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RIGHTS** POLICY

Human Rights Standards: Learning from Experience

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the International Commission of Jurists &
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This report is available from:
International Council on Human Rights Policy
48, chemin du Grand-Montfleury
P. O. Box 147, 1290 Versoix
Geneva, Switzerland
Phone: +41 (0) 22 775 3300
Fax: +41 (0) 22 775 3303
ichrp@ichrp.org
www.ichrp.org

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The report is based on short papers prepared by:

Rachel Brett	Representative for Human Rights and Refugees, Quaker UN Office. <i>Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.</i>
Julian Burger	Senior Human Rights Officer, OHCHR. <i>Draft United Nations Declaration on the Rights of Indigenous Peoples.</i>
Param Cumaraswamy	Vice-President, International Commission of Jurists; Former Special Rapporteur on the Independence of the Judiciary. <i>Bangalore Principles on Judicial Conduct.</i>
Caroline Lambert	Independent consultant. <i>Open-Ended Working Group to consider options regarding the elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.</i>
Grainne O'Hara	Protection Officer, Department of International Protection, UNHCR. <i>Standard-setting processes at UNCHR.</i>
Martin Scheinin	Director, Institute for Human Rights, Åbo Akademi University. <i>Declaration of Minimum Humanitarian Standards.</i>
Lee Swepston	Human Rights Coordinator, International Labour Organization. <i>Adoption of Standards by the International Labour Organization: Lessons and Limitations.</i>
Wilder Tayler	Legal and Policy Director, Human Rights Watch. <i>Note on Standard-Setting in the Inter-American System of Human Rights Protection.</i>

Theo van Boven	Professor, University of Maastricht; former Special Rapporteur on Torture. <i>Draft Principles and Guidelines on the Right to a Remedy and Reparation.</i>
Kirsten Young	Director of Rights and Advocacy, Landmines Survivors Network. <i>Participation and Partnership: A Rights-Based Approach to a Weapon's Legacy.</i>

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Minelik Alemu	Ministry of Foreign Affairs of Ethiopia
Robert Archer	International Council on Human Rights Policy
Luis Alfonso De Alba	Permanent Mission of Mexico to the UN in Geneva
Mariette Grange	International Catholic Migration Commission
Nicholas Howen	International Commission of Jurists
Anuradha Mohit	National Commission on Human Rights, New Delhi
Betty Murungi	Urgent Action Fund-Africa, Nairobi
Sir Nigel Rodley	Member, the UN Human Rights Committee; Professor, Essex University
Ian Seiderman	International Commission of Jurists
Maria Stavropoulou	UNHCR, Athens
Ulrika Sundberg	Permanent Mission of Sweden to the UN in Geneva
Mark Thomson	Association for the Prevention of Torture
Patricio Utreras	Permanent Mission of Chile to the UN in Geneva

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Hina Jilani	Special Representative of the Secretary-General on Human Rights Defenders
Bacre Ndiaye	Director, New York Office of the UN High Commissioner for Human Rights
Sir Nigel Rodley	Member, the UN Human Rights Committee; Professor, Essex University
Ulrika Sundberg	Permanent Mission of Sweden to the UN in Geneva

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Note on Referencing

At first mention in each chapter, a human rights standard is generally given its full title (usually with its acronym or abbreviated name, and the adoption year in brackets). Standards are subsequently referred to by their acronym or abbreviated name. For example: *Universal Declaration of Human Rights* (UDHR, 1948). All human rights standards mentioned in the text (with their short names in brackets) are listed in Appendix I.

INTRODUCTION

The adoption of the *Universal Declaration of Human Rights* (UDHR) in 1948 paved the way for the creation of an unprecedented number of standards to protect human dignity.

The most significant are the *International Covenant on Civil and Political Rights* (ICCPR, 1966) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1966), which provided the foundation of the international legal framework that protects human rights.¹ These two Covenants together with the UDHR form the *International Bill of Human Rights*. Other major human rights treaties include the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD, 1965); the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1979);² the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT, 1984); the *Convention on the Rights of the Child* (CRC, 1989);³ and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICMW, 1990). Dozens of other documents have been adopted on issues as varied as the treatment of prisoners and consent to marriage.

The Cold War was at its height when the Covenants were drafted, and this influenced their negotiation. After the UDHR, the United Nations (UN) adopted no global human rights treaties for almost two decades.⁴ Though many new standards were created following adoption of the Covenants, major political divisions, including the Cold War and frictions between North and South have regularly influenced the negotiation of new human rights standards.

Over the same period human rights received attention in other forums and at regional level. The International Labour Organization (ILO) adopted numerous human rights conventions on non-discrimination, forced labour, child labour, freedom of association and collective bargaining, and indigenous and tribal populations. Regional organisations also developed many standards. Major human rights treaties adopted under the auspices of the Council of Europe include the *European Convention for the Protection of Human Rights and*

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- 1 The Covenants entered into force in 1976.
 - 2 *An Optional Protocol to the Convention on the Elimination of Discrimination against Women* (OP-CEDAW) was adopted in 1999.
 - 3 This Convention has two additional protocols, the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts* (OP-CRC-AC, 2000) and the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (OP-CRC-SC, 2000).
 - 4 This said, the *Convention on the Prevention and Punishment of the Crime of Genocide* was adopted in 1951 and CERD in 1965 (one year earlier than the Covenants) and other global organisations, such as the ILO, adopted human rights treaties during this time.

Fundamental Freedoms (ECHR, 1950), the *European Social Charter* (ESC, 1961), the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (ECPT, 1987) and the *Framework Convention for the Protection of National Minorities* (Convention on Minorities, 1994). For its part, the Organisation of American States adopted the *American Declaration of the Rights and Duties of Man* (1948),⁵ the *American Convention on Human Rights* (American Convention, 1969),⁶ the *Convention to Prevent and Punish Torture* (1985), the *Convention on the Forced Disappearances of Persons* (1994), the *Convention on the Prevention, Punishment and Eradication of Violence against Women* (1995), and the *Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities* (1999). The Organisation of African Unity, now the African Union, adopted the *African Charter on Human and Peoples' Rights* (African Charter, 1981),⁷ the *Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969) and the *African Charter on the Rights and Welfare of the Child* (1990).

The value of this work is undeniable. Taken together, international human rights standards have transformed the nature of the relationship between governments and individuals, and made public authorities far more accountable. At the same time, the proliferation of standards has created new challenges. Some overlap and duplicate one another, for instance: the UN, the ILO, the Council of Europe and the European Union have each developed standards on social security and discrimination that offer different forms and degrees of protection.

The system developed to monitor their implementation and handle complaints is also under stress. States find it burdensome to submit so many reports and the United Nations committees that monitor human rights treaties and deal with complaints have accumulated a backlog of work.⁸ As a result, even cooperative states have become more reluctant to adopt new monitoring mechanisms, without which legal standards risk becoming ineffective.

In addition, much more needs to be done to improve implementation of standards that exist. There is little point in elaborating standards if they are not implemented. In some countries, standards have not been incorporated

5 This Declaration was adopted a few months before the UDHR on 2 May 1948.

6 This Convention has been complemented by two protocols, the Protocol of San Salvador on economic, social, and cultural rights (1998) and the *Protocol to Abolish the Death Penalty* (1990).

7 Two protocols to the Charter have been adopted: the *Additional Protocol on the Establishment of the African Court on Human and Peoples' Rights* (1998), and the *Protocol on the Rights of Women in Africa* (2003).

8 The High Commissioner for Human Rights published a concept paper in 2006 that proposed the creation of a single committee to monitor all human rights treaties. See *Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body*, HRI/MC/2006/CRP.1 (14 March 2006).

in domestic law, or remain aspirations. In others, standards still are not fully implemented despite incorporation.⁹

The slowness of standard-setting processes is a further deterrent. Even if there are exceptions to every rule, most recent negotiations have been cumbersome and long-winded, and their outcomes have been uncertain.¹⁰ Some texts have been watered down, others have been abandoned. The creation of new standards is so time-consuming that many states have become reluctant to discuss new initiatives, while non-governmental organisations (NGOs) are starting to question whether they should engage in protracted negotiations that might result in weak texts.

As a result of these challenges, some fear that efforts to create new standards may weaken rather than strengthen protection of rights, or even undermine the entire system. On this basis, it is sometimes argued that governments and human rights advocates should broaden the application of existing standards, in order to extend protection as required, rather than create new ones.

Yet there are limits to the extension of existing standards: new standards will continue to be needed in the future. Society is continually changing and human rights laws must also change when gaps in protection appear. As social and cultural values evolve, new claims will be made that international law will need to address. As this report went to press, two important standards had just been adopted by the United Nations Human Rights Council (HRC or Council), one dealing with enforced disappearances and the other with the rights of indigenous peoples. Two new standards were being drafted, concerning people with disabilities and violations of economic, social and cultural rights. Additionally, calls were being made to develop standards to cover discrimination on the basis of sexual orientation and the human rights responsibilities of businesses.

9 "The historic legacy of the United Nations human rights programme is found especially in the wide-ranging body of human rights norms and standards produced in the last 60 years. But putting new resources and capacities to work in response to the human rights problems posed today by poverty, discrimination, conflict, impunity, democratic deficits and institution weaknesses will necessitate a heightened focus on implementation." Letter from the United Nations Secretary-General transmitting his report *In Larger Freedom* to the President of the General Assembly, 26 May 2005, www.un.org/largerfreedom/add3.htm (accessed 28 August 2006).

10 Some instruments have taken more than a decade to negotiate. They include the *Declaration on Human Rights Defenders* (A/RES/53/144), the *Declaration on the Protection of All Persons from Enforced Disappearance* (A/RES/47/133), the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (A/RES/47/135), the *Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (E/CN.4/RES/2005/35), and the *Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (E/CN.4/RES/2005/81).

Nor should the influence of new standards be underestimated. Especially when supported by public advocacy, they can promote reform of domestic law and practices, and they provide objective benchmarks by which to measure the performance of state institutions. They can therefore improve accountability and the redress available to victims.

At the same time, standard-setting may take new forms in the future, and those involved may need to organise in new ways – while the creation of the HRC, which replaced the Commission on Human Rights (CHR or Commission) in 2006, provides an opportunity to respond creatively to the challenges encountered in standard-setting to date.¹¹ For all these reasons, it is a good moment to consider what we can learn from past experience. Looking back, at a moment of change, may help us to understand what we can most usefully take forward into the future.

DEFINITIONS AND SCOPE

The report examines the recent evolution of international human rights standard-setting processes in the United Nations and some of its specialised agencies, programmes and funds. It refers to regional standard-setting processes but it does not discuss them in detail.

It covers formal processes that lead to the adoption of instruments that require ratification or accession to become binding; and more informal processes, for example instruments that do not include binding legal obligations but which provide practical guidance to states in their conduct or have moral force.¹²

Standards are defined as internationally negotiated or endorsed human rights documents (instruments), whether these are binding or not binding. Binding documents codify or create legal obligations or duties (“hard law”), while non-binding documents make recommendations about norms of conduct and policy (“soft law”).

The report also discusses supervisory mechanisms, many of which are also established through intergovernmental negotiations, to monitor the implementation of human rights norms. Some of these mechanisms were created at the same time as the standards they monitor; others were negotiated separately.

11 The Council was established by General Assembly resolution 60/251 of 3 April 2006. It is a subsidiary organ of the General Assembly, and therefore has higher status within the UN than its predecessor, the CHR. In five years the General Assembly will review its status. If at that time the Council is found to have established its authority, states may agree to amend the UN Charter and elevate the Council to the status of a principal organ of the United Nations.

12 For a definition of the terms “ratification” and “accession”, see textbox, page 13.

Discussions of standards that would directly implicate non-state actors, such as transnational corporations and armed groups, are increasingly common. This is an emerging trend in human rights policy that is likely to develop actively in coming years.¹³ Most past standards have focused on the obligations of states, however, and this report – which draws lessons from past experience – does so too.

METHODOLOGY

The analysis reviews some of the experiences of standard-setting that have been gathered in the past fifty years at the UN and in other specialised agencies, programmes and funds. It tries to determine what part of that experience is still relevant and what methods and standard-setting approaches are useful for the future.

It is based on several short papers prepared by individuals who participated in different standard-setting processes, and a two-day meeting in Geneva organised by the International Commission of Jurists and the International Council. The meeting brought together diplomats, representatives of non-governmental organisations and staff of intergovernmental organisations, who were invited to share their experiences. Drafts of this report were circulated for comment to these and other experts, and the advice received has been integrated in this publication.

The picture that emerged is inevitably incomplete, and sometimes anecdotal. It quickly became evident that no 'magic formula' would explain success and that each standard-setting process has been unique. The subject of a standard itself shapes the character of negotiations as well as the choice of instrument; and the changing political and diplomatic environment constantly influences the way in which human rights standards are adopted. In addition, many processes that at first sight looked formal and rational turned out to have been much less orderly beneath the surface, reliant on local factors – personalities, the conjuncture of events, timing, chance – that cannot be reproduced at will. To cite an extreme example, failure to prevent genocides in the former Yugoslavia

13 Those interested in proposals to make businesses directly accountable to international human rights law might refer to the interim report of Professor John Ruggie who was appointed Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises in 2005 (E/CN.4/2006/97); the UN Sub-Commission's *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (E/CN.4/Sub.2/2003/12/Rev.2, 2003); and the *Draft UN Code of Conduct on Transnational Corporations* (1984), drafted by an Ad Hoc Intergovernmental Working Group of the Commission on Transnational Corporations, established by ECOSOC in 1974 (E/1990/94). For a general analysis, see Business and Human Rights Resource Centre (www.business-humanrights.org), the International Commission of Jurists (www.icj.org), and International Council on Human Rights Policy, *Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies*, Geneva: ICHRP, 2002.

and in Rwanda helped to precipitate the adoption of the *Rome Statute of the International Criminal Court* (Rome Statute, 1998), which had languished on the international agenda since the Second World War.

To further complicate matters, the negotiation of new human rights standards is almost always politically contentious. Some are in favour while others are against and consequently the history of particular standards is itself usually contested. The actors, too, have different, partial and often quite personal perceptions of their role and that of their institutions. As a result, it is usually not straightforward to report consensually the facts associated with a given standard's adoption – and these difficulties are only increased because most standards are adopted after many years of work, involving contributions by numerous different actors and institutions.

This means that, had we selected other examples, they would have provided different insights and other actors would probably have told different stories about the same events. What some view as success or progress others call failure.

For these reasons, the report sets itself limited objectives. It seeks to review trends in negotiation procedures and suggests some guidelines that actors who wish to set standards may find useful. Though comparison is difficult and the future will not necessarily resemble the past, insights do emerge that should be helpful, especially to readers who are prepared to work by analogy.

I. WHEN ARE NEW STANDARDS DESIRABLE?

New human rights standards are usually created to fill a gap in protection. In this report, three kinds of protection gaps have been identified: “normative”, “application” and “supervisory”. Protection gaps should be distinguished from “implementation” and “ratification” gaps (see chart below).

A “normative gap” exists when a recurrent event (or act or structural factor) deprives human beings of their dignity. Even when existing instruments provide protection in certain respects, in many cases a new or more comprehensive instrument is required to frame the rights of an affected group more clearly or in human rights terms. Such standards enable members of the group to protect their rights more effectively and clarify the duties of states at the same time.

In this context, it is sometimes suggested that the first years of standard-setting generated foundation standards that applied to all human beings, whereas later standards provided more detailed protection to specific groups. The International Covenants adopted in 1966 protected women and children on the same terms as all people, for example. However, new instruments such as the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1979) and the *Convention on the Rights of the Child* (CRC, 1989) subsequently became necessary to (a) identify principles specific to the group (e.g. the best interest of the child), (b) recognise new rights (e.g. the right of children not to be separated from their parents against their will, or the reproductive rights of women), and (c) specify duties of states that were not defined clearly in the general instruments (e.g. the duty to eliminate stereotyped roles for men and women or the duty to ensure that discrimination against women does not occur in the private sphere, in addition to the public sphere).

Disability might be an example of a current “normative gap” of this type. Existing human rights norms, notably the principle of non-discrimination, protect the rights of people with disabilities. However, welfare approaches to disability, combined with low awareness of human rights in public institutions, are so entrenched that it is reasonable to claim that the rights of people with disabilities are not properly protected. The *Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities* (Convention on the Rights of Persons with Disabilities) aims to fill this gap.¹⁴

It may be said that a “normative gap” also exists when a new instrument becomes necessary to prevent and provide protection against a specific practice that

14 In 2001, General Assembly resolution 56/168 of 19 December 2001 created an Ad Hoc Committee to consider proposals for a convention on disabilities. The Committee began to negotiate a draft convention in 2004 and hoped to finalise its revised draft text during its Eighth Session, in August 2006.

violates human rights. Until recently, for example, no norm explicitly covered cases of enforced or involuntary disappearances. The *International Convention for the Protection of All Persons from Enforced Disappearance* (CED, 2006) filled this gap. It establishes that people are entitled to be protected from forced disappearance and requires states to prohibit the practice in law.

