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Introduction: Appraising the United Nations Human Rights Regime

Philip Alston, Frédéric Mégret

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Edited By: Frédéric Mégret, Philip Alston

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(p. 1) Introduction

Appraising the United Nations Human Rights Regime

Recent years have seen immense challenges to the international human rights regime. The resurgence of illiberal democracies around the world, nationalism and xenophobia in Europe, China's domestic crackdown combined with its efforts to export its model of authoritarian capitalism, the Trump Presidency in the United States, Brexit, technological developments reflecting an 'age of surveillance capitalism',¹ and the widespread adoption of neoliberal policies spurring rapidly growing inequality, have all served to put the regime on the defensive. These and related developments have also been accompanied by a substantial critical literature written from a diverse array of viewpoints questioning whether human rights still have a future and whether the techniques by which they have been promoted domestically as well as internationally retain their validity.² But although the United Nations and its normative, institutional, and procedural human rights activities sits at the heart of the international regime, it has rarely been the subject of systematic analysis or evaluation in those contexts. This volume does not purport to take on that entire challenge but it does provide much of the essential material that is required to be taken into account by those who are looking to evaluate the contributions of the United Nations to the past, present, and future of the international human rights regime.

Almost thirty years have passed since the first edition of this book was published. Since then the United Nations human rights regime has changed dramatically in almost every respect. In normative terms, major new instruments have been adopted addressing the situation of persons with disabilities, disappearances, indigenous peoples, and many other groups, and the rights of lesbian, gay, bisexual, transsexual, and intersex (LGBTI) persons are now squarely on the agenda from which they were (p. 2) then almost entirely absent. The number of states that have ratified key treaties has expanded significantly with, for example, the Convention against Torture moving from 73 States parties in 1992 to 165 in 2019, and the Convention on the Elimination of All Forms of Discrimination against Women going from 123 states to 189. The web of non-treaty-based procedures seeking to monitor compliance has grown much thicker and almost all states are held regularly to account for their human rights performance, especially by Special Procedures mandate-holders whose numbers have almost tripled, and by the Universal Periodic Review which began only in 2008 but has already almost completed its third full cycle of reviewing the performance of every state. The number of treaty bodies has expanded from six to ten, and the powers of some of the committees have been expanded significantly. In terms of staff, the relatively small Center for Human Rights has been replaced by an Office of the High Commissioner for Human Rights, and the UN now employs over 1,300 personnel in the Office: 43 per cent of them are based in the field, and another 700 human rights officers are employed in thirteen UN peace missions or political offices. In 1992, 0.7 per cent of the UN budget went to the human rights programme, compared with 3.7 per cent in 2018-19, more than a fivefold increase.³

The goal of this book is not to try to evaluate all of these diverse developments, let alone to gauge their impact on the actual enjoyment of human rights in the world. Rather, it is to trace the evolution of the principal institutional actors within this larger milieu. It is highly instructive to note the extent to which, since the first edition, institutions that were once central have declined in importance or disappeared altogether, whilst mechanisms that were once seen as peripheral have moved to centre stage. To cite but a few obvious examples: the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities no longer exist; the High Commissioner for Human Rights is now the foremost human rights focal point within the UN rather than the

Secretary-General himself; and the Security Council's impact on human rights has completely eclipsed the role that the Economic and Social Council once had. These dynamics illustrate the extent to which the place of human rights within the broader constellation of global governance is susceptible to constant change.

It also underscores the plasticity of the UN human rights regime, and its need for institutional adaptation in response to changes whether in the UN's own role, in the overall international system, or in the challenges confronting the human rights movement. Different eras make different variants of the international human rights project conceivable: hopes once vested in certain institutions are not fulfilled; competition and overlap between organs create pressure for change; all the while, the system continues to develop dynamically by responding more effectively to the needs of previously neglected human rights constituencies such as women, children, migrant workers, indigenous peoples, and LGBTI groups. So much so that all chapters in this collection are (p. 3) new compared to the first edition. In addition, half a dozen chapters have been added, some eliminated, and others shrunk quite dramatically.

At the same time, the questions asked in the first edition remain every bit as relevant as they were then. There are legitimate concerns from a human-rights perspective about excessive institutionalization of what was after all once a radical project;⁴ some even worry that the UN will lose its specificity and soul by becoming too invested in human rights.⁵ The UN's human rights activities are also criticized by a diverse array of states, including some from the Global South which see rights as a Trojan horse for liberal interventionism especially through the R2P concept,⁶ others which feel unjustly victimized,⁷ and some who believe that rights should only be promoted through dialogue rather than condemnation.⁸

The task of evaluation has been made all the more important as a result of the proliferation of populist, authoritarian, and illiberal democratic regimes in recent years, and their propensity to reject both the international human rights standards themselves and the institutional regime that seeks to monitor compliance with them. President Rodrigo Duterte of the Philippines has attacked a number of UN human rights experts and officials and withdrawn his country from the International Criminal Court. In June 2018, the United States withdrew from its membership in the UN Human Rights Council, with the Secretary of State labelling the Council 'a poor defender of human rights' and 'an exercise in shameless hypocrisy'. He warned that the US would not work with organizations that undermine its national interests and its allies, or infringe its national sovereignty.⁹ Subsequently, the US ceased cooperating with UN mechanisms in relation to all domestic issues.¹⁰ And in August 2018, prior to his election as President of Brazil, Jair Bolsonaro indicated in response to a question about the role of the UN Human Rights Council that he proposed to withdraw Brazil from the UN.¹¹

(p. 4) Of course, not all of the critiques should be given the same weight: some come from self-acknowledged human-rights violators and others from those who would throw the baby out with the bath water merely because they see fault with one part of the system. Indeed, the fact that the UN's human rights activities, including finger pointing and occasionally more coercive measures, provoke such strong reactions is a sign that they are achieving something. Still, the pushback from both critics and sceptics highlights the need to discuss more thoroughly the successes and failures of the UN's human rights regime.

This book takes stock of these developments, more than seventy years after the adoption of the Universal Declaration of Human Rights, and critically assesses what they portend for both the UN and human rights. It does so by focusing on the UN as an institution, one which is the repository of many ambitions. It is first and foremost an international organization, a factor that largely determines the type of efforts it can deploy for the development and promotion of human rights. Institutionalization, moreover, creates particular challenges for human rights as a project. At the same time, one should be wary of

counting mere institutional developments as the sum total of what the UN actually does for human rights. The history of human rights even at the UN is more than the sum total of the organs and acronym soup that are associated with human rights.

The UN's human rights regime is complex and may even appear incongruous to those encountering it for the first time. Committees, commissions, and councils coexist, without it being immediately obvious which are the most important and why; there often seem to be strange overlaps among some of its activities; the sometimes technocratic and jargonistic character of its institutional pronouncements may seem far from the ethos of human rights. There are inevitably tensions between the principled nature of human rights as a project, and the sometimes arcane institutional structures of the UN. At the same time, even as the system is accused of being too technocratic, it is also often alleged to be 'politicized', and acting as a sort of intergovernmental black hole into which the brightest human rights ideas disappear. But which is it? Can it be both? How does the UN's complex amalgam of the political, the expert, and the technocratic affect prospects for human rights? And if the UN achieves anything in the area, does it do so despite or thanks to these characteristics?

Several important points should be borne in mind when assessing the UN's role in this area. First, the UN is only one part of a much broader international human rights regime. In addition to the UN itself there are various affiliated agencies such as the International Labour Organization (ILO), the World Health Organization (WHO), and the United Nations Educational, Scientific and Cultural Organization (UNESCO). Even more significantly, there are a number of regional organizations including the Council of Europe, the Organization of American States, and the African Union that have considerable significance. These regional human rights initiatives, for example, are significantly more focused on judicial adjudication. They also operate closer to the ground and in more homogeneous contexts than the United Nations, enabling them, in at least some cases, to make considerable headway towards the ideal of international human rights protection.

(p. 5) To these intergovernmental bodies one must add the ever-increasing role of civil society not only locally and nationally, but internationally and globally. Today, just as we are often reminded that some corporations have budgets and power that exceed those of small states, there are a number of international human rights non-governmental organizations (NGOs) that clearly punch well above their weight in terms of influence, especially compared to some of the less influential United Nation bodies. The development of the global human rights regime owes much to the labour and energy of civil society groups. To cite but one example, most people outside the field of international human rights are more likely to have heard of Amnesty International than the Human Rights Committee or even the Human Rights Council. NGOs have been especially influential in the major international conferences on human rights and related issues, such as those held in Vienna in 1993, Beijing in 1995, and Durban in 2001. They are an important presence at the Council on Human Rights and submit shadow reports that are often crucial to the work of the treaty bodies. Their work thus straddles many facets of the UN's activities. Whilst international officials and even experts are often somewhat constrained in their interaction with states, NGOs are able to adopt a much more combative posture. And even in an era when much is being written about shrinking civil society space as various governments seek to delegitimize, disable, or prosecute human rights proponents, new initiatives continue to breathe life into efforts by these actors.¹²

Notwithstanding the importance of other actors in the overall regime, the deep and varied legal mandates possessed by UN bodies, whether based on the UN Charter, widely ratified treaties, or other initiatives, give them a unique legitimacy and authority in developing human rights standards and policy and in engaging with governments and other actors. Indeed, the UN has by most standards succeeded in making itself the major hub of the international human rights regime. It is the foremost intergovernmental organization in the field, and one which has a huge impact on global governance and international policy-

making. There is no doubt that its activities have contributed in very large measure to creating, shaping, and implementing the human rights regime as a whole. It would be difficult, if not impossible, to understand, let alone evaluate, the overall regime without an understanding of the functions performed by the relevant United Nations 'organs'.

