances throughout the world (CHR resolution 20 (XXXVI)).⁸ Ten years later, in 1990, there were six thematic mandates covering enforced disappearances, extrajudicial, summary or arbitrary executions, religious intolerance, mercenaries, torture and sale of children. Since then, many new mandates have been established to deal with human rights challenges in various parts of the world. They now protect all regions and rights, like civil, cultural, economic, political, and social. The United Nations human rights system claims over fifty active Special Procedures mandates, covering a wide-range of thematic and country-specific issues, with more in the pipeline. Today, as of 1 August 2017, there are 44 thematic and 12 country mandates.⁹

Origins and Development

The ground rules of today's international human rights system were laid in the aftermath of the Second World War as part of the new United Nations (UN) organization.¹⁰ Under Article 68 of the UN Charter, as the main UN body charged with promoting human rights, Member participants in the first meetings of the Commission on Human Rights, established strategically a human rights system built upon two inter-related and inter-dependent pillars, *first*, the

⁵ Marc Limon & Hilary Power, *'HISTORY OF THE UNITED NATIONS SPECIAL PROCEDURES MECHANISM Origins'*, Evolution and Reform, Universal Rights Group, 2014, p 3

⁶ The National Commission on Truth and Reconciliation (Rettig Commission) (Santiago: Secretariat of Communication and Culture, Government General Secretariat Ministry, 1991), 1350 p

⁷ Office of the United Nations High Commissioner for Human Rights United Nations Office at Geneva, ISSN 1014-5567,

⁸ Office of the United Nations High Commissioner for Human Rights United Nations Office at Geneva, ISSN 1014-5567,

⁹ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx>, (23rd August 2017)

¹⁰ Marc Limon & Hilary Power, *'HISTORY OF THE UNITED NATIONS SPECIAL PROCEDURES MECHANISM Origins'*, Evolution and Reform, Universal Rights Group, 2014, p 4

establishment of international human rights norms through an International Bill of Human Rights consisting of a declaration of principles and one or more treaties that, after ratification by governments, would contain legally binding obligations and *second*, the establishment of ‘measures of implementation’¹¹, i.e. the international institutions, mechanisms and processes needed to realize those norms. The second part of this new human rights planning establishing effective ‘measures of implementation’ has consistently proved more difficult to achieve than the first. A persistent obstacle to progress has been disagreement over whether the UN should be empowered to protect human rights, or merely to promote them.¹² In the 1940s, it was the major western powers who took the position that the UN could only promote rather than actively protect human rights, due to national pre-occupations concerning the human rights implications of colonialism (in the case of Great Britain and France) and of segregation and racial discrimination (in the case of the United States).¹³ As has been widely noted, ‘the Charter nowhere explicitly provides authorization for the political organs of the United Nations to assume monitoring competences in the field of human rights.’¹⁴ Indeed, the term ‘protection,’ was deliberately left out of the Charter, *inter alia* on the grounds that it ‘would (...) raise hopes going beyond what the United Nations could successfully accomplish.’¹⁵ So it was that the Charter stated that the UN would seek to ‘achieve international cooperation... in promoting and encouraging respect for human rights,’¹⁶ and mandated the Economic and Social Council (ECOSOC) to ‘set up commissions in economic and social fields and for the promotion of human rights...’¹⁷ If there was any doubt as to the UN’s reluctance to hold states accountable for human rights violations, it was immediately dispelled when members of the Commission met for the first time at Lake Success in 1947 and declared that the Commission had no power to take

¹¹ Bertrand G. Ramcharan, *Evolution of Human Rights Norms and Machinery*, Markkula Center for Applied Ethics, Santa Clara University (date published: unknown).