An “application gap” exists when an international instrument applies to a specific situation or a category of people, but does not apply to similar cases. This gap can be illustrated by the problem of disappearances. For many years, relatives of a person who disappeared during an armed conflict were entitled to know what happened to him or her. This right was specified in *Protocol I to the Geneva Conventions* (1977).¹⁵ However, the Protocol did not apply to people who disappeared in other circumstances (*i.e.* not in the context of armed conflict). This gap was subsequently filled by the *Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (1997)¹⁶ and the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Humanitarian Law* (2005).¹⁷

A “supervisory gap” exists when a right has been included in an instrument, but no mechanism exists to monitor and enforce its compliance, or the mechanism is insufficient to secure compliance or provide remedy to victims. For example, neither the *Optional Protocol to the Convention on the Elimination of Discrimination against Women* (OP-CEDAW, 1999)¹⁸ nor the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OP-CAT, 2002)¹⁹ created new rights: they added new supervisory mechanisms to strengthen state compliance with the Conventions concerned.

It is not always easy to draw clear distinctions between different forms of protection gaps. This helps to explain why proposals to create a new standard often generate disagreement. Governments tend to argue that existing rights

15 Article 32.

16 E/CN.4/Sub.2/1997/20/Rev.1, annex II. The Principles were recently updated and accepted by the former CHR (see footnote 49).

17 Adopted by General Assembly resolution 60/147, 16 December 2005. The Basic principles had earlier been adopted by the CHR (resolution 2005/35 of 19 April 2005) and the Economic and Social Council (resolution 2005/30 of 25 July 2005).

18 The OP-CEDAW contains two additional supervisory procedures: (1) an individual and groups complaints procedure covering violations of rights protected under the CEDAW, and (2) an “inquiry procedure” that enables the Committee to examine grave or systematic violations of women’s rights. In both cases, states must be party to the Convention and the Protocol.

19 The OP-CAT is designed to assist states to implement their obligations under the CAT. It does so by establishing a system of regular visits to places of detention. It entered into force on 22 June 2006.

provide protection for groups which are particularly exposed to risk, while members of such groups and civil society organisations often argue that new standards are needed.

Moreover, more than one “gap” may exist simultaneously; and a new instrument may cover several gaps. The CED has recognised that people have a right not to be “disappeared” (a “normative gap”), extended the right of relatives to know the fate of a missing person (an “application gap”), and also established a new supervisory mechanism that allows a Committee on Enforced Disappearances to make an urgent appeal to the General Assembly when enforced disappearances are shown to be widespread or systematic (a “supervisory gap”).

In theory, certain protection gaps might be resolved by amending the original text, rather than adopting a new protocol. It would have been possible to amend the CRC, for example, rather than adopt the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* (OP-CRC-AC, 2000), which prohibited military recruitment and use of children in hostilities. However, it is always complicated to amend a text because states may use the opportunity to reduce rather than raise the level of protection that standards offer. For this reason, any decision to call for amendment requires very careful political analysis.

Protection gaps should not be confused with failure by states to adopt an international norm (“ratification gap”) or apply it nationally (“implementation gap”).

“Implementation gaps” occur when states fail to pass domestic legislation, or do not establish procedures and institutions that are required to implement an international standard. “Ratification gaps” occur when states do not adopt an international treaty or fail to enact it in domestic law. An extreme example is provided by the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICMW, 1990). Adopted without a vote in 1990, in mid-2006 only thirty-four states had ratified this convention.²⁰

The diagnosis of gaps is based on pragmatic analysis (facts on the ground) and international law. This said, new standards are not always the best solution for gaps in protection. Even when a clear gap in international law is identified, the risks involved in starting a standard-setting process need to be evaluated. Many initiatives also fail. The attempts to develop an international convention on housing rights, and a third optional protocol to the International Covenant on Civil and Political Rights on the right to a fair trial and remedy, are examples.²¹

20 Information valid to July 2006.

21 See, for example, the second progress report of the Special Rapporteur on the right to adequate housing (E/CN.4/Sub.2/1994/20), and the CHR (decision 1995/110 of 3 March 1995) respectively.

Types of Gaps		Possible Remedies
"Normative gap"		New international standard OR Extended application of existing norms
"Application gap"	in specific situations for a specific group of people	New international standard OR Extended application by analogy
"Supervisory gap"		New international standard
"Implementation gap"	no domestic law	Establishment of new domestic procedures AND/OR National institutions
	no domestic implementing mechanism	
"Ratification gap"		Campaign for full ratification OR Building consensus around less controversial aspects of a contested standard to create conditions for eventual ratification

II. WHAT? CHOOSING THE INSTRUMENT

“HARD” AND “SOFT LAW” INSTRUMENTS

International human rights texts may be divided into “hard law” and “soft law” instruments.

The first group is composed of conventions, covenants and protocols that are binding on states which have ratified, accepted or acceded to them (see textbox, page 13).

The second group includes declarations, principles, plans of action and guidelines. It is often said that these documents are not legally binding because states have not formally agreed to be bound by the provisions they contain. Nevertheless, they can have considerable political and legal weight.

“HARD LAW” INSTRUMENTS

Until now, the most common procedure for negotiating a new binding instrument has been to mandate an open-ended working group (WG) to draft the instrument concerned.²² Most working groups were established by the Commission on Human Rights (CHR or Commission). The working groups for both the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* (OP-CRC-AC, 2000) and the *International Convention for the Protection of All Persons from Enforced Disappearance* (CED, 2006) were set up this way, for example.²³ The Commission on the Status of Women also established working groups, including a working group to draft the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1979). The General Assembly created several working groups as well – for example the Ad Hoc Committee formed to prepare a convention against the reproductive cloning of human beings.²⁴

It should be noted that open-ended WGs may have a variety of mandates. Not all prepare texts; the WG on the Right to Development is one that does not.²⁵

The working methods for standard-setting are examined in Chapter IV. At this point it is worth noting that (under the CHR) a working group normally forwarded a draft text to the Commission for discussion and adoption. Once adopted, by

22 “Open-ended” means that states which were not members of the CHR, and NGOs, could participate; working groups typically met between sessions of the Commission.

23 CHR resolution 1994/91 and CHR resolution 2001/46 respectively.

24 General Assembly resolution 56/93 of 12 December 2001.

25 CHR resolutions 1998/72 and 2005/4.

consensus or a majority of Commission members, it was then forwarded to the General Assembly, via the United Nations Economic and Social Council (ECOSOC), for further discussion and approval.

The newly established Human Rights Council (HRC or Council) is expected to adopt similar procedures, with the difference that adopted texts would not pass through ECOSOC. In its first session, the HRC extended the mandate of the WG on the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (OP-ICESR) and forwarded the CED to the General Assembly, having approved it by consensus.²⁶

Once adopted by the General Assembly, a UN instrument is opened for ratification. It enters into force when it receives the number of ratifications required under its provisions. Only states that have ratified an instrument are legally bound by its provisions (see textbox, page 13).

“Hard law” instruments often require many years of negotiation. As noted, it took almost two decades to complete the two principal Covenants.²⁷ Some have however been adopted relatively rapidly. It took only seven years to approve the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT, 1984),²⁸ and the working group established to elaborate a draft text on enforced disappearances drafted the CED in just three. Several factors explain the speed with which the CED was completed. They include the determination of the Chair to move the process forward quickly, and his ability to engage participating states in a constructive manner; the presence of a well-organised coalition of associations of relatives of disappeared persons from Asia and Latin America; the support and commitment of several states, principally from the Latin American and Caribbean Group (GRULAC);²⁹ the involvement of several international NGOs with experience of international negotiation; and the appointment of an Independent Expert mandated to consider the value of a treaty on forced disappearances.³⁰ It should be noted as well that NGOs had flagged the need for a Convention since 1981.

26 HRC resolution A/HRC/1/L.4/Rev.1 and HRC Res. A/HRC/1/L.2 respectively.

27 Drafting began in June 1947 at the first session of the Drafting Committee of the CHR. The General Assembly voted to adopt both Covenants on 16 December 1966.

28 This said, discussions had begun in the General Assembly long before the adoption of the CAT; the General Assembly adopted the Declaration against Torture in 1975 (*Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, General Assembly resolution 3452 (XXX) of 9 December 1975). Efforts to draft a treaty were greatly helped by the political environment after 1973 when repression in Chile and the brutal death of Steve Biko in detention in South Africa (1976) concentrated public attention on the issue of torture.

29 Five regional groups are recognised by the United Nations: the Asian, the African, the Latin American and Caribbean (GRULAC), the Western European and Other (WEOG) and the Eastern European (CEIT).

30 See footnote 57.

In general it is therefore difficult to predict the time required to negotiate a “hard law” text. Those interested in doing so should nevertheless not assume that it can be done quickly.

Glossary of Terms

A treaty does not become binding on a state until the state consents to it. States commonly consent to multilateral treaties by ratification, acceptance or approval, and accession.

Signature. Signature indicates the state’s intention to consent at a later date. Signature does not by itself bind the state to the terms of the treaty. This said, under international law, states that have signed an instrument are obliged to refrain from acts which would defeat the object and purpose.

Ratification. Most multilateral treaties provide for states to sign subject to ratification. This gives states the opportunity to seek domestic approval, and enact any national legislation required in advance of ratification when the treaty becomes legally binding. Once it has ratified an international treaty, a state is required to implement its provisions domestically.

Acceptance or approval. Acceptance or approval of a treaty following signature has the same legal effect as ratification, and the same rules apply. If the treaty allows acceptance or approval without prior signature, these acts are treated as an accession, and the rules relating to accession apply.

Accession, adherence or adhesion. Accession, adherence or adhesion is the act whereby a state becomes a party to a treaty it has not signed by depositing an “instrument of accession”. Accession has the same legal effect as ratification. However, accession requires only one step, namely the deposit of an instrument of accession. Accession may occur before or after a treaty has entered into force.

Reservations. When ratifying a “hard law” instrument, states may enter reservations. These limit, exclude or alter the legal application of certain provisions of the treaty in the state concerned. Reservations that are inconsistent with the object and purpose of the treaty are prohibited. Some treaties forbid reservations or restrict them to certain provisions. Reservations “of a general character” are generally prohibited (e.g. Article 57(1) ECHR). The ILO does not allow reservations to the Conventions it adopts.

Denunciation. Denunciation is the withdrawal from a treaty by a state. Generally, this is permitted provided the terms of the treaty are respected. Some human rights instruments do not permit denunciation. They include the ICCPR, ICESCR and CEDAW. Others – including the CRC, CAT, and CERD – do. Nonetheless, denunciation of a human rights treaty is extremely rare.

“SOFT LAW” INSTRUMENTS

Intergovernmental negotiations leading to a human rights treaty are sometimes preceded by a political declaration that reflects state concerns and lays the foundations of an eventual treaty by defining core issues, (legal) concepts and the likely scope of protection.³¹ The General Assembly adopted such declarations before negotiating the CAT³² and the CED for example.³³ Because declarations are not binding, they are sometimes easier to adopt.³⁴ Nevertheless, they can have considerable political and moral authority and represent statements of commitment by governments.

Declarations and other “soft law” documents offer a more flexible forum in which to develop a norm and the process tends to be less arduous. However, because they are statements of moral and political intent, some of them have proved to be controversial and taken a long time to negotiate.

The working group established to elaborate a *Draft Declaration on the Rights of Indigenous Peoples* met from 1995 to 2006. The Declaration was finally adopted in June 2006 during the first session of the HRC. Considering that the working group was asked to take into account a text that had earlier been prepared and adopted by the Sub-Commission, the standard-setting process lasted more than twenty-three years.³⁵ Where a “soft law” instrument is likely to require lengthy negotiation, a strong case can be made for choosing a “hard law” option. However, it is difficult to predict such matters in advance.

Sometimes “soft law” instruments prepare the way for a binding document; but this too is a difficult matter to predict. Negotiation of “soft law” documents can also be extremely hard, as was the case of the *Draft Declaration on the Rights of Indigenous Peoples*.

31 An international treaty may be titled a “covenant”, “charter”, “convention”, “pact” or “protocol”.

32 The *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was adopted by General Assembly resolution 3452 (XXX) of 9 December 1975.

33 The *Declaration on the Protection of All Persons from Enforced Disappearance* was adopted by General Assembly resolution 47/133 of 18 December 1992. Declarations do not always lead to a treaty, however. Examples of the latter type include the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992); the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981); the *Declaration on the Elimination of Violence against Women* (1993) and the *Declaration on the Right to Development* (1986).

34 Although the recently adopted *Declaration on the Rights of Indigenous Peoples* occasioned long and torturous negotiations.

35 See footnote 88.

Sometimes academic experts or NGOs initiate “soft law” instruments. Examples include the Limburg Principles and the Maastricht Guidelines mentioned below,³⁶ as well as the *Siracusa Principles on the Limitations and Derogation Provisions in the International Covenant on Civil and Political Rights* (Siracusa Principles, 1984).³⁷ Similarly, the *Bangalore Principles of Judicial Conduct* (Bangalore Principles, 2002), adopted by a group of Chief Justices, have been widely disseminated within the judicial community, especially in Asia but also in Africa.³⁸

Obviously some initiatives of this kind fail to be recognised by intergovernmental standard-setting processes. They may, nonetheless, acquire some legal weight. For example, a group of academic experts adopted the *Turku Declaration on Minimum Humanitarian Standards* (Turku Declaration, 1990) during a meeting that was held at Åbo Akademi University’s Institute for Human Rights (Finland) to clarify legal provisions applicable to “states of emergency” that fail the threshold for “states of emergency” agreed in humanitarian law. Although those who drafted the Declaration envisaged that it would be adopted (or at least endorsed) by the UN, it has not been officially recognised.³⁹ On the other hand, the Declaration has been referred to in the case law of the International Criminal Tribunal for the former Yugoslavia and in various experts’ documents.⁴⁰

The term “soft law” can be misleading. Though “soft law” texts are not themselves legally binding, most draw on principles and norms contained in international instruments that are (such as the ICCPR and the ICESCR). Obvious examples include the *Declaration on the Elimination of Violence against Women*

36 See page 29.

37 The Siracusa Principles were adopted in May 1984 by a group of international human rights experts convened by the International Commission of Jurists, the International Association of Penal Law, the American Association for the International Commission of Jurists, the Urban Morgan Institute for Human rights, and the International Institute of Higher Studies in Criminal Sciences in Siracusa, Italy, to consider the limitation and restriction provisions of the ICCPR. The Sub-Commission subsequently recognised them (E/CN.4/1984/4, 28 September 1984).

38 The Bangalore Principles provide a framework enabling judicial authorities to regulate judicial conduct with respect to independence, impartiality, integrity, propriety, competence, and diligence. Intended to establish international standards, they were adopted in an expert meeting in 2001, revised at a Round Table Meeting of Chief Justices in 2002, and included as an annex to the ninth report of the UN Special Rapporteur on the independence of judges and lawyers (E/CN.4/2003/65, 10 January 2003).

39 The Sub-Commission for the Promotion and Protection of Human Rights (see Chapter IV) transmitted the Declaration in 1994 to the 1995 session of the Commission (Sub-Commission resolution 1994/26). In that year, the Commission took note of the resolution and recognised the need for principles applicable to situations of internal and related violence, and requested that the *Turku Declaration on Minimum Humanitarian Standards* should be sent for comment to governments and intergovernmental and non-governmental organisations. In 1996, the Commission again recognised the need for principles applicable to situations of internal violence, but did not refer to the Declaration.

40 Prosecutor v. Tadic, decision of 2 October 1995, Case No. IT-94-1-AR-72.

(1993), the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (Declaration on Human Rights Defenders, 1999).⁴¹ Some go further. The *Guiding Principles on Internal Displacement* (IDP Principles, 1998) not only restate the relevant principles applicable to internally displaced persons (IDPs) but clarify legal grey areas and gaps.⁴²

Customary International Law

Customary law is considered to bind all states (except states that objected before it became accepted as law), whether or not they have ratified relevant treaties. It occupies a central position in international human rights law.