Second, it is important to recall how relatively unforeseeable it was at the outset that human rights preoccupations would become as prominent within the UN as they are today, even if their status seems ever more precarious. While human rights were always one of the three sets of 'purposes' of the organization, it was only relatively late that its objectives were repackaged as comprising the three pillars of security, development, (p. 6) and human rights. At its creation, it was hardly a foregone conclusion that the UN would have much to do in practical terms with human rights; and it was certainly not created as an institution designed to deal *primarily* with rights. For the most part, its mission was to preserve international peace and security and increase cooperation between states. Its goals seemed concerned with the international superstructure rather than anything that might happen within states. Human rights did feature somewhat discreetly in its Charter,¹³ providing at least some sort of normative foundation and legitimacy for the efforts of those who sought to ensure that the UN would take human rights seriously. However, that foothold was largely ignored in its first decades and this could have remained so. The progress that has taken place has occurred against a backdrop of resistance to perceived meddling by the UN in their sovereign affairs, a response that continues to be prominent in the rhetoric of many states, even as they somewhat paradoxically engage actively in the relevant debates.

Nonetheless, and for reasons documented extensively in this book, the place of human rights within the UN, and the size and significance of the relevant machinery, has continued to grow. There have certainly been setbacks, and human rights still compete with many other priorities,¹⁴ but over time human rights promotion has emerged as one of the signal functions of the United Nations. At the rhetorical level at least, as reflected in the 'Human Rights up Front' agenda promoted by Secretary-General Ban Ki-Moon (although downplayed by his successor), the UN is increasingly presented as an organization whose very *raison d'être* is to promote human rights.¹⁵ It is important to seek to understand how this change came about.

Third, an important question is whether there might also be significant downsides to the growing connection between human rights and the United Nations. On one reading, strong engagement is surely a good barometer of how seriously human rights are taken internationally (depending in part on the times and the rights). It is difficult to imagine how else human rights could have been universalized, if not through the UN. At a minimum, the UN provides an international and even global forum to discuss human rights issues; in the best of cases, it provides a source of expertise; and occasionally it may be part of the enforcement or at least compliance inducement that is so crucial to human rights.

At the same time, the human rights movement's engagement with the UN comes with its costs. This is, after all, an organization of states, some of which are more committed to human rights than others, depending on the rights concerned and the timing. States will sometimes instrumentalize human rights discourse for ends that are, in effect, inimical to the goals of human rights. Debates may inflict wounds, leave scars, and undermine the idea of universal agreement that is so central to human rights. The ideal of human rights may be corrupted as a result. There is also the risk that the UN as (p. 7) an international organization will renege on its commitment to human rights, for example when it senses that a principled stance might compromise the pursuit of some other significant other political, diplomatic or security goal. Finally, there is always the possibility that human rights will become mired in the administrative inertia and dull technocratization of any

large international organization, and that the language of hope and activism will become a language of procedures and mechanisms.

The relationship between the UN and human rights is thus infused with the tension between the project of human rights and that of universal organization, both promising projects in their own right but whose *modi operandi* may be incompatible in a multiplicity of ways, both foreseeable and not. It is to the study of some of these tensions that this book is devoted. The present chapter seeks to do four things. First, it sketches the broad nature of the institutional component of the UN regime by providing a brief overview of the individual human rights organs and of their relationship to one another. Second, it considers the contemporary evolution of human rights at the UN, distinguishing in particular between its Charter and treaty bodies. Third, it highlights some of the main challenges of evaluating the UN's human rights work. Fourth, it considers what is, or should be, involved in the process of evaluating or appraising the effectiveness of the UN human rights regime as a whole and of individual organs.

I.1 A sketch of the UN human rights system

The UN is an organization that pursues a range of goals and policies, including international peace and security and development. Human rights are therefore only one element among many and much of the hesitation about human rights at the UN can be explained by the pursuit of competing priorities. There is, moreover, a fundamental ambiguity about the relationship of human rights promotion and protection to the cardinal principle of sovereignty in the Charter. Indeed, a basic question that might be posed is whether the UN should be involved in human rights at all, and if so in what ways? Moreover, the UN is constrained in pursuing its policies by the inherent limitations of the international system, as well as the wishes and priorities of its member states. Clearly the UN as an international organization has a personality of its own under international law but that hardly means that its policies are entirely of its own making, in the sense that one might expect an NGO or even a state to have its 'own' human rights policy. In fact, to speak of a UN human rights policy is to speak of the actions and initiatives of myriad actors, not all of whom work consistently towards the same goals. The UN's human rights 'component' is not exactly a coherent and well-designed whole, as much as the result of multiple attempts at reform and a constant reassessment of the place of human rights within the organization's midst. Although the UN is sometimes described as having a 'human rights machinery', that may be a more imposing description than is warranted, even if it at least conveys the sense of a multiplicity of 'mechanisms' working more or less towards the same goal.

(p. 8) I.2 The broad trajectory of human rights at the UN

In principle, there was much enthusiasm for human rights at the UN's beginnings, especially with the landmark adoption of the Universal Declaration in 1948. The UN Charter instructed the organization to promote human rights but without specifying what those rights were. Civil society groups the world over, governments and intergovernmental organizations made representations to the Commission on Human Rights about their hopes and aspirations as to both the content and the procedures for promoting human rights. At the same time, many of these early hopes were quickly dashed as the Cold War set in and the limits of what the UN could hope to achieve became quite clear. From the beginning, for example, states had made it abundantly clear that they considered the UDHR to be non-binding, and that the role of the UN was confined to merely *promoting* human rights with states, as one among many other activities. As a result, the UN struggled to transcend

invocations of sovereignty that were particularly hostile to any notion of practical human rights inquiry.

The mere existence of the Commission did ensure that human rights would not simply go away. It followed its own course, gradually developing *sui generis* mechanisms, notably the procedures under ECOSOC resolutions 1235 and 1503, that would come to define much of its work and that gradually added some bite to human rights promotion. It moved such promotion from the very cautious and diplomatic starting proposition that it should only set standards, to one where it was increasingly open to the notion that it could also monitor state behaviour. For much of the Cold War, however, action on human rights seemed to be paralysed by shared great power interests in not encouraging undue scrutiny, outside a few *causes célèbres* such as South Africa and the Palestinian Occupied Territories. Instead, most of the action focused on the highly significant but more discreet and painstaking process of transforming the UDHR into a true 'Bill of International Human Rights' by encouraging the adoption of treaties. The adoption of the two Covenants, and of the CERD and CEDAW treaties, were all part of this invaluable early effort to formalize human rights into binding international instruments. Combined with the diligent work of the Sub-Commission, the normative basis of the international human rights regime was laid gradually.

In this context, one long popular description of the UN's activities identified three key 'phases' of activity since 1947: standard-setting (1947–1954), promotion (1955–1966), and protection (post-1967). Each phase was said to have been devoted primarily to the activity in question. To the extent that such a description sought to convey the impression of a planned effort to move human rights gradually from paper to reality, it is misleading. In fact, the phases have been cumulative rather than one replacing the preceding one. As a result, recent decades have seen an acceleration of the pace of change and a mingling of these phases. With the adoption of three major international human rights treaties since 2000, and several other currently under consideration, it hardly seems as if standard setting is a moribund activity, even as promotion and protection activities have continued to be extensive.

(p. 9) Overall, the human rights regime has had its ups and downs in the years since 1946, with growth spurts at regular intervals often followed by efforts to retrench. Major international conferences such as the Tehran (1968) and Vienna (1993) World Conferences on Human Rights proved to be major turning points that enabled various human rights 'forces' to regroup and push UN efforts in different directions. These also helped promote shared understandings about the proper place of human rights at the UN. There is no doubt that the UN's human rights activities have further expanded in the last two decades, and that human rights have become at least rhetorically more central to what the organization does. There has been a systematic increase in the number of UN bodies devoted primarily to dealing with human rights matters, as well as a major increase in the time devoted by some of the existing 'organs' to the human rights part of their mandates. Indeed, some organs which traditionally had very little to do with human rights, such as the Security Council or the International Court of Justice, have become more active in that field. Another important phenomenon is the inclusion of human rights discussions in bodies with no formal human rights mandate but in which they increasingly form part of a broader conversation about the shape of various domestic and international policies.

By the same token, there are strong pressures, led by China and its allies, to gradually diminish the centrality of human rights in the UN's activities. Major reforms of the UN's bureaucratic arrangements in 2019 have been portrayed as an effort to downgrade the attention previously given to human rights.¹⁶ This is therefore an unfinished and continuing process, one that remains precarious and subject to constant renegotiation. If we look back at the past seventy years of the evolving human rights regime at the UN, moreover, any depiction of the growth process as systematic, planned or even rational, would be largely

unwarranted. The system has grown ‘like Topsy’ and the boundaries between the different organs are often only poorly delineated. Indeed, there is a degree of overlap between various bodies (most notably in the last decade between the reporting obligations under treaty bodies and the Human Rights Council) that has often proved resistant to reform. At times, describing it as a system or regime might even be misleading given the extent to which different parts of that system are pushing in different directions.

For the most part, this incoherent pattern has been not entirely accidental. To begin with, the development of the UN human rights regime is crucially indebted to macro political developments and the resulting willingness or unwillingness of member states to take human rights on board. For example, the rise of the Third World led to significant investments by newly decolonized states in human rights like the right to self-determination and the right to be free of racial discrimination. Similarly, the end of the Cold War ushered in a new era, inaugurated by the Vienna World Conference, and committed to greater gender equality and less defensiveness on the grounds of (p. 10) sovereignty. By contrast, 9/11 and the era that followed proved much less propitious to international rights monitoring, although the Arab Spring in 2011 opened up significant new opportunities in some areas and helped expedite the trend towards creating international commissions of inquiry.¹⁷ There is only so much that the UN can do about the influence of such world events given how fundamentally sensitive it is to them.