¹² Marc Limon & Hilary Power, ‘*HISTORY OF THE UNITED NATIONS SPECIAL PROCEDURES MECHANISM Origins*’, Evolution and Reform, Universal Rights Group, 2014, p 4

¹³ Marc Limon & Hilary Power, ‘*HISTORY OF THE UNITED NATIONS SPECIAL PROCEDURES MECHANISM Origins*’, Evolution and Reform, Universal Rights Group, 2014, p 4

¹⁴ Jeroen Gutter, Thematic Procedures of the United Nations Commission on Human Rights and International Law: in Search of a Sense of Community, (Intersentia: 2006), p.76., http://www.universal-rights.org/wp-content/uploads/2015/02/URG_HUNSP_28.01.2015_spread.pdf, (23rd August 2017)

¹⁵ Jeroen Gutter, Thematic Procedures of the United Nations Commission on Human Rights and International Law: in Search of a Sense of Community, (Intersentia: 2006), p.77, http://www.universal-rights.org/wp-content/uploads/2015/02/URG_HUNSP_28.01.2015_spread.pdf, (23rd August 2017)

¹⁶ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 1.3.

¹⁷ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 68

any action in regard to any complaints concerning human rights.¹⁸ This ‘no power to act’ doctrine¹⁹ held sway for the next twenty years (1946–1966). During that time, the Commission gave priority to human rights promotion actions, such as drafting the international human rights instruments, and repeatedly rejected the notion that it had a protection mandate.²⁰ For example, in 1947 an ECOSOC resolution recognized the capacity of the Commission to receive communications submitted by individuals, but stated that it did not have the power to take any action in regard to such communications.²¹ Another resolution, adopted in 1959, put in place new procedures authorizing the Commission to compile and consult communications received and to request replies from the governments concerned, but it too reiterated the position that the Commission had no power to take any action in regard to any complaint concerning human rights.²² Though the ‘no power to act’ doctrine would not be seriously challenged until 1965–1966, it began to fray around the edges a number of years earlier. Perhaps the most remarkable (and often ignored) example of this came in the autumn of 1963, when fourteen (developing country) members of the UN²³ requested that the General Assembly agenda include a discussion on the ‘Violation of Human Rights in South Viet-Nam.’²⁴

In 1969, India, Mauritania, Pakistan and Yugoslavia tabled a resolution establishing a further Working Group, on the situation of human rights in the Palestinian territories occupied since

¹⁸ ECOSOC, Report of the Commission on Human Rights to the Economic and Social Council on the First Session of the Commission on Human Rights, Held at Lake Success, New York from 27th January to 10th February 1947, UN Doc E/259, http://www.universal-rights.org/wp-content/uploads/2015/02/URG_HUNSP_28.01.2015_spread.pdf, (23rd August 2017)

¹⁹ Ingrid Nifosi, *The UN Special Procedures in the Field of Human Rights* (Intersentia, Antwerpen/Oxford, 2005), p.12., http://www.universal-rights.org/wp-content/uploads/2015/02/URG_HUNSP_28.01.2015_spread.pdf, (23rd August 2017)

²⁰ http://www.universal-rights.org/wp-content/uploads/2015/02/URG_HUNSP_28.01.2015_spread.pdf, (23rd August 2017)

²¹ ECOSOC Resolution 75 (V) [Communications concerning human rights], 5th August 1947 (UN Doc. E/573, p.20).

²² ECOSOC Resolution 728 F (XXVIII) [Communications concerning human rights], 30th July 1959 (UN Doc. E/3290, p. 19), http://www.universal-rights.org/wp-content/uploads/2015/02/URG_HUNSP_28.01.2015_spread.pdf, (23rd August 2017)

²³ Afghanistan, Algeria, Cambodia, Ceylon, Guinea, India, Indonesia, Mongolia, Nigeria, Pakistan, Rwanda, Sierra Leone, Somalia, Trinidad and Tobago. Subsequently joined by Mali and Nepal., http://www.universal-rights.org/wp-content/uploads/2015/02/URG_HUNSP_28.01.2015_spread.pdf, (23rd August 2017)

²⁴ Letter dated 4th September 1963, addressed to the Secretary-General of the United Nations, UN Doc. A/5489 (4th September 1963); cited in UNGA, [Report of the United Nations Fact-Finding Mission to South Viet-Nam], UN Doc. A/5630 (7th December 1963), http://www.universal-rights.org/wp-content/uploads/2015/02/URG_HUNSP_28.01.2015_spread.pdf, (23rd August 2017)