Customary law comes to exist when two tests are met: a) common practice by a group of states over a period of time and (b) the belief by these states that the practice concerned is obligatory. A number of human rights norms are now considered to be customary law, from the prohibition of slavery to the prohibition of torture.

Over time, “soft law” instruments may acquire an authority that was not foreseen at the time of their adoption. The most obvious example is the *Universal Declaration of Human Rights* (UDHR, 1948) itself. At the outset, it was merely a non-binding declaration adopted by the General Assembly, but today many of its articles have become statements of customary law that are held to have universal application (see textbox above).

“Soft law” standards may subsequently influence the drafting of “hard law”. Article 10 of the ICCPR was directly inspired by the *Standard Minimum Rules for the Treatment of Prisoners* which were adopted in 1955 by the first Congress on the Prevention of Crime and the Treatment of Offenders.⁴³ Both require law enforcement officials to separate juveniles from adults, and untried from convicted detainees.

“Soft law” instruments can raise awareness. The *Beijing Declaration and Programme of Action* (1995) not only reaffirmed basic principles (for example, that women’s rights are human rights) but identified a number of particularly

41 A/Res./48/104 and A/Res./53/144 and E/CN.4/1998/53/Add.2 respectively.

42 A/Res./53/144 and E/CN.4/1998/53/Add.2 para. 9. In 1993, at the request of the CHR, the former Representative of the Secretary-General on internally displaced persons, Francis M. Deng, prepared an initial study of international standards relevant to IDPs (E/CN.4/1993/35, Annex). Two more extensive studies were subsequently presented in 1996 (E/CN.4/1996/52/Add.2) and 1998 (E/CN.4/1998/53/Add.1). Encouraged by the CHR (E/CN.4/RES/1996/52, para. 9) and the General Assembly, Mr Deng went on to develop the IDP Principles. They were prepared with the help of a team of international legal scholars chaired by Professor Walter Kälin who succeeded Mr Deng as the Representative on IDPs in 2004.

43 Subsequently, the *Standard Minimum Rules for the Treatment of Prisoners* were approved by ECOSOC by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

egregious humanitarian law violations (such as rape, including systematic rape, and forced pregnancy) that subsequently became important to campaigns for women's rights. In a similar way, the *Durban Declaration and Programme of Action* (2001) reaffirmed the *Convention on the Elimination of Racial Discrimination* (CERD, 1965) and analysed new forms of racial discrimination, helping to update the anti-discrimination agenda.

"Soft law" instruments can also address technical issues and provide states with practical guidance. Standards on the prevention of crime and the treatment of offenders, adopted in "soft law" instruments in the 1970s and 1980s, provide specific and detailed guidance to officials that has helped states to fulfil their legal obligations.⁴⁴

Some "soft law" instruments have become points of reference – referred to in national legislation, national and international jurisprudence or in other international instruments. The IDP Principles quickly became a document of reference. In 2004 the Commission on Human Rights expressed satisfaction that an increasing number of states, UN agencies and regional and non-governmental organisations were applying them as a standard.⁴⁵ Written in non-technical language, and drawing on the advice of practitioners and experts, they were widely used to protect internally displaced persons. In Africa, the African Union, the Economic Community of West African States (ECOWAS) and the Intergovernmental Authority on Development (IGAD) have called on member states to disseminate and apply them. In Latin America, the Constitutional Court of Colombia considers them to be binding at domestic level.⁴⁶ Although some countries belonging to Asian regional organisations, including the Association of East Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation, have argued that, being a declaration, the Principles are non-binding, their authority seems to be beyond dispute.⁴⁷

Within the ILO, some "soft law" instruments have been used to set new directions of the Organisation. The *Declaration of Philadelphia* (1944) laid out a programme of action and new directions for the ILO after the Second World War, and it was incorporated into the Constitution in 1946. The *Tripartite Declaration on*

44 Particularly relevant are the instruments adopted by the UN Congresses on the prevention of crime and treatment of offenders. See page 42.

45 Resolution 2004/55, operative para. 6. For the IDP Principles, see E/CN.4/1998/53/Add.2.

46 See e.g. Judgment T-O25 (2004). See also, I/A Court H.R., Case of the Mapiripán Massacre v. Colombia. Preliminary Objections and Acknowledgment of State Responsibility of March 7, 2005. (Only in Spanish). Series C No. 122.

47 When Switzerland convened a series of informal meetings to discuss governments' misgivings and reservations with respect to the IDP Principles in 2002, for example, it became clear that the minority would not challenge their status. Additionally, in the 2005 UN World Summit the heads of states and governments recognised the IDP Principles "as an important international framework for the protection of internally displaced persons". A/Res/60/1 para. 132.

Multinational Enterprises and Social Policy (1967, updated in 2000), set basic standards on this question and established a review procedure. The *Declaration on Fundamental Rights and Principles at Work* (1998), set out new reporting processes and a new approach to human rights technical assistance.

Other “soft law” instruments frequently used by regional and domestic courts include the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*⁴⁸ and the *Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*.⁴⁹ Several Latin American countries have taken these principles and guidelines into account when drawing up legislation on reparations. The Inter-American Court on Human Rights has referred several times to them. They also influenced the Rome Statute of the ICC, notably article 75 dealing with reparations.

Because some “soft law” instruments have had real impact, states increasingly want to engage with, if not supervise and control, processes that states do not initiate. As a result, it may become more difficult to initiate “soft law” standards. Even though the initiative to draft the IDP Principles was encouraged by the Commission, some states criticised the text when it was first presented because it was not drafted by an intergovernmental process. States also feared that the way in which the IDP Principles had been developed would set a precedent.

Such fears may be misplaced. Drafters of “soft law” instruments usually consult stakeholders, formally and informally, and most take particular account of government views because they know that, to have impact, any text ultimately needs their support. When the Commission on Human Rights sought advice from experts, it required them to consult all relevant actors, and in particular governments. The Representative of the Secretary-General on the Human Rights of Internally Displaced Persons was asked to do so and sent a questionnaire to all governments and interested organisations before undertaking his study. States do therefore have opportunities to make their views known and to influence texts, even when the process remains in the hands of experts.

In sum, when it comes to “hard” and “soft law”, it is difficult to assess in advance which kind of instrument will be easier to negotiate. While “hard law” is preferable – as by definition it is binding – it is important not to underestimate the options that “soft law” offers. As mentioned, it can be influential, especially at domestic level, where local courts sometimes apply it, and can assist national authorities to address certain issues by providing practical guidance.

48 General Assembly resolution 60/147 of 16 December 2005.

49 The Principles on Impunity were proposed in 1997 by Professor Joinet (E/CN.4/Sub.2/1997/20/Rev.1, Annex II) and updated by Professor Orentlicher in 2004 (E/CN.4/2005/102/Add.1). The CHR took note of them in its resolution 2005/81 of 21 April 2005.

DIFFERENT INSTRUMENTS FOR DIFFERENT TYPES OF PROTECTION GAPS

Of course, it is not simple to know which kind of instrument should be selected to address a particular protection gap. The sensitivity of the issues at stake, the political climate, the existence of regional standards on the issue or standards on comparable issues, and the presence of actors who might support or oppose a standard-setting initiative all influence that choice. Nevertheless, some general principles can be suggested.

“Normative gaps” are perhaps best addressed by “hard law” instruments. In particular, in the presence of a gap in protection that puts in jeopardy the life or human integrity of people, a legally binding standard is the best response. However, a “soft law” instrument may be the more realistic option when a significant number of states have reservations. It may also be adopted as a first step, to prepare the way for a legally binding norm.

“Application gaps” can be addressed by “hard” or “soft law” instruments. Though a “soft law” text may clarify the need to protect a particular group, however, only “hard law” instruments include legally binding monitoring and enforcement mechanisms. In their absence, protection may be illusory. UN working groups, Special Rapporteurs or Representatives of the Secretary-General can sometimes offer an alternative monitoring mechanism. Victims of enforced disappearances and human rights defenders have certainly benefited from the work of the Working Group on Enforced or Involuntary Disappearances and the Special Representatives of the Secretary-General on human rights defenders, for example.⁵⁰

“Supervisory gaps” are also more suitable for “hard law” instruments. The fact that they are binding, and provide monitoring, means that states are required to enact proper legislation or create bodies to implement them. Although states are required to take effective measures to prevent acts of torture under the CAT (*e.g.* articles 2 and 16), for example, the Optional Protocol to CAT helps to ensure that these commitments are met by establishing a system of visits to places of detention (article 3 OP-CAT).

50 Their impact is due particularly to the fact that both the Working Group and the Special Representative take up individual cases of human rights violations.

III. WHO? THE ACTORS

The number of actors involved in standard-setting has multiplied. A handful of experts prepared the *Universal Declaration of Human Rights* (UDHR) in 1948, whereas more than 150 government delegations and hundreds of civil society organisations participated in drafting the Rome Statute. This does not mean, of course, that the actors involved are of equal weight. Their influence on decisions and in the broader negotiating process varies greatly.

Ultimately, states determine whether a new legal instrument is adopted and what it says. In theory, states could therefore set standards without regard to NGOs or other actors. In practice, this is not what happens. NGOs have regularly placed new issues on the international agenda and ensured they have been taken forward. Diplomats recognise (not always publicly) that NGOs and experts are crucial partners in standard-setting processes. NGOs are important sources of information and analysis, and can shape public opinion internationally and domestically.

Before examining the roles of different actors, it should therefore be emphasised that no interest group or constituency can achieve much on its own. To be successful in standard-setting, a cluster of actors must be willing to cooperate through the long process of negotiation. The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer or Anti-Personnel Mines and on Their Destruction* (Ottawa Treaty, 1997) showed that it is possible to achieve rapid success when victims, veterans of war, NGOs, like-minded governments, military experts as well as UN agencies and the International Committee of the Red Cross (ICRC) cooperate effectively.

If cooperation is obviously desirable, it is by no means simple to achieve. In many cases, it requires advocates to create public awareness and support for issues that may initially be unpopular or unrecognised. This is demanding work that needs accomplished communication and diplomatic skills. Moreover, coordination and consultation must take place at many levels; it is not surprising, in fact, that communication between interest groups is recognised to be a frequent problem. At the same time, if it is vital to involve many stakeholders in developing a new standard – including those who are most directly affected – standard-setting processes also rely on specific professional contributions, by diplomats, legal experts and advocates. Their negotiation cannot be achieved by popular means. If setting effective and legitimate standards is an art, it requires an unusual mix of “elite” and “popular” advocacy.

Lack of diversity undermines the legitimacy of a process. Where government officials and human rights activists from regions outside the “Western European and Other Group” (WEOG) and the “Latin American and Caribbean Group” (GRULAC) are weakly represented, their states and societies tend to identify less with the standards in question, and this ultimately weakens the claim that

human rights norms have universal relevance. This is of particular concern when the standard negotiated is highly relevant to such regions.

New technology has made standard-setting processes accessible to a larger audience, easing coordination and allowing information to be shared rapidly. This is certainly positive, even though it must be acknowledged that not all actors have the same access to these technologies.

STATES

The participation of states in standard-setting processes is unrestricted. However, small missions do not have enough staff to participate consistently in the many official meetings in which they have an interest. Nor can Foreign Affairs Ministries with small human rights departments be expected to monitor and research all the issues under negotiation at one time. NGOs can increase involvement in issues that concern them by providing officials, in capitals as well as missions, with information and reasons to engage.

The composition of government delegations varies from process to process. They are often a mix of career diplomats and (legal) experts. The former are usually the main negotiators; legal experts tend to act as technical advisers.⁵¹

Chairs of Drafting Committees

The chairs of drafting committees play an extremely important role. They can positively influence the conduct of talks, by facilitating dialogue, resolving differences, building co-operation between governments, and presenting compromise texts.

All texts adopted in recent years have been Chair's texts: this in itself shows their influence. Indeed, they often use their political and moral authority to 'force' delegations to accommodate other views and, ultimately, to put on the table a text that reflects, if not consensus, a compromise that may eventually win general consent.

Different elements are usually taken into account when appointing a Chair. They are likely to include negotiating skills, personality, and the candidate's personal commitment to, knowledge of and interest in the issue. In addition, the diplomat's state is a factor, because it influences the extent to which a chair can expect to work with all interested parties, including those less committed to the initiative, and agree a consensual text. This explains why representatives from small countries that have a good human rights record and have previously demonstrated an open and flexible approach to the issue under negotiation are often chosen. At other times, it may be worth opting for a chair that comes from a more powerful country that has the political clout to impose a text or take difficult final decisions.

51 At the ILO, governments usually appoint experts in the subjects under discussion from the Labour or a related Ministry, who are able to engage technically at a level diplomats could not.

Diplomatic representatives may have a personal agenda. This can have a positive effect – if, for example, they decide to drive negotiations forward in order to enhance their reputation, or if their influence enables them to build international, domestic, political or official support for a process. The contrary might also be true.

Government representatives need time to understand the substantive issues behind proposals for new standards. Ministry of Foreign Affairs staff will normally seek advice from other relevant Ministries (e.g. Interior and Justice) and public institutions, including the judiciary and law enforcement agencies. However, because the latter are often unfamiliar with the international settings of negotiations, internal consultation may be time-consuming and difficult. Domestic counterparts may find it difficult to know what information they should supply. This has an unavoidable effect on the pace of negotiations.

In the UN, foreign affairs officials negotiate agreements that other public institutions must subsequently implement. This is potentially a source of inefficiency, even political tension. Diplomats may not be in a position to foresee the impact their decisions will have on officials in other departments and public institutions, who will have to implement the new standard domestically.

At the same time, negotiating delegations are in constant touch with their capitals, where decisions are ultimately taken. Diplomats both receive instructions from their capitals and influence those instructions. For diplomats and advocates, therefore, it is often worth engaging with officials of governments whose public positions are apparently unhelpful.

In short, governments are not monolithic; they shelter many opinions. It is not unusual for different Ministries in a country to have different positions on an issue. During negotiation of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* (OP-CRC-AC), for example, some Ministries of Defence were not prepared to give their Ministries of Foreign Affairs a free hand in negotiations. Advocates generally take into account such differences when they seek allies for lobbying purposes.

A change of government or Minister (or even Ambassador) may transform the negotiating position of a government, sometimes overnight. Diplomats may be required to change their opinions and a delegation that yesterday supported a new instrument may tomorrow vigorously oppose it, or vice-versa.

While diplomats can delay or block a negotiation, they also possess the skills, if they are well-informed and in close contact with their capital, to take discussions forward swiftly and smoothly. Government representatives may sometimes be more progressive in their thinking than civil society organisations, and may grasp fundamental issues – including the need for deeper reform – earlier.

Diplomats also possess skills in 'herding cats' – the art of holding together coalitions of parties who have distinct and contradictory interests. No standard-setting process can be brought to a close without the support of several states. Lead countries must gather 'friends' around the issue. This is easier to do if they hold key positions, for example as coordinator or facilitator. At the beginning of negotiations, delegations spend time getting to know one another's positions, and arranging coordination, especially within regional groups.

Sometimes standard-setting processes can be advanced when a group of like-minded governments work together. A good example is the "Core Group" of governments (most notably Canada, Norway, Austria, and South Africa) that pushed for the Ottawa Treaty. Although this "Core Group" was geographically diverse and contained mid-sized states, in close cooperation with a coalition of NGOs and international organisations it was very effective.

HUMAN RIGHTS NGOs AND COALITIONS

NGOs have made a considerable contribution to standard-setting processes, particularly in the United Nations. Because of their monitoring activities, they have identified many protection gaps and, using their advocacy capacity, have put many issues of concern on the international agenda. Taken as a whole, NGOs also have considerable expertise in international, regional and domestic jurisprudence and implementation.

This said, NGOs from different regions currently have very unequal access to international standard-setting processes. Most NGOs that are not located in Europe or North America cannot afford to make regular trips to Geneva, New York or Vienna, or maintain liaison offices in those cities, and find it difficult to keep themselves informed or contribute to negotiations.

Technology, in particular e-mail and faxes, facilitates the involvement of a broader range of organisations. However, organisations from the South do not all have access or high quality access. Language is also a barrier for many. English tends to dominate but lack of resources for translation makes it harder for non-English speakers to participate.

To participate directly in United Nations discussions, NGOs must be accredited by ECOSOC (see textbox, page 27). Accreditation permits NGO representatives to attend and speak at meetings held by ECOSOC and its subsidiary bodies, to be heard by UN human rights committees and commissions and, in certain cases, to influence the agendas of these bodies. NGOs without ECOSOC status, or that do not have the capacity and resources to participate in international meetings, often contact international NGOs based in Geneva, New York or Vienna to communicate their views and positions.