Specific human rights debates within the UN also continue to be significantly influenced by global political conditions. The tendency of states to divide along geopolitical lines and regional groups has often proved a lasting obstacle to human rights initiatives. Divisions reflect deep disagreements about the proper weight that should be given to certain rights over others, as illustrated by the tension between individual and collective rights; civil and political and economic and social right; and human rights and national security. In order to overcome these sources of disagreement, coalitions that combine different political interests have sometimes emerged. Thus, for example, apartheid in South Africa offended both liberal individualist standards of equality as well as more far-reaching notions of emancipation from colonial rule and an anti-racist tradition. That relatively united front has not often been replicated at the UN.

By the same token, some issues do seem capable of transcending the standard political divisions—for better or for worse from the point of view of human rights. In a context in which almost every state claims to be ‘for’ human rights while at the same time seemingly disagreeing fundamentally about their content, it may be difficult to predict who will take which side on a range of cross-cutting issues. Certainly the West does not have a monopoly over the contemporary meaning of international human rights law, even as human rights rhetoric remains crucial to its modes of intervention. On issues such as the death penalty, privacy in the era of technology, the rights of indigenous peoples, gender equality, or sexual orientation, new coalitions may emerge where states normally on opposite sides of a geopolitical divide nonetheless find common ground. In 2018, for example, the United States was on the same side in UN human rights debates as Iran, Russia, Saudi Arabia and others in opposing references to gender.¹⁸

Furthermore, the system’s complexity and inconsistency is the inevitable result of a multiplicity of actors seeking to achieve diverse, and even irreconcilable, objectives within the same overall institutional framework. If an existing body is considered unable to do a particular job, whether because of some intrinsic defects, sheer incompetence or, more likely, political disagreement, the preferred response will often be to set up yet another. In a very short space of time, states and individual actors may well then develop a vested interest in perpetuating the new body despite the duplication and inefficiencies involved. This pattern has often been repeated in order to accommodate the implementation of new policy agendas, to which existing bodies were perceived to be insufficiently responsive. Only occasionally does pent-up frustration boil over to generate a more radical overhaul.

This happened with the dumping of the Commission (p. 11) and its replacement by the Human Rights Council—although how much of an overhaul that really turned out to be is open to debate. In general, it can be concluded that efforts to identify and describe steady and principled patterns in the evolution of the various procedures are misplaced and misleading.

One interesting dynamic in this context is the relationship between human rights discourse and international human rights *law*. The quest to give legal form and status to human rights principles drove many of the early efforts to entrench human rights within the UN. The result has been a significant correlation between the development of the substantive international law dimension and the creation of specific mechanisms. The treaty bodies are the clearest illustration of this link since they are set up pursuant to particular treaties and adopt a more or less legalistic approach to the monitoring of state conduct. But it is also the case that much of what might be characterized as human rights work proceeds relatively independently of legal standards, reflecting the fact that not all developments within the human rights regime are necessarily *legal* developments. And even when they are legal, this does not necessarily lead to any particular promotional, monitoring or enforcement outcome beyond a broad commitment, perhaps, to the notion that human rights should be taken seriously as law.

At any rate, pragmatism, rather than principle has been the touchstone of the UN's evolution. This is especially apparent in almost any aspect of the activities of the Charter-based organs. Examples include: the reticence of those organs in spelling out the normative basis on which they are acting in specific cases in condemning violations, especially in relation to states which are not parties to relevant treaty regimes; their failure to adopt any particular framework designed to enhance the integrity and perceived objectivity of fact finding activities, including commissions of inquiry; and their reluctance to identify principles which would assist in determining the circumstances under which technical assistance (advisory services) should be offered to states as well as the kind of assistance that might appropriately be provided when violations are involved. In each case, the main organs have tended to adopt ad hoc approaches from which lessons might or might not be drawn for application in subsequent cases.

It is tempting to speak in highly critical terms of this evolution and to rue the lack of coordination, of a rational division of labour, and of any clear institutional blueprint. But while there is indeed much to criticize, it must also be borne in mind that this unstated preference for 'letting a hundred flowers bloom' was largely responsible for the capacity of the system to respond to new circumstances and to take advantage of new opportunities. It may simply be inevitable that a sprawling organization such as the UN should have a human rights machinery to match: one that is complex, disaggregated, and sometimes contradictory. Moreover, on occasion, pressure has accumulated for transcendent reforms, for example to create the post of High Commissioner for Human Rights, to establish the Human Rights Council, or to mainstream human rights within the overall UN structure. The extent to which such institutional initiatives have brought enduring systemic change remains disputed given the inertia of ingrained habits, but they belie a narrative of despair.

(p. 12) I.3 Classifying the organs

Various analytical classifications have been used in order to distinguish different types of UN human rights organs. The main one is that which opposes those composed of governmental representatives to those composed of experts. The latter might be elected or appointed, but are for the most part nominated by governments. From that starting point, analysts have suggested several dichotomies—expert/governmental, expert/political, legal/political and so on—to describe the composition, the *modus operandi* or the basis of

decision-making. To those categories may be added judicial/non-judicial (with quasi-judicial as a commonly used but somewhat problematic intermediate classification).

While these might seem to be straightforward labels, they are often used to convey a political message as well. For example, governmental officials may wish to emphasize their representativeness and thus their pre-eminence in the decision-making hierarchy. 'Experts', on the other hand, may wish to disclaim any political, or non-technical, influences upon their analyses. In UN institutional terms, such distinctions (for example, 'X' is an expert committee, whereas 'Y' is a political body) are very useful because they constitute a form of shorthand to indicate the type of membership profiles to be expected, the procedures to be used, and the outcomes envisaged. More fundamentally, they serve different functional needs. Thus, it is crucial to have experts who are independent from the UN and, more importantly, their own governments, in order to further a less partisan vision of human rights. At the same time, the UN remains an organization of states and it is to some extent essential, especially when it comes to implementation and enforcement, for it to be able to rely on their authority and political good will.

But such analytical distinctions might also be less helpful than they appear to be. First, the different connotations that attach to terms such as 'expert' or 'political' derive less from any natural or inherent meaning than from the usage that has grown up around the terms in UN practice. It is thus unsurprising that insights from theory as well as practice confirm their limited utility for other purposes. For example, March and Olsen argue that, despite the characteristics usually associated with each approach, 'a sharp division of labor between specialists and policy-makers is impossible to sustain, either conceptually or behaviorally'.¹⁹ In some respects the same comment applies to the bodies themselves. Second, a degree of overlap is involved insofar as the main intergovernmental 'political' body, the Human Rights Council, can designate special rapporteurs or commissioners who are themselves experts. Third, the High Commissioner for Human Rights represents a third category of someone who is neither an independent expert nor a government representative. She is a UN civil servant who serves as a focal point for human rights at the UN, but at the same time enjoys a degree of autonomy to speak out that far exceeds that of ordinary UN civil servants.

(p. 13) A more useful analytical distinction is between those organs established by reference to the provisions of the UN Charter (Charter-based organs) and those emerging on the basis of provisions in specific treaties (treaty-based organs). This distinction was, of course, unavailable—or at least meaningless—until 1970 when the first of the UN's human rights treaty bodies met for its inaugural session. Since that time a clearly discernible two-track approach to institutional arrangements has emerged, with Charter bodies typically more intergovernmental and policy-oriented, and treaty bodies more expert focused and legal—with the caveats in the previous paragraph about how these categories sometimes blend.

Put succinctly, the essential role of each of the treaty bodies is to monitor and encourage compliance with a particular treaty regime, while the political organs have a much broader mandate to promote awareness of and respect for human rights, and to respond to violations thereof. Treaty bodies have been established either pursuant to the terms of a specific treaty or for the specific purpose of monitoring compliance with one. They thus have a limited clientele, consisting only of States parties to the treaty in question; a clearly delineated set of concerns reflecting the terms of the treaty; a particular concern with developing the normative understanding of the relevant rights; a limited range of procedural options for dealing with matters of concern; an incentive to be cautious in setting precedents and to use consensus-based decision-making to the greatest extent

possible; and a non-adversarial relationship with States parties based on the concept of a 'constructive dialogue'.

Charter-based organs on the other hand derive their legitimacy and their mandate, in the broadest sense, from the human-rights-related provisions of the Charter. Their fidelity is more to the Charter itself, where treaty bodies look to the terms of their particular treaty. Because the political organs typically focus on a more diverse range of issues and are not confined to the terms of a given treaty, their competence is more universal and every state is an actual or potential 'client' (or respondent), regardless of its specific treaty obligations. The processes followed, whether by the Human Rights Council, the General Assembly, or the Security Council, are overtly political. They can engage, as a last resort, in adversarial actions vis-à-vis states; are more openly influenced by public opinion; do not hesitate to take decisions on the basis of strongly-contested majority voting; often pay comparatively little attention to normative issues; and are very wary about establishing specific procedural frameworks within which to work, preferring a more ad hoc approach in most situations.

Charter and treaty bodies also differ in their degree of concern with human rights policy as opposed to human rights law. While the two may be closely related, they are not the same thing. Treaty bodies for example are more focused on legal developments, the Human Rights Council is more interested in implementation, and the High Commissioner stands somewhere in between. This is particularly obvious when new treaty bodies are created and get down to the task of developing a jurisprudence linked to the newly proclaimed rights. But even bodies not specifically engaged in treaty monitoring will often devote considerable attention to the elaboration of new standards. Thus, for example, many Special Rapporteurs have taken it upon themselves (p. 14) to develop 'guiding principles', norms, or other standards that enrich the overall corpus of international human rights law if only as 'soft law'.