1967.²⁵ Thirteen countries voted in favour of the resolution, one voted against (Israel) and sixteen abstained (mainly Western and Latin American States). Until this point, the Commission's work under the mandate provided by ECOSOC resolution 1235 (XLII) had been focused solely on racial discrimination and colonialism, especially in the context of Africa. Between 1975 and 1980, however, the Commission's focus shifted to political developments in Latin America, a shift that would have two deep and lasting consequences for the Special Procedures system.²⁶ First, the shift represented a de facto rejection of the assumption or understanding (on the part of the initiators and sponsors) that the mandates on apartheid, South Africa and the Palestinian Territories were 'special' in the sense that they were specific responses to very specific (and special) human rights situations and should not constitute a precedent. Second, the widening of the Commission's gaze to cover 'the violation of human rights and fundamental freedoms... in all countries' led, indirectly, to the establishment of the first thematic mandate.²⁷ In 1975, against a backdrop of international concern at the violent coup d'état in Chile and doubts as to the effectiveness of the UN's confidential 1503 procedure for dealing with allegations of human rights violations (as opposed to the public 1235 procedure), the Commission adopted resolution 8 (XXXI), establishing an Ad Hoc Working Group on the situation of human rights in Chile. The resolution was tabled by Senegal (combining drafts provided by the UK, Netherlands, Nicaragua and the USSR) and was adopted without a vote.²⁸ The Ad Hoc Working Group on Chile would be composed of five experts and was to report to the Commission at its 32nd session. Four years later, the Ad Hoc Working Group was transformed (partly to reduce costs) into a Special Rapporteur on the situation of human rights in Chile,²⁹ the first Special Rapporteur with a country mandate.³⁰ Concerns over the issue of enforced disappearances were, however, by no means limited to Chile a point made by the US delegation in 1978, when the General Assembly's Third Committee met to consider the report

²⁵ At the Commission's 27th session in 1971, Morocco and Pakistan tabled a resolution calling for consideration to be given to appointing a Special Rapporteur on colonialism and self-determination at its next (28th) session. However, this did not materialise.

²⁶ http://www.universal-rights.org/wp-content/uploads/2015/02/URG_HUNSP_28.01.2015_spread.pdf, (23rd August 2017)

²⁷ http://www.universal-rights.org/wp-content/uploads/2015/02/URG_HUNSP_28.01.2015_spread.pdf, (23rd August 2017)

²⁸ http://www.universal-rights.org/wp-content/uploads/2015/02/URG_HUNSP_28.01.2015_spread.pdf, (23rd August 2017)

²⁹ UNCHR Resolution 11 (XXXV) [Study of reported violations of human rights in Chile, with particular reference to torture and other cruel, inhuman or degrading treatment or punishment], 6 March 1979.

³⁰ Later, at its 35th session (1979) the Commission established two Experts on the fate of disappeared persons in Chile – a sort of thematic sub-procedure.

the Ad Hoc Working Group on Human Rights in Chile. During the ensuing debate, the US argued that the problem of missing persons was ‘not limited to Chile,’ but ‘also existed in Cyprus and Argentina.’ On this basis, the delegate argued that ‘a mechanism should be set up to examine the problem.’³¹

Mandate and Procedure

The Special Procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective.³² The system of Special Procedures is a central element of the United Nations human rights machinery and covers all human rights civil, cultural, economic, political, and social. In the context of the 2011 review of its work and functioning, the Human Rights Council reaffirmed the obligation of States to cooperate with the Special Procedures, and the integrity and independence of Special Procedures.³³ It also reaffirmed the principles of cooperation, transparency and accountability and the role of the system of Special Procedures in enhancing the capacity of the Human Rights Council to address human rights situations. Member States confirmed their strong opposition to reprisals against persons cooperating with the United Nations and its human rights mechanism and representatives. By ‘HRC-16th-12/04/2011 A/HRC/RES/16/21, review of the work and functioning of the Human Rights Council, the Council further recognized the importance of ensuring transparent, adequate and equitable funding to support all Special Procedures according to their specific needs.’³⁴ Special procedures are either an individual (called "Special Rapporteur" or "Independent Expert") or a working group composed of five members, one from each of the five United Nations regional groupings- Africa, Asia, Latin America and the Caribbean, Eastern Europe and the Western group.³⁵ The Special Rapporteurs, Independent Experts and members of the Working Groups are appointed³⁶ by the Human Rights Council and serve in their personal capacities. They undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith. They are not United Nations staff members and do not receive financial remuneration. The independent status