International NGOs have increasingly recognised that to be effective they need to share information with colleagues in other countries and take account of the views of local partners. A number of them have taken steps to facilitate the participation of competent and well-informed national and local NGOs from different regions.

It can scarcely be overstressed that domestic advocacy is crucial to the impact of standard-setting, as well as to international advocacy. The role that national NGOs play in influencing the positions and behaviour of their governments is irreplaceable.

Sometimes NGOs form coalitions to pursue their goals. Several have been strikingly successful. The Ottawa Treaty and the Rome Statute were both driven forward by large NGO coalitions that generated public and political momentum, using a combination of advocacy and public education. It is worth noting that both campaigns benefited from substantial financial resources and used the media effectively. In both cases, public opinion played an important role in shaping government policies.

The International Campaign to Ban Landmines (ICBL) was formed five years before the adoption of the Ottawa Treaty by a mixed group of NGOs with expertise in human rights and humanitarian law, development, and medical and humanitarian relief.⁵² This range enabled them to provide valuable expertise and advice to government representatives who were initially relatively uninformed about the social impact of mines or the experience of mine victims. As a result, they established a genuine partnership of interest that provides a striking example of the value of a coalition.

The Coalition for the International Criminal Court (CICC) illustrates the positive role that coalitions can play in implementing a standard after adoption.⁵³ The CICC was created in 1995 by twenty-five organisations and grew so fast that, during the Rome Diplomatic Conference in 1998 it had the largest delegation, with nearly five hundred members. Today, it has a membership of over two thousand NGOs from more than 150 countries. After the conference, CICC members adopted a multi-year campaign to secure the sixty ratifications the treaty required to come into force. Despite expert predictions that ratification would take a long time, the treaty came into force after just four years.⁵⁴ As of July 2006 the Rome Statute had been ratified by one hundred states.

During negotiation of the Rome Statute, the Women's Caucus for Gender Justice provided another example of a successful coalition. Mobilising women's rights activists and organisations from different regions, it had a significant influence on

52 More information is available at www.icbl.org.

53 More information is available at www.iccnw.org.

54 The treaty entered into force on 1 July 2002.

the text and its references to gender and sexual violence in particular. When the Rome Statute was approved, the Caucus resumed its work and created a new organisation called Women's Initiatives for Gender Justice, which advocates for gender-inclusive justice and for an effective and independent ICC.

The Rome Statute codified crimes of sexual and gender violence, included them in the ICC's jurisdiction, and instituted procedures for dealing with such crimes and protecting the rights of their victims. It reflected the history of work on gender-specific violence by women's and human rights organisations. As a result of their efforts over many years, violence against women has been recognised as a human rights violation, notably since the Vienna World Conference on Human Rights (1993). Gender had also been prominent in the case-law of the Tribunal for the Former Yugoslavia.⁵⁵

NGOs have found other ways to work together to influence standard-setting processes. Since time is limited and NGOs are numerous, the latter are always under pressure to make efficient use of opportunities to put their views forward. Umbrella bodies play a useful role here. One example of many is the International Council of Voluntary Agencies (ICVA), which represents a wide range of NGOs that work on humanitarian and refugee issues. The Executive Committee (ExCom) of the Office of the United Nations High Commissioner for Refugees (UNHCR) gives ICVA a formal opportunity to present the views of human rights, humanitarian, and development NGOs in a focused way. (For UNHCR's role in standard-setting, see Chapter IV.)

NGOs coordinate formally or informally in many different ways to present their positions efficiently and in a representative manner. Women's organisations have been particularly good at this. Hundreds of women's organisations worked together to produce shared texts during the International Conference on Population and Development (Cairo, 1994) and the Fourth World Conference on Women (Beijing, 1995). This sharply increased the effectiveness of their lobbying and advocacy and helped generate plans of action at both conferences that provided frameworks for the development of national laws and policies on violence against women, and sexual and reproductive health and rights. Women's organisations were also successful in lobbying governments to include representatives from women's NGOs in their official delegations.

Governments themselves can help to bring NGO positions or concerns into negotiations and to the attention of other governments. Some states have a long tradition of working closely with NGOs. Many NGOs have found it useful to develop contacts with such "friendly countries" at different stages of a standard-setting process – though a state that is "friendly" in one process can of course be "hostile" on a different issue.

55 It also established a requirement that staff of the court should fairly represent different regions as well as women and men.

ECONOMIC AND SOCIAL COUNCIL (ECOSOC) Consultative Status

In 1968, the UN Economic and Social Council (ECOSOC) adopted a resolution (revised and expanded in 1996) covering the status of NGOs. Based on article 71 of the *United Nations Charter*, it set out "suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence".

The resolution accorded qualified NGOs three types of consultative status in the UN. Category I includes NGOs that, based on their mandate, have a special interest in all of ECOSOC's activities. Category II includes organisations that, based on their mandate, have an interest in some of ECOSOC's activities. NGOs in Category III are placed on a roster and may be consulted on an ad hoc basis.

To apply for consultative status, NGOs must:

- pursue an activity that is relevant to the work of ECOSOC and its subsidiary bodies;
- have been registered for at least two years;
- have a democratic decision-making mechanism; and
- derive their funding from national affiliates, individual members or other non-governmental components.

Applications are considered by the Intergovernmental Committee on NGOs and submitted to ECOSOC for final approval. Registered organisations must report on their activities to the Committee every four years and describe their contribution to the work of the UN. The status can be suspended or withdrawn if the organisation does not contribute effectively to that work, or if it undertakes activities incompatible with the *United Nations Charter's* principles and objectives, engages in politically-motivated acts against member states or is influenced by internationally recognised criminal activities.

EXPERTS

UN Special Rapporteurs, Members of the UN Sub-Commission on the Promotion and Protection of Human Rights (see Chapter IV) and academic and other technical experts have played a vital role in standard-setting. They regularly identify protection gaps and initiate new standards. They often participate as well during negotiations. The Special Rapporteur on Torture, for example, participated in the negotiation of the *Optional Protocol to the Convention against Torture* (OP-CAT) by supporting the draft proposed initially by Costa Rica and attending the drafting committee at crucial moments. By and large, experts have produced studies of high quality on standards.

Though to a lesser degree, members of UN human rights treaty-monitoring bodies, who are also experts, have played a similar role.⁵⁶ They are often called upon to give their opinion on specific technical or legal issues during intergovernmental negotiations. In their daily activities, nevertheless, the contribution they make to standard-setting is limited. When they review situations or individual cases, or comment on national legislation and practice, they interpret international standards. In particular, UN treaty-monitoring bodies issue “General Comments” or “Recommendations” in which they clarify the scope and content of certain obligations. In that respect, the work of these experts is an important source of information when it comes to identifying protection gaps or discussing which elements a new standard should contain. Their work is also crucial when it comes to broadening or extending the protection of existing standards to meet normative or applicability gaps.

In the ILO, the Committee of Experts on the Application of Conventions and Recommendations often uses its review function under article 19 of the ILO Constitution to propose new or amended standards and these proposals are usually acted upon.

The contribution of experts can be invaluable because they are independent and (by definition) well informed. Their reports and proposals are likely to address technical and legal issues objectively and professionally, avoiding problems of explicit political bias. When this is so, the legitimacy of their views is difficult to challenge and, as a result, experts can be precious allies of both governments and NGOs.

Under the Commission on Human Rights, states sometimes requested experts to make an initial assessment of the benefits a new standard would provide, or its practicality. Some of these studies significantly influenced the path that standard-setting processes took. During negotiation of the *Convention for the Protection of All Persons from Enforced Disappearance* an expert assessment recommended the adoption of a legally binding instrument, which reinvigorated the negotiations that concluded successfully three years later.⁵⁷

In general, a positive expert assessment helps to create conditions that favour the adoption of a new standard. Expert reports can assist a proposal to gather political momentum. Where an expert’s advice is sceptical or complicated, of course, this is likely to delay a new process.

56 For example, the Committee on Economic, Social and Cultural Rights prepared an initial draft of the OP-ICESCR that was submitted to the CHR in 1996 (E/CN.4/1997/105, annex). The Committee on the Rights of the Child prepared a preliminary draft of the OP-CRC-AC (see E/CN.4/1994/91).

57 Mr Manfred Nowak was asked to examine the international framework for protecting individuals from enforced or involuntary disappearances, in line with CHR resolution 2001/46. See also E/CN.4/2002/71, p. 6.

Experts who held mandates under the Special Procedures of the Commission on Human Rights (e.g. Special Rapporteurs and Working Groups of the Commission) were generally selected by the Chairperson of the Commission.⁵⁸ Since the Commission was composed of governments, these appointments were naturally political. At the same time civil society organisations contributed to the process by identifying and recommending candidates.

A number of Special Rapporteurs have made major contributions. Their role is highly valued because, when the reports they produce are independent and of high quality, they cannot be challenged on political grounds. When it created the Human Rights Council, the General Assembly mandated it to “assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and a complaint procedure.”⁵⁹ The Council was asked to complete this review within one year of holding its first session. Accordingly, when it met for the first time in June 2006, it extended all the mandates and mandate-holders of the Commission’s special procedures for one year, while it undertook the above review.⁶⁰

In most cases, UN experts have been willing to receive inputs from NGOs and to communicate civil society concerns on the issues they study. However, they have served without payment, and often have had little administrative support; their capacity has inevitably been limited as a result.

Academic and technical experts also play a role in standard-setting, although their influence is less direct than that of UN-appointed experts. The views they express are often relayed by NGOs to governmental circles.

Some universities have played a key role in promoting standard-setting. For example, Maastricht University in the Netherlands has been the location of several influential expert initiatives. An initial version of the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (OP-CEDAW) was drafted there in 1994 by an independent expert group. In 1986 and 1997, a different group of experts wrote the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (Limburg Principles, 1986) and the *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (Maastricht Guidelines, 1997). Both have been used as a reference when the merits of drafting an optional protocol to the ICESCR have been discussed.

58 Special Representatives of the Secretary-General and some independent experts are selected by the United Nations Secretary-General upon the recommendation of the High Commissioner for Human Rights.

59 Resolution 60/251 of 15 March 2005.

60 A/HRC/1/L.6 and A/HRC/1/L.4. The Council agreed that the review should be conducted through open-ended meetings, in which NGOs and other stakeholders will participate.

SECRETARIATS OF INTERNATIONAL ORGANISATIONS

Secretariats of international intergovernmental organisations can identify gaps, initiate proposals for new standards, and engage actively in the drafting of new norms.

The Secretariats of the Office of the High Commissioner for Human Rights (OHCHR), the International Labour Organization (ILO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), as well as the International Committee of the Red Cross (ICRC), have all been involved in standard-setting.⁶¹

This section will focus on the OHCHR. The work of other UN agencies and the ICRC is examined in Chapter IV.

The OHCHR is the main UN body responsible for human rights. Under its mandate, the Office is committed to working with other institutions of the United Nations to integrate human rights standards in the work of the Office and ensure that standards are implemented nationally. It provides services to human rights bodies engaged in standard-setting.⁶²

The OHCHR has been criticised for not taking a more active role in identifying “normative gaps” and initiating new standards.⁶³ According to this view, it has confined its role to collecting comments, informally advising United Nations experts, and convening and servicing intergovernmental or expert meetings when requested to do so by states. With respect to this criticism, it should be born in mind that many states are reluctant to allow the Office to play an active and independent role. The OHCHR also plays a backstage role. Delegations often ask its staff to provide information and informal advice during drafting processes.

All the same, the OHCHR could no doubt do more within its current mandate to identify protection gaps, support calls for new standards, and make proposals for filling gaps. Although the Office is currently making some important changes

61 Mention should also be made of the Division for the Advancement of Women (DAW), which acts as a Secretariat for both the Commission on the Status of Women (see Chapter IV) and the CEDAW Committee.

62 The OHCHR is composed of a Treaties and Commission Branch, a Special Procedures Branch, a Capacity Building and Field Operations Branch, and a Research and Right to Development Branch. The latter “[p]rovid[es] substantive services to human rights organs engaged in standard-setting activities” among its core functions. (ST/SGB/1997/10, 15 September 1997, Secretary-General’s bulletin, organisation of the OHCHR. Available at www.unhcr.ch/html/hchr.htm – accessed on 28 August 2006).

63 See, for example, International Commission of Jurists, *Reforming the Human Rights System: A Chance for the United Nations to Fulfil its Promise*, June 2005.

to its organisation and programme, and will increase considerably in size in 2006-2008, it has not announced plans to increase its role in standard-setting.

It should be added that the OHCHR has organised several meetings (sometimes with NGOs) which have subsequently influenced standard-setting. Because these meetings have had standing but remained informal, actors have been able to discuss issues frankly and constructively. The International Commission of Jurists (ICJ) and the National Advisory Committee on Human Rights (CNCDH-France) jointly convened such a meeting in Geneva in 1992, which paved the way for a set of principles to combat impunity. A workshop on the justiciability of economic, social and cultural rights which the OHCHR organised with the ICJ in 2001 contributed similarly to the creation of an open-ended working group on an optional protocol to the ICESCR.

BENEFICIARIES, VICTIMS AND THOSE WHO ARE DIRECTLY AFFECTED

Calls for a new standard undoubtedly become more legitimate when those who are directly affected press the claim themselves. During the landmines campaign the voices of landmine survivors were particularly compelling.

In the past, such people were rarely invited to participate in the negotiation of new standards. This may be changing. The General Assembly has taken steps to include and facilitate the participation of groups who are directly affected by them.

Already in 1995, the General Assembly had established a Voluntary Fund for Indigenous Populations to assist representatives of indigenous communities to attend meetings of the Working Group on Indigenous Populations of the Sub-Commission. Ten years later, when the Commission on Human Rights established a working group to draft a *Declaration on the Rights of Indigenous Peoples*, the General Assembly decided that the Fund should also be used to assist indigenous representatives to participate in its deliberations.⁶⁴

More recently, the General Assembly encouraged member states to involve people with disabilities, and representatives of disability organisations as well as experts, in preparing the Convention on the Rights of Persons with Disabilities. States were invited to include persons with disabilities in their delegations. In the resolution establishing the rules of procedure regarding NGO participation, the General Assembly urged "relevant United Nations bodies, in recognition of the importance of the equitable geographical participation of non-governmental organizations in the work of the Ad Hoc Committee, to assist those non-

64 See General Assembly resolutions 10/131 of 13 December 1985 and 50/156 of 21 December 1995. The General Assembly further expanded the Fund's mandate by deciding that it could assist indigenous representatives to attend sessions of the Permanent Forum on Indigenous Issues (resolution 56/140 of 19 December 2001).

governmental organizations that lack resources, in particular non-governmental organizations interested in the matter from developing countries and countries with economies in transition, in participating in the work of the Committee.”⁶⁵ A few months later, the General Assembly established a voluntary fund to cover the participation of such NGOs and experts.⁶⁶ As a result, half the participants in the Ad Hoc Committee were people with disabilities. This ensured that the norms adopted addressed real needs; the drafting process also proved to be extremely democratic. It should be noted, however, that the General Assembly clearly indicated that the arrangements made would “in no way create a precedent for other Ad Hoc Committees of the General Assembly.”⁶⁷ During negotiation of the Ottawa Treaty, survivors’ organisations successfully lobbied governments and NGOs to include a provision to assist survivors.

Often NGOs facilitate the participation of people who are directly affected during the negotiation process. The interplay between the two groups can be mutually advantageous. Those whose rights have been violated rarely speak out about their personal experiences and in most cases, at least initially, they lack the means to communicate their problems directly. NGOs can help them to be heard. For their part, international NGOs can bring the power of their networks and lobbying capacity, as well as political and legal expertise.

During negotiation of the *Convention for the Protection of All Persons from Enforced Disappearance* (CED), international human rights NGOs and local organisations of the relatives of those who had disappeared worked together effectively. This highlights another issue: the responsibility of NGOs to represent the interests of directly affected people in ways that are disinterested and transparent. Where NGOs fail to do this, they do such people a disservice.

Involving people who have direct experience of a problem increases the legitimacy of the process and may facilitate it. They can often identify specific needs that are not apparent to outsiders. In addition, their participation may strengthen their own identity and organisational capacity. Although the *Declaration on the Rights of Indigenous Peoples* was drafted with painful slowness, the participation of many indigenous communities highlighted common interests and strengthened their sense of identity.⁶⁸ The process also raised public and political awareness, internationally and no doubt nationally.