In fact, it is easy to overstate the differences between the two types of organ and to underestimate the ability of one type to emulate certain characteristics of the other. Thus a Charter-based organ might occasionally choose to play down its political character and devote some of its efforts to a systematic clarification of the normative content of a specific right, whilst a treaty-based organ might play down its constructive dialogue approach in order to indicate its strong disapproval of a state's behaviour. Or take the role played by the High Commissioner for Human Rights and human rights 'mainstreaming' (as described in Georges Minet's chapter in this collection): the former makes important inputs into the work of both Charter and treaty bodies, while the latter seeks to ensure that human rights are taken into account throughout the UN by a diverse range of institutional actors. Mainstreaming draws on the work of both types of bodies and does not fall neatly within the Charter/treaty dichotomy.²⁰ Nevertheless, the differences of mandate, content, and style between the two types of organs are sufficiently clear and consistent as to justify using this as the principal distinction for purposes of the analysis in this book.

I.4 Evolution of the UN system

The entire UN human rights machinery has changed significantly, especially over the past four decades. The Charter/treaty body distinction has remained quite firm, but efforts are increasingly made for one to reinforce the other. For example, the Universal Periodic Review undertaken by the Human Rights Council is a quintessentially political exercise conducted among peer states, but it relies heavily upon information generated by the treaty bodies and by the Council's Special Procedures network of independent experts.²¹ Similarly the annual coordination meeting of treaty-body chairs, and the annual meeting of Special Procedures mandate-holders (including Special Rapporteurs) regularly explore ways in which the work of one group can reinforce or draw upon that of the other. Problems of duplication have by no means been eliminated, but efforts have been made to both minimize

and profit from them and to ensure that the overall logics of the respective systems reinforce one another.

I.5 Charter bodies

There have been major changes in the roles played vis-à-vis human rights by the principal Charter bodies. While the Charter defined the International Court of Justice, (p. 15) the Trusteeship Council, the General Assembly, the Economic and Social Council ('ECOSOC'), the Security Council, and the Secretariat as organs of equal importance, this institutional formalism does little to conceal the deeper assumptions of the framers of the UN Charter as to the existence of an implicit organizational hierarchy. For example, the Security Council, with the veto power vested in each of the five permanent members, was clearly at the head of the pecking order, with the General Assembly next in line. While the other organs were each allocated significant spheres of institutional competence, they were, in any general political sense, inferior to the other two. Nonetheless, it has become clear that the place occupied by a given organ within the Charter's general hierarchy does not necessarily determine its human rights relevance or impact. An organ could be very powerful but not particularly concerned with human rights (the Security Council until the 1990s) or relatively secondary in status but pre-eminent for human rights (the Commission on Human Rights).

During the first decades of the UN, the Security Council's role was one of studied indifference, or at least political inability to act forcefully to prevent or respond to human rights violations. By contrast, the General Assembly had the most significant profile in terms of human rights both in its own right and through its various committees, exercised a significant role. The role of ECOSOC as the parent body to the Commission on Human Rights which in turn supervised the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, should have remained central but actually ceded ground dramatically to the General Assembly in the 1970s. Nevertheless, the Assembly's attention was focused on a much broader range of issues, of which human rights was only one. And its initial focus on human rights was confined to issues such as the right to self-determination and the fight against apartheid, although in later years it took up the New International Economic Order agenda, as well as a limited set of key situations involving gross violations. Understanding how that role has continued to evolve, despite the clout of the Human Rights Commission and then Council, is the object of one of Andrew Clapham's chapter in this collection.

The end of the Cold War opened an era of intense competition over the proper definition of the UN's approach to human rights and led to a significant re-alignment of institutional responsibilities. A first clarification occurred with the creation of the post of High Commissioner for Human Rights, one of the most concrete outcomes of the Vienna Conference on Human Rights. This initiative responded to the perceived need to have a human rights 'champion' within the UN, or at least a senior official who would be specifically dedicated to the promotion of human rights. This could be seen as an implicit critique of what had until then been the rather ambiguous role of the Secretariat in this area, and it was not surprising that the Secretary-General at the time, Boutros Boutros-Ghali, responded very negatively to the initiative.²²

For several decades successive Secretaries General had rarely missed an opportunity to affirm their frequent use of a 'good offices' role to promote the realization of human (p. 16) rights, although given the confidential nature of such interventions it was (and still is) difficult to know whether they actually achieved very much. Even Kofi Annan, the first Secretary-General to be more openly committed to the role of human rights, was not ready to use his limited clout to weigh in heavily on human rights matters. In this context, the creation of the High Commissioner for Human Rights arguably relieved the Secretary-General of a significant part of what human rights leadership role his office should have

had, at least outside those domains where it has a more specific competence, such as in relation to UN staff and peacekeeping. Indeed, whereas the previous edition of this book contained a full chapter on the Secretary-General, that role has now been folded into that of the High Commissioner, who continues to report to the Secretary-General, but in practice has regularly asserted a separate and significantly independent role. The role of the Secretary-General is thus discussed merely briefly in Andrew Clapham's chapter on the High Commissioner.

For its part, the Security Council has gradually confirmed its role, especially at the end of the Cold War, as effectively the most important body within the United Nations given its role in maintaining international peace and security and its ability to authorize the use of force and to create peacekeeping missions. The role that it has played in relation to human rights, however, remains complex, as argued by Frédéric Mégret in his chapter. For the first decades of its existence, the Council was reluctant to take on a human rights role given its focus on international peace and security. But references to human rights issues became much more common in Council debates starting in the 1990s, especially as human rights began to provide part of the justification for setting up some peace missions. That movement has tended to intensify with the rise of international criminal justice and the tendency to both justify Council interventions on the basis of human rights and humanitarian law violations, and to in turn draw on those bodies of law as a way of addressing breaches of international peace and security. The promotion of R2P has become largely conceptualized as an effort to bind the Security Council to a more forceful agenda for the promotion of rights. That development remains controversial given the power of the permanent members of the Council and concerns that it will unduly politicize rights.

Somewhat less powerful but potentially the most important of the Charter bodies in human-rights terms are the General Assembly, the Human Rights Council, and, to a lesser extent, the Commission on the Status of Women. The Human Rights Council replaced the Commission on Human Rights and the Sub-Commission. Despite criticisms that it has reproduced some of its predecessor's shortcomings, it has succeeded in consolidating the significance of human rights at the UN. In contrast, the Human Rights Advisory Council which effectively replaced the Sub-Commission has not gained anything like the prominence of its predecessor, as shown in the chapter by Laurence Boisson de Chazournes and Andrzej Gadjowski in this book.

Of the other principal bodies, one has definitely increased its relevance for human rights, one has largely abandoned any significant human rights role, and another has been consigned to irrelevance. The first is the International Court of Justice. A priori, the International Court of Justice (ICJ) has always been difficult to situate in relation (p. 17) to the remaining organs, primarily because it is first and foremost an international law rather than a human rights body. For many decades, its role was marginalized by the Cold War and the general reluctance of states to commit themselves to accept the decision of an independent arbiter. The attitude of many states in the Global South towards the Court, especially after its early decision in the second phase of the *South West Africa Cases*, was ambivalent at best and hostile at worst. When its contentious jurisdiction was used, it was far more likely to be to settle traditional matters of international law such as border or maritime disputes than human rights questions. In the last two decades, however, as Bruno Simma argues in his chapter, the ICJ has assumed much greater salience in the international system. Surprisingly, this has been due in no small part to the interest fuelled by human-rights-related disputes and requests for advisory opinions. This has involved the adjudication of diverse issues such as diplomatic protection of persons facing the death penalty, the immunities of UN rapporteurs and of current and former heads of state, or the legality of either using nuclear weapons or building a wall on occupied territory, all of which have had human rights implications broadly understood. As a result of that resurgence, a

specific chapter is devoted to the ICJ's role, whereas it was absent from the first edition of this book.

Of considerably less interest is the ECOSOC. Not only has it never been the UN's most significant human rights body but the potentially important role it could have had has never come close to being realized. In the early years it served as an intermediary between the Assembly and the Commission on Human Rights, but by the 1970s it had come to do little more than rubber stamp the Commission's work. As Frédéric Mégret notes in his chapter, its significance lies principally today in its ability to affect civil society participation in UN human rights debates through its role in determining which NGOs receive much sought-after observer status with the UN. Despite the obvious relevance of human rights to economic and social matters, therefore, the encounter between the two has largely been a failed one at ECOSOC.

Finally, one principal organ whose contribution is not dealt with here is the Trusteeship Council. This omission is due to the fact that its history has been adequately analysed elsewhere and, more importantly, to the fact that its work has now been largely completed.²³ Indeed, references to the Trusteeship Council in today's human rights literature are much more likely to examine how the Council can be transformed into a super-Human Rights Council than to consider the tiny and ever-dwindling agenda that it still retains.