³¹ UN Doc. A/C.3/33/SR.70; quoted in Nigel Rodley & Matt Pollard, *The Treatment of Prisoners under International Law*, (Oxford University Press, Oxford, 2009), p.338

³² <http://www.ohchr.org>, (23rd August 2017)

³³ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>, (23rd August 2017)

³⁴ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/16/21, (23rd August 2017)

³⁵ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/16/21, (23rd August 2017)

³⁶ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Nominations.aspx>, (23rd August 2017)

of the mandate-holders is crucial for them to be able to fulfil their functions in all impartiality. A mandate-holder's tenure in a given function, whether it is a thematic or country mandate, is limited to a maximum of six years.³⁷ With the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), Special Procedures undertake country visits; act on individual cases of alleged violations and concerns of a broader, structural nature by sending communications to States; conduct thematic studies and convene expert consultations, contributing to the development of international human rights standards; engage in advocacy and raise public awareness; and provide advice for technical cooperation. Special Procedures report annually to the Human Rights Council and the majority of the mandates also report to the General Assembly. At the invitation of States, mandate-holders carry out country visits to analyse the human rights situation at the national level. Some countries have issued "standing invitations"³⁸ to the Special Procedures, which means that they are prepared to receive a visit from any thematic mandate-holder. As of 1 January 2015, 109 Member States and one non-Member Observer State have extended a standing invitation to thematic special procedures. At the end of their visits, special procedures' mandate-holders engage in dialogue with the State on their findings and recommendations and present a report to the Human Rights Council.³⁹

Coordination amongst the Special Procedures: Coordination Committee of Special Procedures and the Annual Meeting of Special Procedures

At their annual meeting in 2005, Special Procedures mandate-holders established a Coordination Committee to facilitate coordination amongst mandate-holders and act as a bridge between them and OHCHR, the broader UN human rights framework, and stakeholders.⁴⁰ Annual meetings of Special Procedures mandate-holders have been organized since 1994. The meeting is intended to better coordinate and harmonize the work of special procedures, and for mandate-holders to address topical issues, and exchange views with States, the President of the Human Rights Council, regional human rights organizations, national human rights institutions, representatives from OHCHR and UN entities, and civil society organizations.

³⁷ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Nominations.aspx>, (23rd August 2017)

³⁸ A standing invitation is an open invitation extended by a Government to all thematic special procedures. By extending a standing invitation States announce that they will always accept requests to visit from all special procedures. As of 23 August 2017, the following 117 Member States and 1 non-Member Observer State have extended a standing invitation to thematic special procedures.

³⁹ www.un.org (23rd August 2017)

⁴⁰ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>, (23rd August 2017)

Code of Conduct and working methods of the special procedures

The Code of Conduct adopted by the Council in 2007 and the Manual of Operations adopted by Special Procedures mandate-holders during their Annual Meeting in 2008 provide guidelines on the working methods of Special Procedures. Mandate-holders also established an Internal Advisory Procedure to review practices and working methods, which allows any stakeholder to bring issues relating to working methods and conduct to the attention of the Coordination Committee. The procedure was devised to enhance the independence and effectiveness of Special Procedures and cooperation by States, and to contribute to self-regulation of the special procedures system and individual mandate holders.⁴¹

The Mandates of the Human Rights Council and its Special Procedures are not limited to

International Human Rights Law:

In Resolution 1992/S-1/1, on human rights in the former Yugoslavia, the Commission ‘ call[ed] upon all parties ... to ensure full respect for ... humanitarian law⁴² and ‘ [r]emind[ed] all parties that they are bound to comply with their obligations under international humanitarian law, and in particular the third Geneva Convention relating to the treatment of prisoners of war and the fourth Geneva Convention relating to the protection of civilian persons in time of war, of 12 August 1949, and the Additional Protocols thereto of 1977.⁴³ Subsequently, ECOSOC explicitly endorsed the Commission’s resolution.⁴⁴ Similarly, in Resolution 1994/72, on the same situation, the Commission ‘ [c]ondemn[ed] categorically all violations of human rights and international

⁴¹ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>, (23rd August 2017)

⁴² Comm. Hum. Rts., Res 1992/S-1/1, The situation of human rights in the territory of the former Yugoslavia, para. 1 (14 August 1992)., Philip Alston , Jason Morgan-Foster and William Abresch, ‘The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the ‘ War on Terror ’, The European Journal of International Law Vol. 19 no. 1, p 14

⁴³ Comm. Hum. Rts., Res 1992/S-1/1, The situation of human rights in the territory of the former Yugoslavia, para. 1 (14 August 1992), para 9, see also: Philip Alston , Jason Morgan-Foster and William Abresch, ‘The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the ‘ War on Terror ’, The European Journal of International Law Vol. 19 no. 1

⁴⁴ ECOSOC Decision 1992/305 (18 Aug. 1992). see also: Philip Alston , Jason Morgan-Foster and William Abresch, ‘The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the ‘ War on Terror ’, The European Journal of International Law Vol. 19 no. 1, p 15

humanitarian law by all sides'.⁴⁵ It then applied international humanitarian law to the situation and 'denounce[d] continued deliberate and unlawful attacks and uses of military force against civilians and other protected persons ... non-combatants, ... [and] ... relief operations'.⁴⁶ Taking note of this resolution, ECOSOC 'approved ... [t]he Commission's ... request that the Special Rapporteur ... continue to submit periodic reports ... on the implementation of Commission resolution 1994/72'.⁴⁷ It also approved ' [t]he Commission's request to the Secretary-General to take steps to assist in obtaining the active cooperation of all United Nations bodies to implement Commission resolution 1994/72'.⁴⁸ Again, rather than denounce Resolution 1994/72 as it would if it believed the Commission was exceeding its mandate, ECOSOC provided continued funds for the Special Rapporteur to implement that resolution, and called upon all UN bodies to cooperate in its implementation. In Resolution S-3/1 of 25 May 1994 on human rights in Rwanda, the Commission ' [c]ondemn[ed] in the strongest terms all breaches of international humanitarian law ... in Rwanda, and call[ed] upon all the parties involved to cease immediately these breaches'.⁴⁹ It also '[c]all[ed] upon the Government of Rwanda to ... take measures to put an end to all violations of ... international humanitarian law by all persons within its jurisdiction or under its control'.⁵⁰ Again, ECOSOC explicitly endorsed this.⁵¹ In Resolution 1996/68, the Commission ' call[ed] upon the Government of Israel, the occupying Power of territories in southern Lebanon and West Bekaa, to comply with the Geneva Conventions of 1949, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War'.⁵² ECOSOC then ' approve[d] the Commission's requests

⁴⁵ Comm. Hum. Rts., Res. 1994/72, Situation of human rights in the territory of the former Yugoslavia: violation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), para. 4 (9 Mar. 1994)., see also: Philip Alston, Jason Morgan-Foster and William Abresch, 'The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the ' War on Terror ', The European Journal of International Law Vol. 19 no. 1, p 15

⁴⁶ Comm. Hum. Rts., Res. 1994/72, Situation of human rights in the territory of the former Yugoslavia: violation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), para. 4 (9 Mar. 1994). Para 7, see also: Philip Alston, Jason Morgan-Foster and William Abresch, 'The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the ' War on Terror ', The European Journal of International Law Vol. 19 no. 1, p 16

⁴⁷ ECOSOC Res. 1994/262 (22 July 1994).