65 General Assembly resolution 56/510 para. 3.

66 See General Assembly resolutions 56/510 of 23 July 2002, 57/229 of 18 December 2002 paras. 10, 12, 13, and 58/246 of 23 December 2003 para. 14.

67 General Assembly resolution 56/510 of 23 July 2002, para. 6.

68 As mentioned, the Working Group on the draft declaration was established by the CHR in 1995. However, it made no real progress for several years, causing frustration for all involved. Political interest and commitment began to wane, media coverage fell, and many indigenous activists felt betrayed or demoralised. Fortunately, the long process suddenly bore fruit when the Declaration was adopted by the HRC in June 2006 (resolution 2006/2, 29 June 2006).

The direct involvement of employers' and workers' representatives in the ILO, and the designation by governments of delegates from Labour Ministries, helps in a similar way to increase the realism and ownership of ILO standards.

People whose rights have been violated or who have the most direct interest in a new standard do not necessarily frame their protection needs in legal terms or call for new human rights laws. In some cases, indeed, such groups have reservations about creating a new standard for their protection. When the Declaration on Human Rights Defenders (1999) was drafted, many human rights activists were initially unconvinced that it would enhance their protection and feared that it would be used by unfriendly governments to restrict their activities. So far, this has not been the case.⁶⁹

Working with beneficiaries and directly affected groups is not always straightforward, however. Direct beneficiaries (victims of landmines, members of minorities, people with disabilities) are effective but sensitive lobbyists. It can be a challenge to find consensus, especially when NGOs (or states) consider it appropriate to compromise on a point to secure political consent. Affected groups may be reluctant to find compromise. The realities of diplomatic negotiation may clash with the ideal of comprehensive protection. In practice, nevertheless, parties that have different interests must understand how others perceive the issues, search for common ground, and make practical agreements when their positions are far apart.

NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIs)

NHRIs are becoming actors in UN human rights activities, and are formally invited to attend various meetings, often as observers. Because they are mandated to promote and protect human rights, and are encouraged to provide advice to their respective governments on human rights matters, standard-setting is relevant to their work.

NHRIs often have privileged access to public authorities – although Ministries of Foreign Affairs may not be their primary interlocutor – and can be a channel through which civil society organisations can convey their positions and concerns to officials.

Furthermore, the *Principles relating to the Status of National Human Rights Institutions* (Paris Principles, 1993) provide that NHRIs should encourage ratification and ensure implementation of international human rights instruments to which the state is a party. They may be effective advocates, alongside national NGOs, in lobbying for ratification of human rights standards.

69 *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (A/RES/53/144, 8 March 1999).

This said, it is clear that NHRIs have uneven capacity. Some need to establish their political independence as required under the Paris Principles, while many lack the human and financial resources that would enable them to take on the full range of their functions.⁷⁰

MEDIA

The media too can play a useful, though indirect role. They often report negotiations, publicly question positions adopted by governments and help form public opinion on an issue. The International Campaign to Ban Landmines used the media particularly efficiently. Strap lines like “every twenty-two seconds somebody steps on a landmine” were widely reported, adding to the pressure on negotiators.

To enable the media to play a vital role, governments and NGOs should assist journalists to inform themselves about efforts to set new human rights standards. This said, issues of confidentiality can clearly arise and media coverage is not always helpful. For example, two recent protocols were negotiated in parallel, on smuggling and trafficking.⁷¹ Whereas stories about trafficking would tend to elicit public support for stronger protection of trafficked people, stories about human smuggling would probably not elicit sympathy for the dangers that unregistered migrants face.

This report is not able to analyse in detail the different ways in which advocates can make use of the media to advance their cause, raise public awareness and influence negotiations.⁷² It is clear, however, that in many cases NGOs and other civil society organisations, as well as governments and international institutions, should work with the media to explain and advance negotiations in which they are involved.

70 For more on the role of national human rights institutions, see International Council on Human Rights Policy, *Performance & Legitimacy – National Human Rights Institutions*, Geneva: ICHRP, 2001, reprinted 2004, and *Assessing the Effectiveness of National Human Rights Institutions*, Geneva: ICHRP, 2005.

71 *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Protocol on Trafficking, 2000) and the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Crime* (Protocol on Smuggling, 2001).

72 For further information on the role of media, see International Council on Human Rights Policy, *Journalism, Media and the Challenge of Human Rights Reporting*, Geneva: ICHRP, 2002.

IV. WHERE? THE LOCATION OF NEGOTIATIONS

The subject matter of a standard and its geographical jurisdiction (global or regional) both influence the location of negotiations. Choice of location in turn determines the path that negotiation is likely to follow.

Global standards require an intergovernmental process that allows most or all states to participate. Traditionally, human rights standards have been negotiated at the United Nations, mainly at the Commission on Human Rights (Geneva) and the General Assembly (New York), as well as the Commission on the Status of Women (New York); humanitarian law standards at diplomatic conferences convened by Switzerland (as the depository of the Geneva Conventions) and the International Movement of Red Cross and Red Crescent Societies (Geneva); refugee law standards at the Executive Committee (ExCom) of the Office of the High Commissioner for Refugees (Geneva); and international criminal law standards at the UN Office on Drugs and Crime and at Congresses on the Prevention of Crime and the Treatment of Offenders (Vienna).

At regional level, human rights standards are negotiated by regional organisations such as the African Union, the Council of Europe and the Organisation of American States. Other UN bodies, such as the ILO and UNESCO also negotiate standards related to their own mandates. Such standards are of global application and a number of them are considered to be human rights standards.

Those wishing to promote a new standard clearly have to decide which forum offers the highest chance of success. Several factors will govern this decision – including where they themselves have most influence, and where the new proposal will be received most sympathetically. In practice, however, such assessments are not easy to make.

For one thing, decisions may be contested. When they wanted to address the specific needs of children during armed conflicts, human rights advocates recommended that a diplomatic conference should be convened to approve a humanitarian law treaty.⁷³ States disagreed, on the grounds that such issues had a natural link with the *Convention on the Rights of the Child* (CRC, 1989) and its monitoring body. Furthermore, a humanitarian law treaty would not address recruitment of child soldiers in peacetime. The Optional Protocol to the CRC on the involvement of children in armed conflict (OP-CRC-AC) was finally negotiated by an open-ended working group of the Commission on Human

73 The CHR established a working group to draft the OP-CRC-AC in 1994 (resolution 1994/91). By 1998 the process had become blocked, and a diplomatic conference to produce an international humanitarian law treaty was seen by some NGOs as one of the alternatives to overcome the impasse.

Rights.⁷⁴ Even then, the OP did not introduce a specific monitoring mechanism with stronger powers than those of the Committee on the Rights of the Child.⁷⁵ At the time it was argued that it would be inconsistent to create a separate mechanism for a single issue. The OP went further than traditional human rights instruments in that non-state actors are also bound by its provisions. However, the supervisory mechanism merely requires states to report to the Committee.

The forum of negotiation influences the type of instrument adopted, the range of issues addressed, the legal obligations that are highlighted, and the scope of the supervisory mechanism. When it seemed unlikely to achieve a mandate for a Convention on the Rights of Persons with Disabilities within the Commission on Human Rights, the Mexican President made a speech to the General Assembly in 2001 in which he proposed the establishment of a “special committee” to examine the elaboration of an international convention to promote and protect the rights of people with disabilities. In this case, the drafting Committee was not placed within the CHR but under the Commission on Social Development (CSD).⁷⁶ It was hoped that as a result the Convention would be comprehensive, “based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination”.⁷⁷

A sensible choice of location assisted the adoption of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (Voluntary Guidelines on the Right to Food, 2004). The negotiation of these Guidelines (which lasted less than two years) took place within the UN Food and Agriculture Organization (FAO), and would have taken much longer within a human rights intergovernmental body.⁷⁸

The status and influence of different actors also changes with venue. The composition and expertise of government delegations and Secretariats vary from place to place – as do the capacity and number of NGOs. Regular exposure to human rights issues in Geneva means that some diplomats develop a good understanding of human rights norms and current debates, because they attend so many meetings on human rights, particularly at the Human Rights

74 The CHR (resolution 1994/91) decided to establish an open-ended working group to draft an Optional Protocol to the CRC drawing on a preliminary draft Optional Protocol on the involvement of children in armed conflicts that was submitted by the Committee on the Rights of the Child (E/CN.4/1994/91).

75 This Committee is one of the few treaty bodies that has no mandate to receive individual complaints in respect of the rights it addresses.

76 Like the CHR, the CSD is another functional commission of the ECOSOC.

77 General Assembly resolution 56/168 of 19 December 2001, para. 1.

78 The FAO Council formally established the Intergovernmental Working Group (IGWG) for the elaboration of the Voluntary Guidelines on the Right to Food in November 2002 and adopted the Guidelines in September 2004. Afterwards the Guidelines were submitted to the Committee on World Food Security (CFS) for endorsement and transmission to the Council. NGOs played a crucial role in this process.

Council (and formerly the Commission on Human Rights). For similar reasons, NGO staff based in Geneva tend to have a sound knowledge of human rights and acquire negotiating skills.

Sometimes there may be advantages in bringing the discussion to an unusual location. Recent negotiations on UN reform, which led to the creation of the Human Rights Council, suggested that some diplomats in New York were more ready to “think out of the box” than those in Geneva; too much expertise held by a small group of people may inhibit new thinking. Because delegations active on human rights issues know each other well, alliances and relationships are also somewhat settled. This can cut both ways: it can stifle initiative but permit much practical cooperation because trust exists and positions are predictable. The same is true with respect to NGOs.

The location of negotiations can promote or suppress the participation of different actors in the UN system. For example, the decision to locate negotiation of the Convention on the Rights of Persons with Disabilities in New York depressed the participation of Geneva-based NGOs and intergovernmental bodies such as the ILO and WHO, because their costs rose.

It should finally be emphasised that the work of the United Nations human rights bodies is complemented by a range of standards (on health, education, labour, culture, and on refugees) which other UN specialised agencies, programmes and funds have developed.⁷⁹ Though the ILO and UNESCO do so, these bodies and their constituencies have generally not described their work in terms of human rights, and many would still be reluctant to do so – even if, increasingly, they acknowledge their responsibility to implement universal human rights standards. For good or bad, the intergovernmental body most associated with human rights standard-setting was the former UN Commission on Human Rights. Most observers expect the Human Rights Council to fulfil a similar role.

THE UNITED NATIONS

Many UN organs have a role to play in the field of establishing human rights standards. The most relevant organs are described in this section.⁸⁰

79 There are four agencies: ILO, FAO, UNESCO and WHO. Examples of programmes and funds are: UNHCR, UNICEF, UNIFEM.

80 The Security Council (SC) has not been considered. The SC has 15 members; five permanent members and 10 elected by the General Assembly for two-year terms. The key role of the SC is the maintenance of international peace and security. Actions taken by the Security Council will generally impact on human rights because these invariably come to the fore whenever international peace and security are threatened. Nonetheless, the impact of the Security Council in standard-setting is generally indirect. An exception might be resolution 1325 (2000), the first resolution ever passed by the SC that specifically addressed the impact of war on women and girls.

Commission on Human Rights (CHR or Commission)

The Commission on Human Rights (CHR or Commission) was established by ECOSOC in 1946 and replaced by the Human Rights Council (HRC or Council) in 2006. The CHR was composed of government representatives.

The first international human rights standard-setting exercise took place at the CHR when government representatives drafted the *Universal Declaration of Human Rights* (UDHR). It was decided at the start that a non-binding inspirational declaration was preferable to a treaty, as the latter might raise difficult legal and technical problems and be obstructed by governments. Within two years, the CHR's text was formally endorsed by the General Assembly. During the first twenty years of its existence, the CHR was confined to standard-setting, since it was not authorised to monitor or take action on human rights situations.

The Commission on Human Rights became probably the most 'democratic' forum within the UN, and civil society organisations had access to its plenary debates. NGOs with ECOSOC status (see textbox, page 27) could submit written and oral statements to the Commission and were entitled to participate in formal and informal sessions of its subsidiary bodies, including those mandated to create new standards. The Human Rights Council will review its rules and procedures during 2006-2007, including those that regulate the participation of civil society organisations. It is hoped that the Council will continue the tradition of openness that the CHR pioneered.

It is also hoped that the Human Rights Council will continue to play a leading role in setting standards. The resolution that created the Council provides that it will "make recommendations to the General Assembly for the further development of international law in the field of human rights".⁸¹ Some of its methods of work will certainly change, nevertheless, and, though it is premature to guess what these changes will be, they are likely to have some effects on standard-setting. On the other hand, most of the actors will remain the same.

Sub-Commission on the Promotion and Protection of Human Rights

The UN Sub-Commission was often referred to as the 'think-tank' of its parent body, the CHR. Initially set up to provide advice to the CHR on protection of minorities and prevention of discrimination, its mandate was later extended to cover all human rights, from contemporary forms of slavery to counter-terrorism measures. Its twenty-six independent members were elected in their individual capacity to reflect various legal traditions. Although the independence and expertise of some of its members was questioned, the Sub-Commission often undertook studies of high quality. It recommended the adoption of several new standards and prepared a number of draft texts, some of which were taken

81 General Assembly resolution 60/251, para 5 (c).

forward by the CHR or influenced its work. The Sub-Commission contributed most in the areas of minority rights, racial and religious non-discrimination, and reparation.

Several important “soft law” instruments started life in the Sub-Commission.⁸² The *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Basic Principles and Guidelines, 2005) were the result of the work of two Sub-Commission experts, Professors Theo van Boven and Cherif Bassiouni. At the end of the 1980s, the Sub-Commission asked Mr van Boven to prepare a report on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights. He submitted it to the Sub-Commission in 1993 and in 1997 the Commission appointed Mr Bassiouni, as an independent expert, to revise the draft, taking state comments into account. By this means the Commission on Human Rights avoided a regular intergovernmental negotiation of a sensitive issue. It also recognised implicitly the value of using independent experts to draft consensual documents that bring together existing international obligations. A revised version was circulated among states in 2000, and the Commission then convened three consultative meetings with states between 2002 and 2004 (chaired by Chile), before the Basic Principles and Guidelines were adopted by the Commission and the General Assembly in 2005.

These consultations were open to states, intergovernmental organisations and NGOs. Some NGOs criticised the process for its length and what they saw as a relatively anodyne outcome, while other participants felt that it had been necessarily realistic and had advanced international human rights law. One NGO concluded that they placed “more emphasis on the fact that the Basic Principles and Guidelines reiterate existing international law rather than create new rules. (...) These outcomes and the time taken to conclude these discussions make it apparent that further consultations (...) will be of little positive consequence. The consultative meetings, taken as a whole, have resulted in a document imbued with political compromise rather than a detailed articulation of principles by experts”.⁸³ Professor van Boven, in contrast, believed that the gaps in protection were more political than legal, and that procedures for effective implementation of existing standards in this field were required more than new legal obligations. In his view, the aim was to reach a

82 For example, it was the source of drafts for the Declaration on Human Rights Defenders, the Draft Declaration on Indigenous Peoples, the *Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, and the *Draft Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

83 International Service for Human Rights, at www.ishr.ch/About%20UN/Reports%20and%20Analysis/CHRWG/Remedy/Remedy-3rdConsultation.pdf (accessed on 28 August 2006).

consensus without weakening the text of the Basic Principles and Guidelines.⁸⁴ This is a good illustration of how differently those involved in standard-setting assess their experience.

Another “soft law” standard developed by Sub-Commission experts was the *Set of Principles for the protection and Promotion of Human Rights through Action to Combat Impunity*. These were prepared by Mr Louis Joinet, in 1997.⁸⁵ In 2003 the Commission requested the Secretary-General to appoint an independent expert to reflect recent developments in international law and practice. In 2005 the Principles were updated and adopted through a Commission on Human Rights resolution on impunity.⁸⁶

Other relevant standards developed by the Sub-Commission were the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*⁸⁷ and the *Declaration on the Rights of Indigenous Peoples*. Both standards emerged from Sub-Commission working groups.⁸⁸

It is difficult to predict whether the newly-established Human Rights Council will retain the Sub-Commission, or a successor to it. When establishing the Council, the General Assembly called on states to “review and, where necessary, improve and rationalise all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of ... expert advice.”⁸⁹ The Council would benefit from the services of an independent expert body to analyse technical issues and prepare background documents. Such a body could initiate studies (*proprio motu*) – a procedure the Commission increasingly curtailed – and provide a forum in which states (and NGOs) could explore new issues without triggering formal intergovernmental

84 www.ishr.ch/About%20UN/Reports%20and%20Analysis/CHRWG/Remedy/Remedy-3rdConsultation.pdf (accessed on 28 August 2006).