1.6 Treaty bodies

The evolution of the treaty bodies has been determined less by the overall governance structure of the UN and more by developments in the field of international human rights (p. 18) law itself. Since the Committee on the Elimination of All Forms of Racial Discrimination (CERD), which is the object of Patrick Thornberry's chapter in this collection, first met in January 1970, the treaty-based system has expanded at a rate which is without precedent in the field of international organization. There are now no less than ten treaty bodies, all of which are analysed in this book. In addition to the CERD, these are: the Human Rights Committee (CCPR) (Ludovic Hennebel in this book), the Committee on Economic, Social and Cultural Rights (CESCR) (Philip Alston), the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) (Andrew Byrnes), the Committee against Torture (CAT) and the Subcommittee on Prevention of Torture (SPT) (Andrew Byrnes), the Committee on the Rights of the Child (CRC) (Christine Evans), the Committee on Migrant Workers (CMW) (Vincent Chetail), the Committee on the Rights of Persons with Disabilities (CRPD) (Michael Stein and Janet Lord), and the Committee on Enforced Disappearances (CED) (Olivier de Frouville).²⁴

The proliferation of treaty bodies reflects diverse phenomena: a certain fragmentation of human rights advocacy and promotion among groups with particular rights concerns, such as children, migrant workers, and persons with disabilities; a logic of specialization (for example torture and disappearances might readily be dealt with by the Human Rights Committee, but the argument is that a more focused and specialized body is necessary); and both the relative enthusiasm of civil society for specialist treaty bodies as well as the continued willingness of states to ratify new instruments. Unsurprisingly, efforts to merge treaty bodies have often met serious resistance from those who consider that this would detract attention from the specific issues at stake and deprive the treaty bodies of very focused expertise.²⁵ But the multiplication of treaty bodies has not necessarily meant a proportionate increase in overall influence. Some have even suggested that it has dissipated their power and made them less connected to the Charter bodies.²⁶

Although there are some practical differences among the treaty bodies, such as the fact that CESCR was created by ECOSOC; and the Sub-committee on Torture does mostly field work, all function along broadly similar lines in terms of expertise and methods of work, which makes studying them jointly and comparatively a fruitful endeavour.²⁷ In brief, each of the treaty bodies performs the task of monitoring States parties' compliance with their obligations under the relevant treaty. They do so primarily through a dialogue with the representatives of each of the States parties on the basis of a detailed report (an 'initial' report, followed by 'periodic' reports at approximately 4–5 year intervals). The principal outcome of this process is the record of the resulting dialogue and the Committee's identification of the key issues in its concluding (p. 19) observations. These provide an opportunity for the Committee as a whole to assess the extent to which the State party appears to be in compliance, or otherwise.²⁸ The extent to which states then comply with the treaty bodies' recommendations has been the subject of few empirical studies, but results tend to be better in states that are already reasonably respectful of human rights.²⁹

Each of the Committees also adopts carefully drafted statements in the form of General Comments (or some comparable terminology), which purport to draw directly on the Committees' work in examining reports, and which seek to elaborate upon the normative content of particular rights or to address specific issues that have arisen. The proliferation of treaty bodies has brought with it a greater likelihood that competing and even conflicting jurisprudential interpretations will emerge.

One of the most symbolic and visible tools possessed by treaty bodies is their ability to consider 'communications' or petitions. All of the principal treaties anticipate that possibility, which typically requires a specific opt-in (normally through ratification of a separate Protocol) by States parties. The outcomes of these procedures generate the closest thing to a systematic UN 'jurisprudence' on human rights³⁰ and, although the 'final views' are often succinctly and unevenly argued,³¹ they provide instructive and potentially authoritative statements about the interpretation of the relevant treaties over time. Even if each procedure inevitably takes time to become known, most have attracted a steady flow of petitions, although most are rejected at the admissibility stage.

Finally, there are two forms of detailed inquiry into the situation in a particular state. The first is an inter-state complaints mechanism which exists in some of the treaties, but has been used exceedingly sparingly. The second is the possibility for a treaty body to undertake a confidential inquiry *in loco* in response to allegations of systematic, grave, or serious violations. CEDAW, CAT, and the CRPD have all undertaken important inquiries utilizing this procedure which was originally modelled on a provision in the Convention against Torture.

States' degrees of engagement with the treaty bodies varies considerably, but for the most part continuing and meaningful exchange has been achieved. Even though states are inevitably on the defensive, some of them are quite committed to making the most of the opportunity for dialogue, and it not unheard of for legislative, administrative, or policy changes to result from the reporting process. It is no coincidence that civil society has been increasingly involved in reporting, often drafting 'shadow reports' that typically provide a very different picture of the state's human rights performance when compared with the official report. The treaty bodies are therefore one of the key sites of (p. 20) production of international human rights law by the UN and one where the tension between universalism and subsidiarity is often addressed.³²

There is no formal hierarchy among the treaty bodies, although the Human Rights Committee discussed in Ludovic Hennebel's chapter tends to have the potentially most comprehensive mandate and to have been endowed with the greatest resources in terms of meeting time and Secretariat assistance. But the treaty bodies regularly deal with common substantive issues, including that of discrimination, and face many of the same administrative and logistical obstacles.³³ The relationship among them and the need for

measures to promote better coordination, to reduce overlapping, to avoid conflicting approaches, and to reduce the burden imposed on states that are parties to many different treaties, have been addressed by UN organs since 1989.³⁴ The internal mechanism for doing so is the Meeting of the Chairpersons of the Human Rights Treaty Bodies which has been convened since 1984.

But states have also pushed hard for more fundamental reforms, as described by Suzanne Egan in her chapter, and these demands have been reinforced by chronic delays in considering reports, large backlogs in reporting by states, and an element of competition from the UPR. Proposals have focused on eliminating some of the treaty bodies,³⁵ merging them, consolidating reporting obligations across different treaties,³⁶ or even creating an 'International Human Rights Court which, in some versions, would take over all of the treaty bodies work in considering complaints'.³⁷ While the High Commissioner has weighed in,³⁸ along with key stakeholders,³⁹ far-reaching reform still seems a long way off. In the meantime, increasing attention is being given to the ongoing question of the treaty bodies' legitimacy, spurred especially by instances in (p. 21) which their interpretations are perceived to have strayed far from what states originally intended.⁴⁰

1.7 The challenge of evaluating the UN's human rights record

It has been argued that promoting human rights at the UN would be necessary even if it were not particularly, or only very partially, successful. Louis Henkin once hinted at the possibility, for example, that '[i]t may be that the international community could not abandon or desist from pursuing an international human rights program even if doubts as to its efficacy were overwhelming'.⁴¹ Leaving aside the question of whether the elimination of such a programme is still as unthinkable as Henkin suggested, it is surely necessary to go beyond symbolism and undertake a more probing inquiry into the utility and relevance of the UN's work in this area. Emphasizing the UN's symbolic function risks underselling both its potential and its achievements. The question then is how to go about evaluating the performance of an unwieldy entity such as the UN, whose human rights ways are often manifold and mysterious.

While this is an important issue for scholars, it is also of concern to states and the UN itself. States have regularly sought to evaluate what has been achieved, perhaps most notably in the context of the World Conference on Human Rights in Vienna in 1993. Similarly, moves to replace the Commission on Human Rights in 2005 were partly driven by criticisms of its performance and a perceived need, both external and internal, to improve the intergovernmental human rights machinery at the UN. Thus, the UN is not only 'doing' human rights, but also constantly 'evaluating' itself, with more or less success. After all, human rights promotion and enforcement is costly, not so much in financial terms but because of its diplomatic and political costs, including a potential 'opportunity cost' (what the UN could be doing if it was not seeking to promote human rights or not seeking to do so in the way it happens to have prioritized).

Civil society groups have also undertaken some detailed analytical studies of the UN's human rights programmes, but these tend to be focused on one particular activity, such as the procedures of the Human Rights Council,⁴² the universal periodic review,⁴³ petitions systems,⁴⁴ or the functioning of commissions of inquiry.⁴⁵ They also tend to devote little, if any, attention to spelling out the criteria for effectiveness or success.

On the scholarly side, there has been much commentary on various aspects of the UN's human rights activities focusing on its impact and the need for reform.⁴⁶ But there (p. 22) have been few efforts to develop a systematic framework of evaluation. In the 1980s and 1990s, several studies attempted to make sense of the puzzle, viewed from an international relations point of view, of how an organization composed of governments could actually take seriously its mandate to implement human rights.⁴⁷ For the most part, commentary on the UN's overall human rights performance remains limited and segmented. Many authors are

interested in the global human rights regime and only tangentially in the role of the UN in promoting it; many are interested in very specific aspects of the UN's overall activity such as the Human Rights Council or the Security Council, or specific problems therein but adopt a functional institutional approach;⁴⁸ some are only interested in normative developments whilst others focus only on policy; and some focus on the record of states in the UN context rather than the UN itself.⁴⁹ Moreover, many of the studies are surprisingly inconclusive.⁵⁰ There is clearly a gap in the literature in terms of focusing on the UN as an institution committed to human rights in ways that are neither too general nor too narrowly technocratic.

I.8 Methodological challenges

Several fundamental challenges lie in the way of a proper evaluation of the UN's human rights record. We suggest four in particular. The first is the extent to which the UN should be judged by its own criteria of success or by something more objective. Within the UN itself there has tended to be an emphasis upon what might be termed bureaucratic indicators such as the number of pages of documents 'processed', the number of meetings serviced, the number of trips undertaken, or the number of observers and NGOs at meetings. In 2014, the General Assembly concluded its efforts to reform treaty bodies by mandating the UN to assess the future needs of treaty bodies in terms of meeting time and the corresponding level of human and financial resource requirements, based on the number of State party reports and individual communications received and the workload targets specified in the resolution. As a result, a detailed report along with voluminous statistical annexes is now provided to the (p. 23) Assembly on a biennial basis.⁵¹ But while quantitative analyses are useful, it is also important that qualitative assessments should be undertaken. The UN has shown in the past that it is capable of taking a hard look at its own performance, at least in response to crisis situations. This was evident for example when the Secretary-General commissioned two painful lessons-learned exercises on the Rwanda and Bosnia peacekeeping debacles and the deaths that ensued,⁵² and an internal study on the failings of the Organization in the lead up to the end of the Sri Lankan civil war in 2008.⁵³ At the same time, the UN is often inclined to take the credit for developments which might have all too little to do with it directly. It must also balance the concerns of its different constituencies, while at the same time playing down any suggestion that trade-offs are being made. This means that its self-assessments are often a poor guide as to how much has actually been achieved.