⁴⁸ ECOSOC Res. 1994/262 (22 July 1994).

⁴⁹ Comm. Hum. Rts., Res. S-3/1, The situation of human rights in Rwanda, para. 1 (25 May 1994).

⁵⁰ Comm. Hum. Rts., Res. S-3/1, The situation of human rights in Rwanda, para. 1 (25 May 1994).

⁵¹ ECOSOC Decision 1994/223 (6 June 1994).

⁵² Comm. Hum. Rts., Res. 1996/68, Human rights situation in southern Lebanon and West Bekaa, para. 3 (23 April 1996)., see also: Philip Alston, Jason Morgan-Foster and William Abresch, 'The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the ' War on Terror ', The European Journal of International Law Vol. 19 no. 1, p 16

to the Secretary-General ... [t]o bring the resolution to the attention of the Government of Israel and to invite it to provide information concerning the extent of its implementation thereof'.⁵³ As these examples make clear, during the life of the Commission, ECOSOC repeatedly and unequivocally endorsed the proposition that both the legal regime of international humanitarian law and the phenomenon of armed conflict fell within its competence. It must be conceded that in establishing the new Human Rights Council to replace the Commission, the General Assembly did not include any specific language confirming this competence.⁵⁴ While the United States might argue that this omission indicated a wish to step away from, or even reject, previous practice, such a conclusion would need to be supported by some evidence from the relevant debates. Since the issue was never broached, it is more reasonable to assume that the assumption was not questioned by any delegation and that it was simply assumed that the Council would, in this respect as in most others, maintain the practice followed by the Commission.⁵⁵

The Mandate of the Special Rapporteur on International Humanitarian Law

The Commission and the Council have consistently asserted the right to consider the implementation of international humanitarian law as well as of human rights law, the question still remains as to whether the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions also extends to both bodies of law.⁵⁶ The first is that institutions which make up the international human rights machinery are restricted in their focus to the application of human rights law, presumably of both a treaty and customary nature. The second is that any such assumption cannot be displaced or overcome by consistent state practice to the contrary.⁵⁷ And a third element is that the development of a consistent practice by the Special Rapporteur of considering international humanitarian law cannot under any circumstances cure the failure of

⁵³ ECOSOC Decision 1996/274 (23 July 1996).

⁵⁴ GA Res. 60/251 (3 April 2006).

⁵⁵ Philip Alston, Jason Morgan-Foster and William Abresch, 'The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the ' War on Terror ', The European Journal of International Law Vol. 19 no. 1, p 17

⁵⁶ Philip Alston, Jason Morgan-Foster and William Abresch, 'The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the ' War on Terror ', The European Journal of International Law Vol. 19 no. 1, p 18

⁵⁷ Philip Alston, Jason Morgan-Foster and William Abresch, 'The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the ' War on Terror ', The European Journal of International Law Vol. 19 no. 1, p 18

the original mandate accorded by the Commission on Human Rights to make explicit reference to that body of law. To a certain extent these elements are all intertwined but we shall nonetheless endeavor to examine them in sequence.⁵⁸ The Human Rights Committee's direct competence is expressly limited to claims of 'violation by [a] State Party of any of the rights set forth in' the International Covenant on Civil and Political Rights.⁵⁹ But even in that case, this does not exclude the Committee from taking account of a state's obligations under other instruments, including those relating to international humanitarian law, in interpreting its obligations under the Covenant.⁶⁰ This is also true of the regional human rights courts, although the range of treaties over which they have jurisdiction varies significantly from court to court. The European Court of Human Rights only has jurisdiction over complaints arising under the European Convention on Human Rights and its protocols, whereas the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights both have wider jurisdictions.⁶¹ With respect to such bodies as the Commission on Human Rights and the Human Rights Council, however, the argument is even less complex. Neither was established as a judicial or quasi-judicial body designed to hear and pass judgment on complaints arising under any particular legal instrument. Instead, each was established to further the UN Charter's general commitment to 'promoting and encouraging respect for human rights' through a range of activities.⁶² This mandate is both logically and historically prior to the question of what treaty obligations states have with respect to human rights. Indeed, the principal international human rights treaties, especially the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, were drafted by the Commission in its early⁶³ years.⁶⁴ In particular relation to the mandate of the Special Rapporteur

⁵⁸ Philip Alston, Jason Morgan-Foster and William Abresch, 'The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the ' War on Terror ', *The European Journal of International Law* Vol. 19 no. 1, p 18

⁵⁹ Optional Protocol to the International Covenant on Civil and Political Rights, Art. 1.