85 See E/CN.4/Sub.2/1997/20/Rev.1 and Sub-Commission resolution 1997/28.

86 See Diane Orentlicher, *Report updating the Set of principles to combat impunity*, E/CN.4/2005/102.

87 E/CN.4/Sub.2/2003/12/Rev.2 of 23 August 2003.

88 In its resolution 1998/8 of 20 August 1998 the Sub-Commission established a working group, composed of five of its members, to examine the working methods and activities of business corporations. By resolution 2001/3 of 15 August 2001, the Sub-Commission extended its mandate for a second three-year period. The Sub-Commission began its work on the rights of indigenous peoples in 1970 and in 1971 appointed a Special Rapporteur on the topic (Mr José R. Martínez Cobo). In 1982, a Working Group on Indigenous Populations was established as a subsidiary organ of the Sub-Commission. The *Draft Declaration on the Rights of Indigenous Peoples* drew on the work of the Sub-Commission Working Group.

89 General Assembly resolution 60/251, para. 6.

processes.⁹⁰ This said, the Sub-Commission's methods of work were relatively cumbersome, and some exploratory studies can best be done by an expert directly appointed by the Human Rights Council.⁹¹

Commission on the Status of Women (CSW)

The Commission on the Status of Women is a subsidiary body of ECOSOC. (It therefore has the same status as the CHR but a lower one than the HRC.) Most standards relating to the rights of women were drafted in this forum, including the *Convention on the Political Rights of Women* (1952), the *Convention on the Nationality of Married Women* (1957), the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (1962), the *Declaration on the Elimination of Violence against Women* (1993), the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1979) and the *Optional Protocol to the Optional Protocol to the Convention on the Elimination of Discrimination against Women* (OP-CEDAW, 1999).

CEDAW provides a good example of the CSW's standard-setting work. In 1972, five years after the *Declaration on the Elimination of Discrimination against Women* (1967) was adopted, it began work on preparing a binding treaty. The text of the Convention was prepared by working groups appointed within the Commission and by a working group of the Third Committee of the General Assembly.

Drafting was spurred by the *World Plan of Action for the Implementation of the Objectives of International Women's Year*, adopted by the World Conference on Women (Mexico, 1975), which called for a convention on the elimination of discrimination against women. The General Assembly also urged the CSW to finish its work by 1976, so that the Convention could be completed in time for the World Conference on the UN Decade for Women: Equality, Development and Peace (1980 Copenhagen). The General Assembly finally adopted the Convention in 1979.

The OP-CEDAW was also the outcome of sustained efforts by women's rights activists. In response to campaigning at the 1993 World Conference on Human Rights in Vienna, states acknowledged the need to develop an optional complaints procedure under the Convention, and called on the CSW and the CEDAW Committee to take action. In 1994 a group of independent experts (including members of treaty-monitoring bodies) met in Maastricht to elaborate a draft OP-CEDAW. Although this text was not officially accepted as

90 In recent years, the Commission allowed the Sub-Commission to undertake standard-setting only at its request or after prior authorisation. See CHR resolution 2005/83, para. 8 (c).

91 See, for example, International Commission of Jurists, *Reforming the Human Rights System: A Chance for the United Nations to Fulfil its Promise*, June 2005.

a basis for government negotiations, it served as a key reference point in future negotiations. The Platform for Action, adopted by the fourth Conference on Women in Beijing in 1995, explicitly supported the elaboration of an Optional Protocol.

An open-ended WG of the CSW then met annually from 1996 to 1999 to review the need for and then draft a protocol. Women's human rights advocates participated actively throughout the drafting process and were extremely effective. Many of their key demands were included and the process was relatively fast. The OP was adopted in 1999 and entered into force within a year.

Commission for Social Development (CSD)

Like the former CHR and the CSW, the Commission for Social Development is a functional commission of ECOSOC. It consists of 46 government representatives. The Commission is the key UN body in charge of the follow-up and implementation of the *Copenhagen Declaration and Programme of Action* (1995). Its role in standard-setting is particularly important in regard to the rights of persons with disabilities.

Among the programmes implemented by the CSD's Division for Social Policy and Development is the UN Programme on Disability, which is the lead programme on disability within the United Nations system.

One of the major objectives of the Programme on Disability is to advance the rights and protect the dignity of persons with disabilities. The Programme on Disability also serves as the Secretariat for the General Assembly Ad Hoc Committee on a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities. As mentioned earlier, this Ad Hoc Committee is in charge of drafting the Convention on the Rights of Persons with Disabilities.

The Commission on Crime Prevention and Criminal Justice / The Committee on Crime Prevention and Control

The Commission on Crime Prevention and Criminal Justice (established in 1991) is a subsidiary body of ECOSOC. It was preceded by the Committee on Crime Prevention and Control. The Commission formulates international policies and recommends activities in the field of crime control.

During the 1970s and 1980s the Congress on the Prevention of Crime and the Treatment of Offenders (which meets every five years) drafted an impressive number of "soft law" standards. They ranged from the adoption in 1955 of *Standard Minimum Rules for the Treatment of Prisoners* to the *Model Treaty for the Prevention of Crimes that Infringe on the Cultural Heritage of Peoples in the*

Form of Moveable Property (1990).⁹² Most of these texts were subsequently endorsed, by consensus, by ECOSOC or the General Assembly. From 1990, however, the Congress' ability to negotiate new standards declined after it came under political attack for meeting that year in Havana.

The forty-member Commission on Crime Prevention and Criminal Justice meets annually and is mandated to formulate international policies, and recommend activities, in the field of crime control. It is a subsidiary body of ECOSOC. The UN Office on Drugs and Crime (UNODC) (established in 1997, with headquarters in Vienna) supports the activities of both the Commission on Crime Prevention and the Congress. In cooperation with other relevant international and regional entities, UNODC also provides assistance to states (advisory services, needs assessment, capacity building).

Recently, the *United Nations Convention against Transnational Organised Crime* (2000) and two supplementary protocols, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, were drafted in Vienna.⁹³ These instruments take a criminal law rather than a human rights approach to the issues but clearly have a human rights dimension.

United Nations General Assembly (General Assembly)

On occasion, the General Assembly has itself directly sponsored new standards. It has usually done so when the instruments concerned involve more than one area of policy or are under consideration by more than one UN body. The Convention on the Rights of Persons with Disabilities is an example. In 2001, the General Assembly established an Ad Hoc Committee to prepare a draft convention on disability (the *Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*). For two decades, disability had been on the agenda of the Commission for Social Development and its Special Rapporteur on Disability. The General Assembly itself had also adopted *Standard Rules on the Equalization of Opportunities for People with Disabilities* in 1993. This partly explains why the CHR was not mandated to set new standards in this area, even though these would have a strong human rights component. In addition, the protection of disabled people was perceived in diplomatic circles to be a social rather than legal or human rights problem.

92 Adopted by the eighth Crime Congress on the Prevention of Crime and Treatment of Offenders, Havana, 27 August-7 September 1990 and welcomed by the General Assembly in resolution 45/121 of 14 December 1990.

93 The General Assembly established an Ad Hoc Committee in 1998, open to all states, to draft the Convention (resolution 53/111, 9 December). The Committee's first session took place in Vienna from 19-29 January 1999. The General Assembly adopted the Convention in 2000 (resolution 55/25 of 15 November).

Diplomatic conferences

When an issue is considered particularly important, the General Assembly may convene an international conference to focus global attention on it and build consensus in favour of action. Exceptionally, diplomatic conferences are convened by states. The *Geneva Conventions of 12 August of 1949* and their Protocols of 1977 were adopted at diplomatic conferences convened and hosted by Switzerland as the depositary state.

Recent diplomatic conferences are considered to have finalised treaties with speed and efficiency. However, it should be understood that the decisions they took were made possible by the lengthy negotiations that preceded them. This was true of both the Diplomatic Conference on an International Total Ban on Anti-Personnel Land Mines which adopted the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer or Anti-Personnel Mines and on Their Destruction* (Ottawa Treaty)⁹⁴ and the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (also known as the Rome Conference).

The Ottawa Treaty, for example, was inspired by frustration with the slow progress of disarmament talks. A ban on landmines was on the agenda of the 1977 conference on the Protocols to the Geneva Conventions and again when the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed Excessively Injurious or to Have Indiscriminate Effects* (CCW, 1980) was drafted. In 1996, the first review conference of the CCW amended its Protocol II to restrict use of landmines, but failed to ban them. At that time, this was “widely considered to be the most stringent international agreement possible in the prevailing climate”.⁹⁵ The campaign for a ban therefore set out to circumvent these slow and cumbersome procedures by bringing together in a single movement all the stakeholders – governments, the security and military establishment, the ICRC, NGOs, survivors, de-miners, experts in arms control, development specialists, and academics. An outsider would certainly judge that the campaign was spectacularly successful, because the Treaty was negotiated in just over a year. However, the essential preparatory work and negotiation had taken place during the drafting phase of the CCW.

The Rome Conference illustrates how an issue may move from one location to another over time, as efforts are made to advance (or delay) it. From its formation the United Nations envisioned an international criminal court to prosecute serious crimes.⁹⁶ Proposals were brought forward periodically, without

94 Diplomatic Conference on an International Total Ban on Anti-Personnel Land Mines, Oslo, 18 September 1997.

95 <http://icrc.org/Web/Eng/siteeng0.nsf/iwplList74/C9E511A124C41F3DC125B66005C6D3> (accessed on 28 August 2006).

96 General Assembly resolution 260 of 9 December 1948.

result. In December 1989, responding to a request by Trinidad and Tobago, the General Assembly asked the International Law Commission to resume its work on the subject. The conflicts in the former Yugoslavia and the genocide in Rwanda in the early 1990s increased political pressure on the International Law Commission which submitted a draft statute to the General Assembly in 1994. The latter then formed an Ad Hoc Committee on the Establishment of an International Criminal Court, which met twice in 1995. Finally, the General Assembly created a Preparatory Committee to write a widely acceptable consolidated draft Statute: it was this document that was submitted to the Rome diplomatic conference for approval in 1998.

World Conferences and Summits

World Conferences are often perceived to offer a unique opportunity to gather political support for an issue, and reaffirm or create standards. The *Vienna Declaration and Programme of Action*, adopted at the World Conference on Human Rights (1993, Vienna), urged governments to quickly consider options for an Optional Protocol to CEDAW.⁹⁷

After the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001), the Commission on Human Rights established an Intergovernmental Working Group on the Effective Implementation of the *Durban Declaration and Programme of Action*.⁹⁸ Among its tasks, this WG is mandated to prepare international standards to strengthen and update international instruments against racism.

Sometimes the General Assembly convenes “World Summits” which bring together heads of state and governments. Several have been influential, including the Earth Summit (1992), two World Summits on Sustainable Development (1995 and 2002), the Millennium Summit (2000, see below), and the United Nations World Summit (2005).

Such Summits can have a direct impact on standard-setting. During the 2005 summit, for example, states not only established the Human Rights Council and several other new UN institutions, but encouraged ratification of the *Convention against Corruption* (2003) that caused it to enter into force.⁹⁹

However, the most prominent aim of such Summits is to set policies. The 2000 World Summit illustrates this clearly. It adopted the *Millennium Declaration*, which

97 *Vienna Declaration and Programme of Action*, para. 40.

98 CHR resolution 2002/68 and ECOSOC decision 2002/270 of 25 July 2002.

99 The Summit took place from 14-16 September 2005. Its agenda was based on proposals outlined by the UN Secretary-General in his report *In Larger Freedom* (March 2005, www.un.org/largerfreedom – accessed 28 August 2006).

in turn contained the Millennium Development Goals (MDGs), development targets that all 191 UN member states have pledged to meet by 2015.¹⁰⁰ Though the MDGs are not written in human rights language, they are consistent with the promotion of certain economic and social rights. The MDGs have been actively mainstreamed at many levels to an extent that has rarely occurred. It remains to be seen how successfully they will be implemented in practice.

This last point highlights the weakness of World Conferences and Summits: they create expectations of commitment that states and heads of state subsequently do not always or fully honour.

OTHER INTERNATIONAL ORGANISATIONS

Many specialised international organisations set standards that are relevant to the protection of human rights – though the institutions concerned may not always associate their standards with human rights.

Unfortunately, some of these organisations still do not always coordinate their work efficiently with work going on in the rest of the international system. Secretariats are not always aware of negotiations and discussions that take place in other organisations, and often claim to lack the time or staff to monitor them. It should be added that the majority of human rights advocates are also unfamiliar with standard-setting work that is unconnected with the activities of United Nations human rights bodies and as a result they tend not to monitor or influence that work.

Failure to coordinate creates the risk that institutions will create parallel standards based on different legal assumptions, or set standards that are inconsistent with one another. In this regard, it has been suggested that, wherever standards relate to human rights, the OHCHR should make sure that they are compatible with the current legal framework and include consultation with human rights specialists.

This section lists some of the international organisations that might provide locations for debating new standards. It should be emphasised again that these bodies may be unwilling to accept human rights inputs and some do not currently consider that their work should be formally linked to human rights or the work of human rights institutions.

International Labour Organization (ILO)

The ILO has one of the more elaborate and sophisticated procedures for setting and supervising international standards, and recognises the relevance

100 General Assembly resolution 55/2.

of its standards to the wider international human rights framework. The ILO is driven by its tripartite structure (composed of governments, representatives of employers and trades unions); employers and workers' representatives hold half the votes in the International Labour Conference (ILC), where standards are set. Non-governmental parties therefore enjoy considerable weight in the ILO but have a strong incentive to reach agreement with governments, which remain the only authorities entitled to ratify international treaties.

The procedure for adoption of new labour standards is timetabled and designed to last no longer than forty-three months. This means that many of the draft provisions, and the instrument as a whole, are voted on. Norms can therefore be adopted without full consensus. However, in practice the imposed timetable encourages parties to reach agreement. Before adoption, standards are usually discussed in two successive ILC sessions ("Double Discussion Procedure"). Once the Governing Body of the ILO has included an item on the agenda – a process that necessarily generates a certain consensus in itself – the formal procedure begins when the Secretariat prepares a comparative study of domestic laws and practice, and a questionnaire to be completed by governments within four months. Replies, including those from workers' and employers' organisations, are analysed and draft conclusions prepared in a report which is then discussed by all the parties at the following ILC. Based on that debate, the Secretariat then prepares a draft instrument. Governments have three months to react before a further draft of the instrument is circulated by the Secretariat. This is submitted to a plenary session of the succeeding ILC for further amendment and adoption by majority vote.

The Secretariat plays a central role. Though decisions are taken by the three parties, it identifies gaps in legislation, drafts preliminary feasibility studies, offers choices to the parties, and participates in the negotiations. Often, proposals go forward after several years of research and consultations. The system requires the Secretariat staff to have a high level of technical expertise.

ILO instruments are of two kinds: *Conventions*, that need to be ratified to create legal obligations, and *Recommendations*, that merely provide guidance on policy, legislation and practice and cannot be ratified. ILO instruments do not permit reservations on ratifications. Instead, various types of "flexibility clauses" allow states to make choices, within specified limits, on how they will implement the provisions adopted. For example, the Minimum Age Convention (Convention No. 138 of 1973) temporarily allows less developed countries to lower the minimum working age from 15 to 14.

Like all other international organisations, the ILO lacks effective mechanisms to enforce its legislation. However, it has a system of supervision, based on an obligation to regularly report on measures taken. Articles 24 and 26 of the ILO Constitution allow all parties to file complaints against a state that does not respect ratified ILO standards. Under certain circumstances a complaint may

theoretically be referred to the International Court of Justice, but this has never happened.

The ILO has constantly revised its standards to take account of technological and social changes. Nowadays, conventions are usually revised by adopting protocols, or by consolidation of older standards, but a variety of methods is available.

The ILO's requirement to adopt standards within a specified time-frame, with the possibility of taking decisions before consensus is reached, enhances its capacity to set standards. It circumvents deadlocks and forces the parties to reach pragmatic solutions that are acceptable to all. In particular, workers' and employers' representatives are well aware of the problems they can face when an instrument is not ratified.

United Nations High Commissioner for Refugees (UNHCR)

Since the adoption of the *Convention relating to the Status of Refugees* (1951) and its Protocol (1967), the main standard-setting body for refugee issues is the Executive Committee of the High Commissioner's Programme (ExCom).