Second, a key question is whether to focus on developments within the UN itself or on the actual impact of the UN's activities on human rights in the world. These two approaches might be related, and in a large organization institutional change is often mistaken for real change, as if this or that reform will magically bring about substantive improvement—but they are not synonymous. Human rights could become institutionally more salient in the UN without that necessarily translating into positive human rights impacts on the ground. Too often the accumulation of treaties and norm-setting exercises has been identified as positive when their impact may be negligible. A huge reform such as replacing the Commission and Sub-Commission with the Human Rights Council and its Advisory Committee might amount to little if membership issues cannot be addressed fruitfully and if more productive ways of addressing challenges, including but not limited to violations, cannot be devised. Similarly, the increasing interest of the Security Council in matters of human rights may be a mixed blessing if it crowds out other efforts while doing little. And the addition of new treaty bodies may complicate the task of existing ones and make the overall burden on states less sustainable.

A thorough evaluation of the relationship between institutional achievements and the state of human rights in the world goes far beyond the remit of this book, but we should be wary of equating institutional evolutions with real world change. Even if all of these things could be done better, it would be difficult to link them empirically to actual human rights improvements on the ground. We should be attentive to the fact that more human rights *machinery* does not necessarily translate into more human rights. Having said that, the UN has to start somewhere, and improving its processes may be the only and most concrete thing it can do with a view to producing more human rights (p. 24) compliance. As we outline in the following paragraph, it is not as if ‘everything’ is under the UN’s control.

Third, the challenge of establishing causality is difficult in evaluation in general, and even more so in this domain. It is hard to measure significant long-term impacts on issues such as the treatment of detainees, police harassment, freedom of the press, the fairness of the political system, and freedom of association. Even an immediate change in government or a direct reversal of offending policies may have had little to do with UN measures. Even debates over the impact of the UN’s human rights treaties often seem to be stuck in endless methodological quarrels that make them inconclusive, at least for policy purposes.⁵⁴ But while the UN cannot take all of the credit for the radical improvements in human rights that have occurred in the last fifty years, its share in some of them ought also to be acknowledged.⁵⁵

Fourth, in the case of the UN, things are complicated by the fact that its human rights responsibilities are only ever at best *shared* responsibilities. It is hardly a world government and although many hopes may have been invested in its human rights mandate, its implementation remains for the most part the responsibility of states. This means that almost all failures to implement human rights will involve a significant element of failure on the part of sovereigns. Of course, the UN might also be responsible, most notably when its own policies fail to provide necessary remedies in response, for example, to sexual misconduct by its peacekeepers or the negligent transmission of an infectious disease such as cholera. But one should give unto Caesar what belongs to Caesar and not hold the UN to an impossibly exacting standard that it does not have the means to fulfil. The UN as an organization, thanks for example to the Secretary-General or the High Commissioner for Human Rights, might seek out certain mandates but there are limits to how much it can then be the master of its own destiny. This also applies to human rights ‘successes’, many of which may simply be attributable to national or regional dynamics that operate quite distinctly from the UN, and suggest it often has a residual place when all else fails.

Fifth, an interesting question is whether the UN should be evaluated for what it has done, or for what it has failed to do. Sticking to what the UN has actually done may be too generous to the organization, because it uses the UN’s self-selected frame of reference rather than taking a more objective view of what it might have sought to achieve if it had used its institutional imagination. Missed opportunities, formalist responses, (p. 25) and blindness to issues should all be taken into account if a comprehensive balance sheet is to be drawn up. By the same token, it is true that there is always more that the UN *could* be doing, and it is clearly not responsible for everything that goes wrong in the world from a human rights point of view, especially when matters go beyond its mandate and powers.

I.9 The need to problematize criteria

The UN’s human rights record has been the subject of much casual comment but remarkably little systematic evaluation. Since evaluation is, as the word itself connotes, a value-based undertaking, the starting point for any such exercise must be the identification of the criteria against which an informed and balanced assessment can be attempted. While this is hardly a great insight, it stands in stark contrast to the approach adopted in practice by most of those who have in the past purported to offer an assessment of the UN’s human rights programme. The same criticism also applies in the international organization field

more generally. Thus, for example, the UN system as a whole has been the focus of a series of evaluation exercises in the last decades, both internal and external in nature, but few if any of them have gone beyond vague references to efficiency and effectiveness in describing their criteria for assessment.⁵⁶

One explanation for this failure to specify criteria is the assumption that the Organization's central human rights function is to respond effectively to violations wherever they occur. Leaving aside the question of whether a pre-occupation with gross violations obscures the more preventive and promotional work that should be done, the definition of an 'effective' response is usually not spelled out. Some might be satisfied with a focused discussion in an international forum of any relevant situation, others might insist upon a formal condemnation or at least the establishment of a fact-finding and reporting mechanism wherever appropriate, while still others might be unsatisfied with anything less than the imposition of sanctions or even the mounting of a military intervention designed to restore respect for human rights. Moreover, some will argue that what matters is less the nature of the measure adopted than whether it actually proved to be effective, which is an even more complex question to address, and an especially demanding criterion of effectiveness in contexts that are often close to being intractable.

The differing normative assumptions from which such diagnoses proceed make it difficult to unproblematically evaluate the UN's record. For example, how one sees the UN's human rights performance depends on what kind of balance one thinks (p. 26) the UN should be striking between sovereignty and human rights in the first place. For some, human rights have to be implemented in ways that are respectful of sovereignty and within the parameters of public international law, whilst others insist that human rights ought typically to trump states' prerogatives or else the commitment will amount to little. But even this common binary is problematic, because it neglects the extent to which sovereignty and human rights are hard to separate in this way. Respect for sovereignty, for example, may be interpreted from a human rights perspective as safeguarding international pluralism, peoples' self-determination or democratic deliberation and therefore as hardly anathema to human rights. Deep differences about which human rights ought to be promoted as a matter of priority, in a context where intense differences of appreciation exist around the relative importance of rights, also underlie many of the controversies.⁵⁷ Despite governments' formal commitment to the indivisibility of rights, different groups of countries consistently push for the overarching importance of certain rights at the expense of others.

The often intensely political character of rights controversies suggests that it may be difficult to adopt an accepted standpoint from which to unproblematically evaluate implementation and compliance. But it is better to accept such complexity rather than to pretend that it is not there. For example, the emphasis on freedom of expression by some may clash with the perceived undermining of freedom of religion by others; the claimed need for intervention to defend populations will be in tension with respect for the rights of those who stand to be negatively affected by such an intervention; civil and political rights may be presented as in tension with economic and social rights or the right to development, and more generally individual with collective rights. These tensions are no doubt potentially productive, but they are tensions nonetheless and suggest that there will often be at least two sides to any human rights 'story'. This book reflects the understanding that what counts as a human rights achievement on the part of the UN will inevitably be susceptible to varying interpretations. The various contributors to the volume thus stand for a range of views on what counts as human rights 'progress'.

Evaluating the effectiveness of efforts to promote human rights also involves taking into account major disagreements about strategies for implementation. Should human rights be promoted through dialogue or should they be upheld by force? Should the cardinal principle be to get states 'on board' via their consent or to dynamically coerce laggards into joining the mainstream? Should the foremost goal be equal and consistent treatment of all states,

or taking advantage of majorities and coalitions to enforce human rights where and when one can? How far should the opening to and association with civil society go? Should the UN focus on general principles and thematic studies, or actually look at particular states and their records? These differing options will have a major and direct influence on the outcome of any evaluation exercise. None (p. 27) of them is necessarily more 'human rights oriented' than any other; rather, all seem to proceed from quite different conceptions of the ends and means of international action in favour of human rights. It is worth underlining that the more 'forceful' interventions in favour of human rights may not necessarily be the most efficient in given contexts and might even in some cases backfire. To make matters more complicated, of course, any number of these positions may be held by states or non-state groups or the UN itself in ways that are opportunistic or inconsistent over time.

This highlights a fundamental tension between more consensual and more confrontational approaches to human rights implementation, both of which have their merits. Should the goal of the international human rights regime be to develop standards that are firm and consistent, leaving it to others to ensure they are enforced? Or should the UN itself be involved in actual protection of human rights, at the risk of inconsistency and perhaps watering down of the standards? This is the central paradox of human rights institutionalization, in that 'power' is needed to be able to enforce the law but human rights risk being absorbed and instrumentalized by that power. In effect, the UN has unmistakably moved in the direction of protecting human rights even if that means interfering with the sovereignty of at least some states. In the process, however, it has often settled precariously in the middle, with procedures such as fact-finding and reporting which are better than nothing but might also be chronically disappointing from the point of view of rights protection.

An even deeper problem may be that not even 'effectiveness' is necessarily an unproblematic criterion against which to measure the UN's human rights record. Effectiveness in promoting or enforcing ill-conceived or problematic human rights standards is unlikely to be a net gain for the human rights project. There is a deep normative dimension to promoting human rights which suggests that getting their interpretation and definition right is at least as important as making sure that these definitions then make their way into the world. Standard setting, therefore, is not just the first step in a movement wherein implementation is the most important, but a crucial part of what makes international human rights what they are. Moreover, it is a step that is in a sense constantly taken since the content and interpretation of rights are constantly being developed through implementation.

Moreover, the emphasis on effectiveness and a sort of 'command and control' approach to implementation may gloss over the complexity of what is at stake. As the more sophisticated constructivist theories of international relations and law suggest, what matters is not simply how binding norms are considered, but the extent to which they quite literally 'constitute' actors and behaviour through socialization and acculturation.⁵⁸ In that perspective, for example, the fact that states increasingly shape their criticism of each other or justification of their actions in human rights terms may be as significant as whether human rights are 'enforced' for the benefit of individuals. (p. 28) Indeed, the UN has been credited for the largely symbolic—but still, one would think, momentous—achievement of bringing about 'a revolutionary change concerning the place of human rights in world affairs'.⁵⁹ At the same time, too optimistic a take on human rights' structuring role in international affairs may sound abstract and apologetic, especially if human rights are seen to reinforce the existing status quo rather than displace it.⁶⁰

It is also important to relativize the efficiency criterion by noting that what matters is not only what the UN achieves but *how* it achieves it. To take an obvious example, even though an authorization to use force by the Security Council may be highly sought after as part of a last-ditch attempt to prevent atrocities, how that use of force is justified and then supervised and conducted will matter considerably to the perceived legitimacy and credibility of the organization and the strength of any resulting precedent. Although the Human Rights Council can validate strong allegations against a government, it matters that it does so in ways that seem relatively impartial and avoids the perception of one group of states ganging up on another. What some might consider to be a progressive and otherwise helpful interpretation of the content of a right by a treaty body might also do a disservice to the right in question if the reasoning is weak or fails to take account of issues raised by persuasive dissenting opinions.⁶¹ Values such as universality, impartiality, consensus or transparency all have their importance for human rights in a context where the international push and shove of the UN constantly puts them at risk.

