

Introduction

One of the great questions of international affairs is how to promote respect for universal principles of human rights in a world where sovereign states can be persuaded but rarely compelled to do the right thing. Over the decades following the atrocities of World War II, the international community constructed a house with a strong foundation of universal norms that place the individual's right to human dignity at the center. To give meaning to this concept, states adopted treaties that defined the scope and content of a wide variety of political, civil, economic, social, and group rights. Having lived through the horrors of a global war that left millions of victims in its wake, states chose to bind themselves in a web of agreements that regulated and limited their powers to infringe those rights. Working through the United Nations and a number of regional organizations, they forged a variety of tools to monitor how states implement their obligations and to assist, cajole, and demand protection of such rights in real time. Building this house was one of the great accomplishments of the second half of the twentieth century.

Yet there is no shortage of emergencies that test and even threaten the foundations of this structure. From the impunity of a sitting president like Omar al-Bashir of Sudan for genocide in Darfur to the killing sprees led by notorious indicted criminal Joseph Kony of the Lord's Resistance Army in central Africa, the international community confronts a painfully long list of human rights violations on a daily basis. One of the most critical human rights challenges of this century, therefore, is to ensure that this house, so laboriously built over years of struggle, functions effectively to shelter those who need protection from discrimination, abuse, and violence. To do this,

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we need to ask and answer a seemingly simple question: What actually works when it comes to international promotion and protection of human rights at the national level, where rights and realities intersect? This book seeks to answer that question as it relates to one critical piece of the United Nations human rights system: the independent experts mandated by governments to report on how states respect human rights in practice, otherwise known as the “special procedures.”

The book comes at a time when the main forum that states have established to negotiate these questions, the UN Human Rights Council (HRC) in Geneva, continues to face intense scrutiny. For a variety of reasons, most notably the high political sensitivity of human rights, the council serves as a battleground for shaping a state’s reputation at home and abroad. The recent outpouring of protests from Sri Lanka against any council action regarding its bloody defeat of the Liberation Tigers of Tamil-Eelam is a reminder of the stakes involved when a government’s human rights record comes under the international microscope.

Created in 2006 after a contentious debate about the shortcomings of the predecessor Commission on Human Rights, the HRC remains a work in progress. Key features of the old commission, such as the independence of the special procedures and of the Office of the High Commissioner for Human Rights, were preserved. Resources to deploy human rights monitors to the field were expanded, and a new universal peer review mechanism to evaluate each country’s human rights record was created. A process encouraging competitive elections for seats on the council was established, resulting, for the first time, in defeats for certain candidates with bad human rights records (for example, Iran, Venezuela, Sri Lanka, Azerbaijan, and Belarus), although others with similar records continue to be elected (for example, Cuba, China, and Saudi Arabia). The Human Rights Council retained the authority to address country-specific situations and to convene special sessions to examine urgent cases.¹

But some member states, particularly those with bad human rights records, continue to oppose strongly the principle of country scrutiny while simultaneously supporting certain long-standing exceptions like Israel, which is subject to an open-ended mandate on the occupied Palestinian territories and often biased treatment. The campaign to use the HRC as a platform for the Palestinian cause, and Israel’s refusal to cooperate with its resolutions, feeds a belief, particularly in the United States, that the council is beyond repair. If this narrow concern is acted on, it will be a tragic mistake for the larger cause of human rights.

After some deserved disappointment with its actions, and inaction, in its first two years, a period when the United States virtually walked away from the table, the council appears to be turning an important curve—away from pointless debates about whether it has the authority to criticize countries (it clearly does) and toward specific actions in a range of cases, from the historical change sweeping the Arab world to entrenched conflicts in North Korea, Myanmar, and Côte d’Ivoire. These include the rapid suspension of Libya as a member of the council when violence erupted there in February 2010; the dispatch of special fact-finding teams to investigate human rights abuses in Libya, Syria, and Côte d’Ivoire; the creation of a new special rapporteur to address denial of rights in Iran; the end of a damaging campaign to elevate “defamation of religion” to a human rights principle; and the opening of unprecedented debates on the rights of lesbian, gay, transgender, and bisexual people.