The ExCom is composed of seventy member states (some of whom are not parties to the 1951 Convention). It meets every year and adopts "Conclusions on Protection". These cover a wide range of protection issues, including matters not addressed in any depth in international law, such as voluntary repatriation, responses to massive refugee crises, and upholding the principles of asylum.

Since the late 1970s, the ExCom has included explicit references to human rights in its Conclusions. It has increasingly been recognised that refugee and human rights law, initially regarded as separate, complement one another. ExCom Conclusions have referred to specific categories of rights-holders, such as children, women, victims of trafficking or internally displaced persons, and to principles, such as the prohibition of torture and arbitrary detention. In 2003, the ExCom acknowledged "the multifaceted linkages between refugee issues and human rights and recall[ed] that the refugee experience, in all its stages, is affected by the degree of respect by States for human rights".¹⁰¹ The same Conclusion mentions that UN human rights mechanisms may be relevant for refugee law and calls upon states and treaty bodies to reflect, within their mandates, on the human rights dimensions of forced displacement.

ExCom Conclusions are advisory, rather than binding, but have considerable authority. They represent international expertise in refugee matters and can be taken as expressions of the international community's views, particularly since participation in meetings of the ExCom is not limited to, and typically exceeds,

101 ExCom Conclusion No. 95, para. k.

its membership. As noted, the specialist knowledge of the Committee and the fact that its decisions are taken by consensus add weight to its Conclusions.

Conclusions are prepared in a series of informal consultations chaired by the ExCom Rapporteur. ExCom members and the Secretariat identify issues of concern for the current year. This gives an opportunity for UNHCR to put on the international agenda issues it confronts in its daily activities. The Secretariat then drafts a brief for the ExCom's Standing Committee, which includes information on national legislation and practice. After states have commented, the Secretariat prepares the Conclusions, ensuring they are consistent with previous law and practice. Consultation amongst states continues, facilitated by the Secretariat, which provides assistance and advice on the text it has submitted. When consensus is reached, the Conclusions are formally presented to the ExCom plenary for adoption. Though Conclusions must be adopted by consensus, it is worth noting that no text has ever been withdrawn.

Only government representatives participate in the ExCom. NGOs are excluded from the formal debate but are consulted, in particular by the Secretariat, before plenary sessions. Recently, their role has been significantly strengthened. The International Council of Voluntary Agencies, a global network of human rights, humanitarian and development NGOs, now has an opportunity to present consolidated NGO statements.

UNHCR staff contribute to the standard-setting work of other organisations. For example, they participated (as observers) in negotiation of the UN Convention against Transnational Organised Crime (2000) and the Council of Europe's *Convention on Action against Trafficking in Human Beings* (2005). Through court interventions and research, such as the publication of the *Legal and Protection Policy Research Series* and the *Guidelines on International Protection*, UNHCR contributes to the development of international refugee law.

In 2001, fifty years after the adoption of the 1951 Convention, UNHCR convened a Global Consultation on International Protection (involving a wide array of government specialists, non-governmental agencies, academics, judges and other refugee experts, including refugees themselves) and a conference of states parties to adopt an *Agenda for Protection*. This reinforced the commitment of states to the 1951 Convention.

United Nations Educational, Scientific and Cultural Organisation (UNESCO)

The Constitution of UNESCO entitles it to develop international standards in its field of competence (education, science, culture, communication, information, and freedom of opinion and expression). Since 1945 its General Conference has adopted some sixty instruments that have some relevance to human rights.

Particularly relevant are the *Convention against Discrimination in Education* (1960) and UNESCO's efforts to formulate basic principles on bioethics in the *Universal Declaration on the Human Genome and Human Rights* (1997), the *Declaration on Human Genetic Data* (2003) and the *Universal Declaration on Bioethics and Human Rights* (2005).

UNESCO's procedure starts with preparation of a technical and legal study for the Executive Board, which then submits a proposal to the General Conference. The latter decides whether to take a proposal forward, and whether it should be a Convention (subject to ratification) or a simple Recommendation. Recommendations can, however, require states to adapt legislation and practice. The Director-General subsequently prepares a draft, taking into account the positions of governments. The General Conference adopts Conventions by a two-third majority and Recommendations by simple majority.

NGOs that fulfil certain conditions may seek, through the Executive Board, to establish a formal relationship with UNESCO ("consultative relations"). The Director-General may also recommend that an NGO should be invited into such a relationship. Additionally, the Executive Board invites a small number of umbrella organisations (that contribute to UNESCO's work and have competence in the fields of education, science, culture or communication) to become associates ("associate relations"), at their request and on the recommendation of the Director-General.

Organisations that have consultative or associate relations with UNESCO are invited by the Director-General to send observers to sessions of the General Conference and its commissions. Observers may make statements on matters within their competence in the commissions, committees and subsidiary bodies of the General Conference. They may also submit written statements to the Director-General on programme matters within their competence.

World Health Organization (WHO)

The WHO Constitution states that enjoyment of the highest attainable standard of health is a fundamental human right ("the right to health"). It gives WHO extensive powers to establish health-related standards, and adopt treaties and conventions. In practice, however, WHO has focused on setting global health policy and has preferred non-binding approaches. Human rights language has consistently filtered into the resolutions adopted by the World Health Assembly, WHO's supreme decision-making body, whose main function is to determine the policies of the organisation.

WHO has not used its normative mandate to articulate explicitly the content and scope of the right to health. Instead, this process has taken place within the UN human rights system. WHO has worked closely with the relevant bodies (UN

human rights treaty bodies and UN Special Rapporteurs) to ensure that human rights norms, standards and principles reflect good public health practice.

The first treaty negotiated under the auspices of WHO was the *Framework Convention on Tobacco Control* (FCTC, 2003). References to human rights in the FCTC are restricted to the preamble and include key UN human rights treaties, such as the ICESCR. The other international and legally binding text that WHO has generated is the *International Health Regulations* (IHR, 2005).¹⁰² The latter seek to prevent, protect against, control, and provide a public health response to, the international spread of disease. The IHR state explicitly that their implementation should fully respect the dignity of people and their human rights and fundamental freedoms.

Due to its impact, another document worth mentioning is the *International Code of Marketing of Breast-Milk Substitutes* (1981) which sets out minimum standards for the marketing, promotion, supply, labelling and use of breast-milk substitutes.¹⁰³ Although the document is weaker than advocates desired, it contains far more detailed standards than could have been expected in a binding convention. States are requested to incorporate the Code in full into their laws and regulations, supported by UN technical assistance, and are required regularly to report to WHO on implementation.¹⁰⁴

International NGOs that satisfy certain criteria and have been recognised by the WHO Executive Board may participate, without vote, in sessions of WHO's governing bodies, as well as committees and conferences convened under its authority. The same NGOs may submit memoranda to the Executive Board, and suggest items for inclusion in the Assembly's agenda. In general, proposals for health standards and new or revised health policies are developed through different processes, including scientific review, data gathering, and analysis, before proposals are presented to WHO's governing body for approval.

NGOs that have no formal relationship with WHO may provide information and suggest text for policy documents, by participating in the various consultations that WHO organises as it develops a proposal. The internet has also made it much easier for outside organisations to contribute to policy development: WHO often publishes invitations on its web site to comment on policy matters. It did so, for example, when it prepared its General Programme of Work (Draft

102 The IHR will become legally binding on all WHO member states, except those that have rejected them or submitted reservations, within eighteen months of notification of adoption by the World Health Assembly.

103 Adopted by resolution WHA34.22 of 21 May 1981. World Health Organization, *International Code of Marketing of Breast-milk Substitutes*, Document WHA34/1981/REC/1, Annex 3, Geneva 1981.

104 For further information see International Council on Human Rights Policy, *Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies*, Geneva: ICHRP, 2002, pp.144-148.

Eleven General Programme of Work 2006-2015). The draft it published for comment included a commitment to prioritise human rights that relate to health in WHO's global public health agenda, and stated that WHO would seek to make the organisation more aware that human rights are relevant to the design and implementation of health programmes and legislation.

International Committee of the Red Cross (ICRC)

The ICRC is the “guardian” of the *Geneva Conventions of 12 August 1949* and their Additional Protocols (1977). It plays a leading role in setting humanitarian standards by providing legal and practical expertise. The aim is to ensure consistency in all new standards.

This report is not able to describe its activities in detail, but those interested in setting new standards in humanitarian law should unquestionably consult and involve the ICRC before taking matters forward.

The ICRC also participates as an expert on international humanitarian law questions in other international standard-setting processes. It took part in negotiation of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* (2000) because this text touches upon armed conflict and humanitarian law. It engaged with the *Optional Protocol to the Convention against Torture* (2002) because the ICRC has exceptional experience of making visits to detainees. It also followed the *Guiding Principles on Internal Displacement* (1998), the *Convention for the Protection of All Persons from Enforced Disappearance* (2006) and the Principles on Reparation. The ICRC participated in the Coalition to Ban Landmines and the Coalition in support of the International Criminal Court. While it acts as an expert adviser rather than an advocate on such questions, the ICRC has clearly supported the development of certain standards and has frequently suggested specific wording during drafting negotiations, in order to improve protection and to prevent the adoption of inconsistent provisions and the erosion of international humanitarian law.

REGIONAL ORGANISATIONS

Although this report has focused on standard-setting processes at the United Nations, it is important to bear in mind that regional organisations set human rights standards. The three most developed regional human rights systems have been established by the Organisation of American States, the Council of Europe, and the African Union. In a number of cases, the standards set at regional level have been higher than those set by the UN. Regional institutions have also pioneered new issues in a number of cases, before global institutions were ready to consider them.

Norms on issues that are of special interest to one region (as disappearances were in Latin America or national minorities are in Europe) have been adopted at regional level long before a global consensus on those subjects was feasible.¹⁰⁵ The African Union (former Organization of African Unity) has also adopted regional norms. Worth noting are a Protocol on the rights of women that extends women's rights further than any other international treaty including CEDAW. The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (2003) for the first time, in an international standard, explicitly provides for the right of a woman to abortion. It is also unique in that it unequivocally denounces and declares female genital mutilation and related practices illegal. The Protocol also addresses the special needs of women in times of armed conflict. The African Union has also adopted a very inclusive definition of refugees, which takes into account flight due to generalised violence or conflict.¹⁰⁶

Regional bodies can therefore play a creative and positive role in standard-setting. In some cases this is because a smaller group of states can negotiate standards more easily than a global forum, especially if they share similar values, have a common legal tradition and heritage, and are members of a political union. For example, when Costa Rica and other states failed in the early 1980s to insert into the *United Nations Convention against Torture* (CAT, 1984) a monitoring mechanism for visits to places of detention, NGOs succeeded in having a similar proposal accepted by the Assembly of the Council of Europe in 1983. After four years of debate, the Council adopted the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (ECPT, 1987). The issue was then eventually returned to the UN which itself adopted an *Optional Protocol to the Convention against Torture* in 2002.

NGOs and states have some experience of setting standards regionally as well as globally. It should be noted that, where proposals have moved from global to regional level in the way described above, critics have tended to assert that standards first adopted regionally are not properly universal in their appeal.

105 The *Inter-American Convention on the Forced Disappearance of Persons* was adopted by the Organisation of American States in 1994. A *Framework Convention for the Protection of National Minorities* was adopted by the Council of Europe in 1995.

106 See article 1 of the *Convention Governing the Specific Aspects of Refugee Problems in Africa*, adopted by the Organization of African Unity in 1969.

V. HOW? METHODS OF WORK

Procedures and methods of work are vital to the success of any negotiation. They establish rules of conduct and communication for all those involved.

Working methods should not be designed merely with efficiency in mind. It is even more important to create a sense of ownership among those who have an interest in the outcome. Negotiators and those who will have to abide by a new standard should feel that their views and opinions have been taken into account (if not reflected in the text). Those who have a personal or direct interest, and their advocates, should feel their points of view have been understood as well.

An inclusive and respectful process will help to ensure that standards are relevant, address needs on the ground, and can be implemented practically.

The description of working methods below is based on past experience. It must be assumed that the Human Rights Council will make some changes. It will define its rules of procedure during 2006-2007.

MANDATE FOR NEGOTIATION PROCESSES

International human rights standards are developed through intergovernmental negotiations. Those involved can influence the outcome in a range of ways, depending on the type of process, the forum in which negotiations take place, and the procedures adopted. Permanent bodies, such as the Human Rights Council, the General Assembly and the Vienna institutions, have a broad mandate and pre-established procedures.

Mandates usually state who is entitled to participate in negotiations and define the extent and nature of their participation. At the UN, participation by member states is unrestricted. Every state is automatically entitled to participate in drafting processes, although, in subsidiary bodies such as the UN Commission on Human Rights or the newly established Human Rights Council, they do not necessarily have voting powers. (The ILO is the evident exception. Non-governmental partners are not only formally involved in negotiations, but have authority to vote.)

UN specialised agencies have a right to participate and regional organisations are normally invited to participate as observers. However, their participation usually depends on whether the issues at stake touch upon their mandates. It is worth noting that policies to mainstream human rights in the UN system, and ensure that all UN activities respect them, may be expected to cause specialised agencies and programmes of the UN to become more involved in human rights standard-setting.

NGOs with ECOSOC status (see textbox, page 27) are also automatically invited to participate. They can submit written statements, including proposals for text, and make oral statements during the periods reserved for civil society interventions. They have access to official documents.

Individuals and organisations without consultative status may be permitted to contribute. The mandate of the Working Group on the Declaration on Indigenous Peoples authorised organisations of indigenous people to participate even if they did not have ECOSOC status. In a similar way, the Ad Hoc Committee set up by the General Assembly to negotiate the Convention on the Rights of Persons with Disabilities decided to establish a working group, composed of forty members, twelve of whom were to be NGOs, and over half persons with disabilities.¹⁰⁷ (See Chapter III.)

The Commission on Human Rights permitted more non-state participation than other UN fora. Will civil society organisations be granted more access in the future, including to standard-setting processes? This question is difficult to answer. The Human Rights Council has extended the existing rules of access for one year, but will review them, and a number of states would be pleased to see NGO participation restricted. The subject is at the same time sensitive and raises complex issues. In 2004 a report was published (the “Cardoso report”) on the future of civil society involvement in the UN.¹⁰⁸ It made a number of specific proposals to streamline and depoliticise accreditation, strengthen and broaden participation, and ease the physical access of civil society to UN facilities.¹⁰⁹ It has received little political attention, however, and its recommendations have not been taken forward.¹¹⁰

FORMAT OF THE MEETINGS

During diplomatic negotiations, at least as much activity occurs outside as inside the negotiating room. Corridor meetings and receptions are often used to discuss details and shape compromises on sensitive issues.

107 Report of the second session (A/58/118 & Corr.1), para. 15.

108 *We the peoples: civil society, the United Nations and global governance – Report of the Panel of Eminent Persons on United Nations-Civil Society Relations*, A/58/817 (June 2004).

109 See in particular proposals 19 to 23.

110 In addition to the “Cardoso Panel”, the UN Secretary-General established two additional panels of “eminent persons” to make recommendations on reform of the UN. The “High Level Panel on Threats, Challenges and Change and the Millennium Project” reported in 2005 and the “High-Level Panel on UN System Wide-Coherence in Areas of Development, Humanitarian Assistance, Environment” was formed in 2006. Both the High Level Panel on Threats Challenges and Change and the “Cardoso report” were quickly followed by a report of the Secretary-General (A/59/2005 and A/59/354 respectively), but whereas several of the former’s main recommendations were taken up by governments the latter’s were not.

Official sessions are marked by a certain caution and rigidity because what is said is officially recorded and may be subsequently quoted back to participants who make contradictory statements. Diplomats are also constrained by the instructions received from their capitals and often have little room for manoeuvre. The need to consult capitals naturally slows the pace of discussion. Official representatives are not usually in a position to improvise and may have to wait for one or several days before commenting when a new element of debate is introduced. This needs to be taken into account, not least by NGOs when they make unexpected proposals in the midst of a negotiation. Final texts are adopted formally during such sessions, provision by provision and if necessary line by line.

States may decide to hold a number of closed sessions. States often meet behind closed doors, in particular to harmonise the position of their regional group. (NGOs of course concert in a similar way.)

“Informal sessions” take place away from the room in which formal meetings are held. They can move faster, and delegates may be able to state their governments’ positions more openly. Except for informal meetings that are “closed”, NGOs generally participate in “informal sessions”.

Work usually continues between sessions. Formal and short inter-session meetings may be held and informal consultations can include many kinds of events. Regional meetings provided useful opportunities to enlist the support of regional groups and determine regional priorities in advance of the World Conference on Human Rights (Vienna, 1993). They played the same role before the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001).