Crucially, how one evaluates the UN's record may depend on what one's implicit comparator is. For example, the UN's human rights project is certainly relatively 'thinner' in some respects than regional ones: one could point out, for example, that there is no 'international human rights court' comparable to the regional ones (although there is certainly talk of one, which suggests that some see the regional models as in some ways setting the standard for the universal). But this is also because the *scope* of the UN's human rights endeavours are considerably broader than that of other organizations: they involve almost 200 states with highly diverse interests and positions, cover the whole range of conceivable rights, and have to work through a vast institutional structure that is simultaneously pursuing a variety of competing goals. It would thus be unfair and not particularly helpful to compare the UN's human rights project, for example, to that of the Council of Europe. Doing so, however, can help problematize both normative issues (how far for example should international human rights policy defer to the pluralism of states?) and enforcement ones (how well is the UN doing compared to, say, the inter-American human rights system?).

(p. 29) I.10 Proposed framework

Despite the difficulties, the identification of at least some methodology is an indispensable prerequisite to any sustained attempt at evaluation that aspires to be taken seriously. There is an urgent need for more creative and empirical research to be undertaken to explore the advantages and disadvantages of different approaches. It might be asked how academic observers have sought to overcome these problems. The principal answer has to be that they have not. Indeed there have simply not been enough studies, let alone enough studies adopting the same criteria, to provide a basis for any meta-analysis of the literature. Moreover, and for the most part, as noted earlier, too many evaluations have been produced without any detailed attempt to specify the criteria, benchmarks or assumptions on which they are based. For example, one book identifies 'enforcement' as the goal of the international human rights regime but then defines enforcement as 'comprising all measures intended and proper to induce respect for human rights.'⁶² Perhaps not surprisingly, the resulting approach to evaluation confuses promotion and enforcement in ways that are not especially informative. Clarifying and specifying what the UN actually does is the best way to make sure that one does not credit it for things it could not have done, but also making sure that credit is given where due.

In this section, we develop a broad framework for critically appraising the record of the UN as a whole when it comes to human rights, and for each specific body or mechanism. It is crucial to properly determine the scope and nature of the UN's human rights mission, in order to ensure that one does not assess it by reference to either an impossibly high standard or excessively undemanding criteria. This should then open up the possibility of a

more systematic evaluation of how well the UN has fulfilled what might legitimately be expected of it. Much of the foregoing analysis has aimed at identifying the shortcomings of some of the evaluative frameworks that have been used in different contexts to appraise the UN's human rights programme. The message is not that they are all fatally flawed and nor is it that there is any particularly scientific means of arriving at an appropriate set of criteria. Rather, it is that serious consideration needs to be given to such criteria as a prelude to any evaluation and that the criteria being applied should be spelled out.

I.11 Asking the right questions

Short of a unifying theory to evaluate the UN's human rights record, there may be a number of questions to be asked in order to take the proper measure of the scope of the regime. Much of the academic literature can be argued to have converged around five key questions: Who? When? What? For Whom? and Why? Addressing these questions (p. 30) (in no necessary order) and understanding how they affect the evaluation of the UN's record can at least help understand both the object of study and the distortions imposed by various approaches.

'Who' are the key actors in relation to human rights in the UN context and who generate understandings of their contributions? We have already introduced the distinction between treaty and Charter bodies, but in itself that does not tell us much about their relative importance. Where is the leadership? Does it come from the Human Rights Council? The Security Council? Or perhaps the combined normative power of all treaty bodies put together? Does it come from Geneva, New York, or field missions? Human rights discourse and norms tend to emanate from all parts of the United Nations these days, so much so that it is difficult to know for sure who speaks for the organization on the topic. In a given context, should we be paying more attention to the Secretary-General, the High Commissioner, a treaty body, or a Special Rapporteur, especially if all have made relevant pronouncements? Understanding the institutionally localized character of many human rights assessments can help us evaluate them. Even the most obscure human rights body may occasionally have significant influence (think for example of the role of the ECOSOC in granting status to NGOs), despite the fact that a mixture of functional specialization (human rights specific bodies as opposed to bodies with general mandates) and raw power (the Security Council as opposed to treaty bodies) deeply condition what can be expected from any given body. Moreover, the more or less technocratic, expert, or political character of these bodies will influence their own assessment of the UN's human rights output.

'When?' raises the issue of the appropriate time frame. The UN's human rights project is generally considered to have begun with the adoption of the UN Charter in 1945 or the Universal Declaration in 1948. By almost any measure, considerable institutional, political and legal progress has been achieved since then. But very different time frames could also be chosen, by opting to focus on a particular set issue (such as children's rights, or the rights of persons with disabilities), or a specific body (such as the Human Rights Committee, or the Council's Universal Periodic Review), or a particular country situation (such as apartheid in South Africa, or the occupation of the Palestinian territories). The time frame chosen is also going to be important depending on how the inquiry is framed. For example, if the criterion chosen is the responsiveness to gross violations, a focus on the 1960s and 1970s when the UN's response to violations was essentially limited to criticizing the unholy trinity of South Africa, Israel in respect of the Occupied Territories, and Chile, the overall assessment will not be strong. But if the focus is on institution building and one starts with the end of the Cold War which 'liberated' the UN to expand its approach, then the creation of the post of High Commissioner for Human Rights in 1993 is a high point, despite the fact that the office took a number of years to exert its influence. Similarly, a

focus on major turning points such as the terrorist attacks on the USA on 11 September 2001, or the 'Arab spring', will yield very different assessments.

'What?' refers to the types of activities in which the UN is involved. What lies on the spectrum between the traditional extremes of 'promotion' and 'protection'? What (p. 31) weight should be given to certain types of activities over others? How do we rank the importance of the latest General Comment by a treaty body, a General Assembly resolution calling for non-discrimination against a reviled group, a Security Council resolution mandating a new international administration to uphold human rights, or a promotional initiative taken by the High Commissioner? The reality is that the UN acts in many and varied ways and in some respects the power of its machinery lies in the diversity of its mechanisms. When one avenue is blocked, another might be able to function effectively. Being attentive to the UN's diversity of modes of intervention and the extent to which each can be tailored to the exigencies of particular situations is crucial.

The question 'for whom?' poses an immediate problem in terms of the human rights regime. The outcome of the evaluation will be radically different depending on whether the standpoint adopted is primarily that of the victims of violations, human rights activists, governments, UN officials, or the media. *Who* cares that the UN is not doing enough to uphold and defend human rights? Criticism has come from states, human rights NGOs, the press, social media, members of the general public, scholars, and also from the UN itself.⁶³ But their perspectives might be radically different. States might worry about a loss of credibility, but also about the risk of being criticized, whereas others will be concerned because the interests of the victims are being ignored or misrepresented.

Finally, the question 'why?' will be answered rather differently by a victim, an academic, an activist, a government minister, or an international official. The answers might range from a general quest to gain a better understanding of modes of international cooperation, or a desire to increase efficiency defined in managerial terms, through a focus on remedies and reparations, to a desire to ensure an immediate and productive response to all future reports of alleged violations. This book is interested in these questions from a conceptual rather than an instrumental or policy perspective and thus does not purport to present explicit recommendations as to how the system could work more effectively. The question of how the UN system and its component parts work is already a very rich one and is an essential preliminary one for more policy-oriented inquiries.

I.12 Identifying the benchmark(s)

The preceding analysis has helped to narrow down the inquiry, but it still does not tell us what exactly should be evaluated. One tempting approach is simply to evaluate the UN by its own standards and proclaimed objectives. This at least avoids the accusation that one is projecting ambitions on the UN that it does not share. From a legal perspective, (p. 32) the standards are what they are and they do set a certain horizon of achievement. One might therefore hope to escape endless debates about the UN's record by at least holding it to its word. The problem is that the 'system' per se does not exist in such terms and its component parts are not always clear about what they aspire to, or only spell out their goals in the most general of terms.

In the case of the principal Charter-based organs, for example, the terms of the Charter provisions give little practical guidance for the purposes of evaluation and the constituent instruments may not be a great deal more helpful. The Human Rights Council, for example, is 'responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.'⁶⁴ Similarly, the High Commissioner for Human Rights is tasked with the rather ambitious mission 'to promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights'.⁶⁵ At that level of generality it may seem that

those bodies have responsibilities that are so vague that it is difficult to set the terms of any meaningful evaluation, let alone one that would yield interesting results.

Nevertheless, being attentive to the wording of UN mandates is also extremely important and something can be gained by taking the terms of actual mandates seriously. Whilst 'promotion' may involve a host of activities that are not directly related to the actual state of human rights in the world, a mandate to 'protect' human rights suggests something that is much more focused and connected to ongoing human rights threats. But such a mandate can only be pursued within the overall framework of UN activities and must take account of the limitations and constraints that apply to actions by the relevant UN bodies.

Nevertheless, various bodies and actors who have chosen to take their mandates to heart have been able to make significant impacts, regardless of the expectations and constraints applied to them.