⁶⁰ General Comment 29, supra note 51, para. 10 (' Although it is not the function of the Human Rights Committee to review the conduct of a State party under other treaties, in exercising its functions under the Covenant the Committee has the competence to take a State party's other international obligations into account when it considers whether the Covenant allows the State party to derogate from specific provisions of the Covenant. ').

⁶¹ See generally D. Shelton, *Regional Protection of Human Rights* (2008).

⁶² UN Charter, Art. 1(3). This commitment was referenced in the resolution establishing the Human Rights Council (GA Res. 60/251 (3 Apr. 2006), preamble. The resolution establishing the Commission on Human Rights references a related provision, UN Charter, Art. 62(2), which gives ECOSOC a mandate to ' make recommendations for the purpose of promoting respect for, and observance of, human rights ' (ECOSOC Res. 1/5 (16 Feb. 1946), section A, para. 1).

⁶³ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/62/265 (16 Aug. 2007), paras 22 – 54., See also: Philip Alston, Jason Morgan-Foster and William Abresch, 'The Competence of the

on extrajudicial, summary, or arbitrary executions, it notes that the mandate as defined in the resolution creating the post is ‘to examine ... questions related to summary or arbitrary executions’, without reference to the specific legal framework within which that mandate is to be implemented.⁶⁵ A recent review by the Special Rapporteur of the organic evolution of his mandate illustrates the extent to which this evolution has been driven primarily by factors such as demands by states to address specific situations or phenomena which were not envisaged explicitly in the original resolution, by the need to respond to new forms of violations, and by increasing public demands for effective responses in specific contexts.⁶⁶

Conclusion

The Code of Conduct adopted by the Council in 2007 and the Manual of Operations adopted by Special Procedures mandate-holders during their Annual Meeting in 2008 provide guidelines on the working methods of Special Procedures. Mandate-holders also established an Internal Advisory Procedure to review practices and working methods, which allows any stakeholder to bring issues relating to working methods and conduct to the attention of the Coordination Committee. The procedure was devised to enhance the independence and effectiveness of Special Procedures and cooperation by States, and to contribute to self-regulation of the special procedures system and individual⁶⁷ mandate holders. Special procedures regularly make recommendations to countries and other stakeholders in their reports to the Human Rights Council.⁶⁸ All recommendations contained in country visits’ reports by special procedures since 2006, as well as direct access to the reports in which the recommendations are included, are accessible through the Universal Human Rights Index. These recommendations can be searched by topic, right, mandate, region or country. When using the “Advanced search” of the Universal

UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the ‘ War on Terror ’, *The European Journal of International Law* Vol. 19 no. 1, p 20

⁶⁴ Alston, ‘ The Commission on Human Rights ’, in P. Alston (ed.), *The United Nations and Human Rights: A Critical Appraisal* (1992) 126.

⁶⁵ *Comm. Hum. Rts.*, Res. 1982/29, para. 2; *ECOSOC Res.* 1982/35, para. 2.

⁶⁶ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/62/265 (16 Aug. 2007), paras 22 – 54., See also: Philip Alston, Jason Morgan-Foster and William Abresch, ‘The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the ‘ War on Terror ’, *The European Journal of International Law* Vol. 19 no. 1, p 20

⁶⁷ www.un.org, (23rd August 2017)

⁶⁸ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>, (23rd August 2017)

Human Rights Index, a list of all recommendations made by all special procedures mandates on a particular topic, region or country can be generated.