These more assertive steps did not happen by accident. The Human Rights Council, after all, is composed of governments, many of which have every interest in deflecting attention from any international monitoring of domestic affairs. But an increasing number of members are joining coalitions composed of traditional protagonists like the United States and Europe along with emerging democracies from Latin America, Africa, and Asia that support more, rather than less, international scrutiny of rights violations. The Arab Spring of 2011, in no small measure, appears to have been the spark to move states away from traditional noninterventionist posturing toward serious action to deal with real problems in real time. It probably helps that some of the states that are most antagonistic to the UN’s human rights mandates have been denied seats on the HRC thanks to a reformed elections process that takes into account a candidate’s human rights credentials, while states like Libya, Egypt, and Pakistan have become more muted in their objections since undergoing their own process of change. Other forces—an increasingly networked and organized international human rights movement, greater public exposure of human rights crises, and the concern of more-democratic governments with public opinion in their countries—may portend a new era in which governments feel more compelled than ever to take steps to deal at least with the most urgent situations.

When the time comes to reach for the tools that would make a difference, the international community quickly runs into the tangle of legal, bureaucratic, and outdated pipes and wires that keep the UN house running year after year. The human rights treaty bodies, for example, which review the legal commitments states have made to promote a range of human rights, are

slow and cumbersome, and too many states ignore their decisions. Political resolutions that condemn violations may be massaged for months and ultimately watered down to have little effect or blocked entirely, as can be seen in the case of the Assad regime's brutal attacks in Syria. The International Criminal Court may issue indictments but has no power to arrest.

The UN special procedures have become, over time, the bricks and mortar that have helped keep this house standing. These are the men and women appointed by states to monitor, analyze, and report on the whole spectrum of human rights problems. Dramatically underresourced and faced with a host of external and at times self-imposed challenges, these dedicated independent experts nonetheless carry out the unheralded legwork that the system has come to depend on for credible reporting and advice. Understanding how and why they have been effective at both the national level and within the larger UN architecture, and on that basis how to strengthen them, is the subject of this book.

Starting in June 2009, I led a team of researchers at the Brookings Institution's Foreign Policy Program in carrying out research on this cornerstone of the United Nations human rights system. The term *special procedures* refers to the special rapporteurs, special representatives, independent experts, and working groups mandated by the UN's political bodies to monitor and report on human rights violations and to recommend ways to promote and protect human rights.² Some investigators are mandated to focus on a range of alleged violations committed within a specific country, for example, North Korea, while most are tasked with addressing the status of a particular human rights issue worldwide, for example, freedom from torture. United Nations member states created these mechanisms more than forty years ago to serve as independent eyes and ears evaluating the application of international human rights norms to concrete situations like apartheid South Africa and military-ruled Chile. Since then, after many decades of hard labor and deft diplomacy, they have mushroomed into an ecosystem that stretches into practically every corner of the human rights agenda.

The special procedures carry out their mandates by undertaking fact-finding missions to countries of concern; issuing communications, including urgent appeals, to governments and requesting corrective action; calling public attention to specific violations; elaborating on human rights norms; and providing periodic reports to the HRC and the General Assembly. They operate as critical nodes in the larger UN system composed of treaty bodies, political resolutions, the High Commissioner for Human Rights, technical assistance, and field offices, connecting to each part in different and unique

ways. They serve as the main entry point into this system for victims and human rights defenders in every corner of the world, offering a practical forum for the promotion and protection of human rights. By most accounts, they have played a critical role in shaping the content of international human rights norms, shedding light on how states comply with such norms, and advancing measures to improve respect for them. They are considered by many to be, in the words of Secretary-General Kofi Annan, “the crown jewel of the system.”³

Despite their well-deserved place in the international human rights architecture, there exists no comprehensive public study of the contribution these key mechanisms have made to implementation of international human rights standards at the national level, leaving a gaping hole in the human rights and foreign policy scholarship that impoverishes debate on the value of the UN’s human rights system. This debate has intensified with the creation of the Human Rights Council in 2006 and continues even after member states completed the five-year review of the council in 2011.

The purpose of this book, building on the Brookings report entitled *Catalysts for Rights: The Unique Contribution of the UN’s Independent Experts on Human Rights*, released in October 2010, is to assess what role the special procedures play in promoting human rights at the national level, to explain the factors that shape their effectiveness, and to recommend steps for strengthening them. Based on months of original research in the field and data gleaned from thousands of reports and communications between rapporteurs and governments, this book tells the story of the difference this unique system of independent experts can make to the human rights project. A list of advisers to the study appears in appendix A.

One important objective of this book is to advance the debate in the United States and abroad about the role of the United Nations in furthering its own principles by examining the effectiveness of one of the system’s most important and prolific mechanisms. It is hoped the results will enable policymakers, legislators, and the general public to make more informed decisions concerning the costs and benefits of policy decisions that affect the UN’s human rights regime.