The position of the observer is also crucial to how human rights realization is assessed. Is the observer committed to human rights and/or to the goals of the United Nations? Is their background in practice or theory, law or political science, domestic or international human rights? What is their gender, race or ethnicity, nationality? In editing this volume we endeavoured to assemble a diverse cast of contributors, bearing in mind that interest in and expertise on human rights at the UN was a prerequisite which limited the options to a degree. But we recognize that situationality bears on all analysis, especially on a matter as complex and multi-faceted as the global promotion of respect for human rights.

In that respect, eschewing unrealistically high expectations may help avoid the mistake of thinking that the UN is doing worse than it is, just as not setting one's ambitions too low may enable a critical distance. Much will depend on whether the focus is on processes or outcomes, on the underlying theory of what the UN should be doing, and on what might count as success in that respect. If one thinks that the UN is there to (p. 33) 'enforce' human rights against states, then one may end up being chronically disappointed. The point is not that one should lower the standard artificially so that the UN may pass muster, but that there are significant constraints on what it could reasonably aspire to achieve.

Thus the basic methodology for evaluating the UN's performance should combine both a more idealistic (comparing the UN's machinery to what could have been) and a practical (looking at how the actual machinery is evolving) component. As a starting point, it might be instructive to imagine how to build up the UN's human rights machinery from scratch if one were hypothetically not hamstrung by existing institutional constraints. A non-bureaucratic and truly probing evaluation would take as its starting point some vision of the arrangements required in order to promote human rights consciousness and to prevent human rights violations to the greatest extent possible. The existing UN and other arrangements would then be compared with that benchmark rather than assessed on their own bureaucratic, institutional, and realpolitik terms. While such an exercise will undoubtedly be of limited utility to address the quirky institutional puzzles of the moment, it may be useful as a sort of counter-factual.

It will probably come as no surprise that some elements that one might deem as necessary have in fact made their way into the actual human rights machinery; but it will also be the case that some crucial elements are absent in the system. It can be argued that a strong regime of human rights promotion needs to fulfil a number of functions: (i) it should be based on a certain legitimacy and authority to promote human rights; (ii) it should have strong deliberative capacity allowing its key constituencies to have their voice heard; (iii) it should be able to generate expertise on and authoritative adjudication of human rights standards; (iv) it should be active in the promotion of human rights; (v) it should have some capacity for implementation and enforcement of human rights standards, and (vi) it should

itself be capable of abiding by human rights and certainly not making situations worse through its own actions.

Looking at it this way, one might point out that the distinction between Charter and treaty bodies is not just a fortuitous and idiosyncratic by-product of the UN structure but also responds more deeply to the need, particularly in such a heterogeneous international setting, to have both intergovernmental and more impartial expert inputs into the discussion. Given the range of challenges, the UN needs both political bodies and special investigative mechanisms to deal with large-scale human-rights violations, and more deliberative bodies to undertake reviews of the extent to which laws and policies in countries across the board comply with international obligations. Even the duplicative overlap between the Universal Periodic Review and reporting to the treaty bodies is more apparent than real: one could make the argument that states need broad brush criticism from their peers, as well as treaty-specific feedback from impartial experts.⁶⁶ At any rate, the coexistence creates potentially productive dynamics.⁶⁷ At the same (p. 34) time, if the UN is measured against what could have been, it will inevitably be found wanting. For example, the sometimes deep politicization of Charter bodies, or the chronic delays of the treaty bodies, are hard to square with any ideal vision of a system of human rights promotion and protection.

To complement this approach, it will also be necessary to realistically start with the system as it is and to look at what could be improved. Would-be reformers often have to face up to the reality that there is no choice but to deal with the complexities and idiosyncrasies of what actually exists. Such valuing of the status quo becomes even more attractive in an era in which the United States is no longer supportive of multilateral human rights institutions, Western Europe is pre-occupied by its own problems, China and Russia are fully engaged but pursuing quite different agendas, and countries of the Global South are at best ambivalent, if not on the offensive against the UN's approach, as in the case of countries like Brazil and the Philippines. In such a context, the idea that constructive reforms be pursued might look like an invitation to overturn the *acquis* and set the agenda back very significantly. Such a realist approach to the UN's human rights project is not inconsistent with the more idealistic vision outlined earlier.

I.13 Conclusion

There is a tendency for those assessing the UN's human rights record to be either highly congratulatory or entirely dismissive. Many of those who work within the system tend to adopt the former approach and seem never to tire of citing its many institutional and procedural achievements as evidence that there has been great progress in terms of respect for human rights. The creation of a new committee, the adoption of another resolution, the holding of another UN panel or conference, or the publication of another report, are all treated as contributions that inevitably move the cause forward. The opposite approach is sometimes adopted by critics. Philip Allott, for example, has claimed that after 1945 the 'idea of human rights quickly became perverted by the self-misconceiving of international society. Human rights were quickly appropriated by governments, embodied in treaties, made part of the stuff of primitive international relations, swept up into the maw of an international bureaucracy.' In sum, he concluded that 'the deterrent effect of bureaucratized human rights is negligible'.⁶⁸

But neither of these extremes is capable of capturing the complexity, the contradictions, and the nuance of what has and has not been achieved by the multiplicity of UN actors whose work is surveyed in this volume. Even leaving aside the fundamental problem that any talk of 'the UN' in such a discussion inevitably blurs crucial distinctions among officials, independent experts, governments, and others, the (p. 35) outcome of any attempt at assessment will depend largely on the starting point. If one focuses only on institutional developments, the image may be of an organization constantly reinventing itself. But

focusing only on such formal outcomes risks obscuring the real debate over actual impact in terms of enhanced respect for rights. At the same time, as noted above, new initiatives should not automatically be denigrated, especially given the inertia and resistance that must be overcome before they can be adopted. It will at least sometimes be reasonably assumed that purely administrative changes will eventually percolate (one hesitates to say 'trickle down') to their intended beneficiaries.

In other words, there is often a glass half-full/half-empty quality to these debates, some focusing on what has been achieved and how far the UN has already come given previous neglect of human rights, and others forever deploring missed opportunities. Which is closest to the truth? What are we to make of the UN's human rights record? It seems that only a holistic and system wide evaluation of the UN's human rights machinery can do justice to it. It is also important to ensure that the focus on the UN's performance in holding states to account does not distract attention from the urgent issue of confronting human rights violations for which the UN itself is responsible.⁶⁹

Overall, what matters most is how all of the various pillars contribute to the whole: how do the political, expert and technocratic dimensions of human rights at the UN operate together (or not)? This book thus treats the Charter-based and treaty-based organs as well as the UN's own institutional efforts at mainstreaming human rights as parts of a single integrated programme. This may be granting the UN more unity of purpose than it deserves, but in the end it is a single international organization with many facets.

The chapters that follow appraise the achievements and shortcomings of each of the various UN organs which play a major role in human rights terms. They take stock critically of developments in a context where progress cannot be taken for granted but should be acknowledged if and when it occurs. Because UN organs are so different, no single template will work to evaluate their records. The achievements of the Security Council and the Committee on Economic, Social and Cultural Rights, for example, cannot be evaluated using the same approach. Moreover, the tools and criteria used in each case are likely to reflect certain biases, but the real challenge is to acknowledge these rather than pretending that they do not exist. It is to be hoped that each of the following chapters provides the essential raw material required to evaluate the relevant body and to broadly assess its contribution.

If the basic question is whether the UN should be involved in human rights promotion, then the answer is a definite 'yes.' The only finding that would specifically argue against more UN human rights involvement is if such efforts actually positively undermined human rights. The sheer diversity of efforts undertaken by the UN in favour of human rights, their obvious impact on victims in at least some cases, and their contribution to the development of international human rights law, are all significant. (p. 36) However, there is limited reason to celebrate. The problem lies less in what the UN has done than what it could have done better or more of. And the sometimes deep disagreements that emerge at the UN over human rights—over the frontiers of racism and freedom of expression, the possibility of intervening militarily to protect rights, the existence of distinct civilizational approaches to human rights, or the threats posed by extreme poverty and extreme inequality—are in constant danger of belying the actual universality of rights.

The unavoidable conclusion is that it remains essential to see the UN as an important arena in the struggle to promote and protect human rights. Even if it might not have been a good idea in the first place to mix intergovernmentalism and human rights, the fact is that the UN is now highly invested in human rights. 'Speaking human rights' within the United Nations, but also to it, is a way of shaping the organization. And there are significant potential rewards to harnessing the UN's power to advance human rights goals. The UN commands considerable leverage over states, a leverage that is unlikely to come from any other organization, especially for those states—which are still quite numerous—that do not

fall under the jurisdiction of some regional human rights mechanism. To not invest in shaping the public discourse of the organization may be to let others do so. More often than not, the UN provides the setting or context in which broad human rights policy is shaped, and one would ignore it at one's peril. Although the UN has many faults, they are there to be remedied.

Although this book is primarily about how different UN bodies have fared in holding states to account for their human rights performance, it is also important to consider how the UN itself has changed as a result of its engagement with human rights. This engagement should give rise to sustained reflections about what sort of international organization it wants to be. Should it be primarily an organization involved in facilitating intergovernmental coexistence and cooperation, or should it be willing to pursue common, substantive ideals, about what constitute fair societies? If human rights do increasingly provide a sort of blueprint for fair societies, how might one go about deploying them universally in ways that nonetheless still respect the important, albeit increasingly vague, principle of sovereignty? These are, needless to say, debates on which the member states have quite radically different views, and so the human rights project at the UN has always existed in tension with inter-state politics. But the UN, as an international organization, is more than simply the sum of the states that are party to it: it also clearly has an identity and perhaps a vision of its own. Thus despite the inevitably deeply contradictory aspirations of member states, the question remains as to what the UN itself can do to advance respect for human rights.

Footnotes:

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