The United Nations has formal rules of procedure, but practice also matters and many traditions have grown up over time. The UN’s rules are often criticised for being ponderous and at times obsolete, especially with regard to the participation of NGOs (and national human rights institutions). Experience suggests, however, that there is almost always room to adapt. Arrangements can usually be found to suit the different needs of those involved in a negotiating process. On the other hand, inter-sessional and other non-formal negotiations can exclude actors other than states (for example, because of costs), thus diminishing their capacity to make effective contributions.

TIME LIMITS

When it approves a mandate for establishing a new standard, the United Nations may set a deadline for completing the work of drafting, or opt for an open-ended mandate. Although the Commission on Human Rights decided

that timetables “should in principle not exceed five years”, progress on new norms has generally remained slow.¹¹¹

In practice, time limits are rarely respected and mandates are renewed for as long as felt necessary. Those who participate know this and as a result they are under little pressure to conclude. Spoilers can obstruct progress for as long as they have patience. By contrast, the ILO has firm deadlines that impose decisions on negotiators. This cuts both ways. Time limits can bring negotiators to a decision but can also force the parties to compromises in ways that no-one finds satisfactory, thereby undermining the possibility of reaching universally accepted norms.

It is always difficult to strike a balance between the need to progress and the need to achieve the highest possible standard of protection. It may sometimes be preferable to move with caution, in order to build political support; but calls to slow processes are often designed simply to obstruct progress. Though it is obviously difficult to make judgements in this area, the goal should be to press forward as fast as possible, consistent with what is politically achievable.

This represents a challenge for the Human Rights Council. It should find ways to overcome some of the delay the Commission faced over standard-setting while ensuring that high standards of protection are achieved.¹¹²

DRAFTING

To create a sense of progress, texts must evolve. The first draft has great importance in this respect, because it sets the tone for later discussions. First drafts are normally prepared and submitted by governments (*i.e.* Chairs of drafting committees, see textbox, page 22). The latter almost always consult informally with other governments, NGOs and experts beforehand.

Drafts are sometimes based on an initial text from experts or NGOs.¹¹³ As mentioned, the first draft of the *Declaration on the Rights of Indigenous Peoples* was prepared by the Working Group on Indigenous Populations, a subsidiary body of the Sub-Commission on Human Rights.

Both ILO and UNHCR Secretariats take responsibility for preparing initial drafts. This means that a number of technical issues can be dealt with professionally, due to their expertise and the information they gather during preliminary

111 CHR, decision 2000/109, Annex, para.60.

112 See Explanatory note by the Secretary-General to the President of the General Assembly of 14 April 2005, A/59/2005/Add.1, para.11.

113 For example, the draft OP-CAT submitted by Costa Rica after the 1980 session of the CHR had been prepared by the International Commission of Jurists (E/CN.4/1409 (1980).

consultations with governments, other interested parties and civil society organisations. This procedure also ensures that new standards are consistent with existing ones. On the other hand, Secretariats may not be very imaginative precisely because they are familiar with the issues and tend to accommodate in advance the interests of the governments they serve. The role of Secretariats is nevertheless explicitly advisory and final decisions are taken by states (and, in the case of the ILO, parties).

The authors of initial drafts face delicate political choices. A text that contains highly ambitious proposals may deter. At the same time, it is easier to defend a comprehensive and well constructed text than improve a weak one.

From the very beginning, drafters need to calculate the extent to which particular proposals will elicit or forfeit political support. They need to decide what proposals are fundamental – both to the value of the new standard and the coherence of human rights in general – and distinguish provisions that must be formulated without ambiguity from ones that may be allowed to evolve under the pressure of negotiation and compromise. Political judgements of this sort are complicated further by the fact that, although advocates and people with a direct interest in the outcome may possess a deep and even passionate understanding of why a standard is needed, they may for the same reasons be unwilling to accommodate the diplomatic and legal parameters within which drafters must work.

Equally delicate judgements need to be made at the stage of approving a text. Removal of a sentence or paragraph may fatally weaken a text, but may equally be compensated by insertions at a less sensitive point later on. Introducing less precise wording may fatally weaken a standard's effect; but, if well-crafted, vaguely-worded text may protect essential principles or objectives. Throughout, those involved (inside and outside the negotiating room) see their interests retreat or advance as the text evolves, and alliances and relationships fluctuate accordingly. This too needs the most careful attention.

RULES FOR ADOPTING AN INSTRUMENT

Rules also govern the adoption of new instruments. Adoption by consensus is generally preferable, because it confirms that support is widespread if not universal. It establishes legitimacy; and makes widespread ratification and effective implementation more likely. This said, adoption by consensus does not guarantee ratification. Several instruments which have been adopted by consensus in resolutions of the General Assembly have not subsequently been ratified by every state.

To be credible and have impact, a new standard needs to enjoy political support, and eventually it must be ratified by the states for whom its provisions are particularly relevant. As mentioned, the *International Convention on the*

Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) is problematic in this respect because it was adopted by consensus in the General Assembly but has not been ratified by countries that host the largest populations of migrant workers. In consequence, both its authority and its protective effect have been weak.

It is quite often argued that the desire to achieve political consensus tends to undermine the quality of a standard-setting process. This criticism can be overplayed, however. All international legal instruments are political documents that represent a settlement between parties that have different interests. The *Universal Declaration of Human Rights* was adopted after about 1,400 votes were taken, touching practically every word and provision. Yet it is one of the most lucid and authoritative of all human rights documents.

VI. CONCLUDING REMARKS

As societies evolve, new standards will continue to be needed. In this chapter, we draw together some of the lessons that have emerged from past experience and ask, as we look forward, how these can be applied in the period ahead.

Some protection gaps will be filled by extending the application of existing standards. There are limits to extension, however, and new standards will still be needed. This can be said with some confidence, considering the way in which new issues have emerged in the last forty years. It was not imagined in 1960 that human rights standards would be needed to protect people with disabilities, or address the impact on human rights of genetics or information technology.

It is difficult to predict how existing standards will evolve in the future and which gaps may require new standards, because our powers of foresight remain poor. As far as can be judged, however, the future is likely to resemble the past. We can presume that new standards will be required to protect specific groups, to address new or evolving threats, and to enhance supervisory mechanisms.

Although this subject is not addressed in this report, it can also be assumed that standards to regulate the conduct of non-state actors are likely to emerge.

With respect to supervisory systems, notably those established by UN human rights treaties, these have already evolved considerably.¹¹⁴ In the future, it can be hoped that supervisory mechanisms will be further strengthened and become more operational. It is already recognised, in addition, that reform may be necessary to ensure that the various human rights supervisory bodies work together in a coherent and efficient way.

We have repeatedly observed that setting standards is not a predictable activity. Each one has a unique and usually surprising history. That characteristic is likely to persist in the future too. Nonetheless, several common challenges and choices can be identified.

Before starting out to set a new human rights standard, first of all, it is sensible to ask certain questions. Is the new standard really needed? How likely is it that some governments (or other actors) might exploit the initiative to water down other standards? What alternatives might be explored? What form should

¹¹⁴ Initially, states were merely required to provide reports, but a number of treaties now include more active or adversarial mechanisms, such as the inquiry procedures contained in article 20 of the CAT and article 8 of the OP-CEDAW. The *Convention for the Protection of All Persons from Enforced Disappearance* has gone even further by setting up an urgent humanitarian procedure. If the Committee on Enforced Disappearances receives information that indicates that enforced disappearances are widespread or systematic, it may refer the matter to the General Assembly (article 34).

the new standard take? What negotiation process would be appropriate? Who might offer support? What could be done differently, to make the outcome effective and relevant?

CHALLENGES

It is true that new initiatives can flourish independently of one another. Nevertheless, setting any new standard is a resource-consuming business, and the outcome is always unpredictable. Should those involved try to agree priorities or rationalise international efforts to develop new standards?

It is not evident that such an exercise would succeed. Human rights advocates, in government and civil society, would not find it easy to decide that one gap needs attention more urgently than another. The difficulties in finding a consensus are also obviously increased by the fact that new processes are initiated by people who believe passionately in their importance.

A second major challenge will be to develop human rights norms and methods that protect individuals or groups effectively but are not distorted by collisions of ideology or political interest. Setting UN standards has always been controversial, and too often this has been due to ideological and regional differences (notably due to the Cold War and tensions between North and South). The protection of those who are not protected should be the foremost goal of all new standards.

A third challenge will be to develop processes that are more inclusive. This report has noted that, despite some progress, standard-setting remains an elitist activity. It will be necessary to find ways to involve a wider range of actors.

In this respect, states should broaden their political alliances, outside their regional groups, for the purposes of standard-setting.

At national level, officials involved in negotiations should ensure at an early stage that relevant Ministries are involved in discussions, especially those that will later be responsible for implementing the standard concerned.

A far broader range of NGOs from all regions of the world need to be involved in standard-setting activities. It will be increasingly unacceptable politically if NGO participation in standard-setting remains dominated by a small number of organisations that for historical reasons have acquired particular expertise and better access to the three main cities where formal negotiation of human rights standards tends to occur.

To increase the participation of a wider range of organisations, financial and other barriers to participation need to be removed. This will require the development of facilities to assist participation by NGOs from poorer regions.

It will be important to involve more representatives from groups that have a direct interest in standards under negotiation. As noted, it is increasingly recognised that those with a direct interest in new norms should be heard. But much more needs to be done, more consistently. Particular challenges will arise when a new standard affects many people. Discussion of economic and social rights and the elimination of small arms come to mind.

This in turn will require improvements in communication. More information needs to be shared between organisations that are directly involved in standard-setting processes, and those in other countries that have an interest but cannot participate.

It is always a challenge to remain creative. The unpredictable character of processes to set standards and the many different forms of negotiation that can be explored nevertheless create opportunities. While some “hard law” standards will still be necessary, in coming years it may not be feasible to focus mainly on these. New “soft law” instruments may provide alternatives. New ways to use independent experts might be explored. The OHCHR may come to play a more active role. The Human Rights Council may create space for innovation.

Finally, there is the challenge of implementation. New standard-setting will not be politically credible if existing standards are implemented feebly or do not tangibly improve the life of people. The claim that human rights are universal will also come under challenge if new binding standards are ratified by only a small number of states. It might be said, in this respect, that setting standards successfully in the future will depend on effectively implementing standards set in the past.

POINTERS AND RECOMMENDATIONS

This last section highlights some elements that may be strategic to success because they make negotiations *dynamic*. Most of the points made were identified in earlier chapters of the report.

DEVELOP A “BOTTOM UP” APPROACH

Experience suggests that a standard-setting initiative is more likely to succeed if it has allies and popular support from the start. Public education, advocacy, media campaigns, and academic publications can all help to build a public and political base.

In order to develop conceptual understanding and support from a range of constituencies, arguments of different kinds – popular, legal, technical, financial, ethical – need to be developed in support of a new standard.

The work with domestic parliamentarians should not be underestimated. The process of developing a new standard requires domestic political as well as public support.

Once formed, public and political support must be nurtured through the long process of negotiation. It may rescue the negotiation at certain stages, and will be vital when, after adoption, the new standard must be ratified and implemented.

THINK ABOUT TIMING AND TAKE ADVANTAGE OF OPPORTUNITIES

Timing determines outcomes. At the same time, there is no science to good timing. In many cases, circumstances and coincidence will influence the progress of a negotiation and its outcome – and the impact of external events, whether positive or not, is almost always outside the control of those who are promoting a new standard.¹¹⁵ The lesson is perhaps that those who advocate new standards need to take advantage of opportunities – but that coincidental events can delay progress as well as advance it, and can change the political environment for worse as well as for better.

Experience also suggests that, while it is sensible to look for a favourable moment to start a new process, the future is not predictable for long. In this sense, deferring action until circumstances are ideal may not be a particularly sound strategy. The 'right time' may not arrive. Even if favourable conditions can be described, who is to know whether they will persist twelve months later?

To an extent, nevertheless, good timing can be achieved. It is possible to create, or take advantage of, conditions in which a newly launched initiative will catch the wind and gather speed. Well organised advocacy in capitals, within regional groups, and globally, can create a favourable climate for action.

Certain issues are fundamentally contentious, of course, regardless of when they surface. This has been true of many human rights standards. A list would certainly include the death penalty, indigenous rights, business accountability, discrimination based on sexual orientation, domestic violence, and economic and social rights. When issues are contentious, judgements about 'when' are less important than judgements about 'who' and 'how': *who* might be allies (and who will oppose) and *how* a standard might be framed to maximise support for it.

115 The International Criminal Court illustrates both sides of the coin. After decades of inaction, wars in the former Yugoslavia and Rwanda and the work of ad hoc criminal tribunals established by the Security Council probably provided the catalyst that transformed the Rome Statute from a pipedream to a treaty. At the same time, the Rome conference occurred at a moment of political change in the United States that put the treaty's political viability at risk. Neither of these coincidences could have been foreseen.

Setting new standards usually takes time. Those who initiate a new process should reflect on this before starting – even if those who led successful past initiatives might never have started if they had been aware of the consequences for their diaries!

THINK ABOUT RESOURCES

Pressure on resources is predictably an issue – not least because standard-setting is a marathon rather than a sprint. The participation of actors from developing countries is particularly affected. For obvious reasons, NGOs should evaluate the cost of engaging in a standard-setting process – and their commitment to it – before starting out. NGOs should not make their commitment dependent on funding.

At the same time, it is sensible for NGOs to inform themselves about the level of funders' interest before starting.¹¹⁶ Interest varies. Some projects have been well funded and others have not.

Resources are an issue for states as well, particularly states that have small delegations and missions. Generally, small delegations are not able to actively engage in all the standard-setting processes in which they have an interest.

THINK ABOUT THE INSTRUMENT

Though a “hard law” standard is the ideal, it may be appropriate to work towards the adoption of a declaration, at least initially. Non-binding instruments sometimes attract broad state support more easily. Many issues could not be taken forward politically if legally binding instruments were proposed.

The adoption of a “soft law” text can also be the first step towards a binding standard. Such texts provide a foundation for lobbying activities and public education, and help to build public and political support.

THINK ABOUT THE LOCATION

Governments or NGOs wishing to initiate a standard-setting process need to decide where negotiation will be located (General Assembly, the Human Rights Council, the ILO, etc.). This decision determines where they will focus their advocacy.

116 While the NGO Coalition for an OP to the ICESCR has not been able to fund even a coordinator, funders provided several million dollars for the campaign that led to the Ottawa Treaty. Between 1997 and 1999, the Soros Foundation alone provided more than US\$3.4 million (<http://www.soros.org/landmine.html> – accessed on 28 August 2006).

Several obvious factors influence choice of location. They include the competence of an organisation to discuss the issue in question; the access of key actors to its procedures; the presence of allies; the preferred nature of the standard (“hard law” or “soft law”).

In general, human rights advocates are insufficiently familiar with standard-setting processes that are not linked to the Human Rights Council (and formerly the Commission on Human Rights) and the Commission on the Status of Women. Few actively monitor what happens in Vienna, for example, or the ILO. In some cases, these might provide interesting options for the location of future initiatives.

The option of starting future initiatives in regional bodies should always be considered. Regional human rights organisations are sometimes in a better position to innovate or take forward discussion of contentious issues.

BUILD ALLIANCES

This report underlines that it is not effective to work alone. Alliances are crucial to success. To be successful in the longer-term, those involved in standard-setting need to build a broad and inclusive base. Alliances should include all key stakeholders – including governments, civil society organisations, experts, victims and beneficiaries, and UN agencies. Wide participation ensures that different ethical and legal issues are taken into account, and that standards are relevant to people who are directly affected.

Alliances need to be managed. Those involved need to work together, apply their political and diplomatic skills, and at times accept compromises, if alliances are to hold.

NGO networks or coalitions provide several benefits. A coalition can include groups that have complementary expertise and experience. Coalitions that have national NGOs as members can lobby governments in the negotiating room but also in their home countries. Coalitions can help to secure ratifications of a new treaty, bringing it into force quickly, and can monitor implementation. In general, a strong coalition adds to the credibility of a campaign, and increases the impact of advocacy.

This said, difficulties arise in all coalitions and networks. It is not easy to coordinate many NGOs with different interests and viewpoints. Managing coalitions is time-consuming and inevitably they respond more ponderously. Decisions and policies may reflect the weakest link. These are almost unavoidable costs. To help resolve such problems, coalitions and networks need to share information efficiently and establish procedures to respond quickly to challenges and obstacles in a coordinated way.

Coalitions should also try to use new technologies to the maximum to coordinate their activities and disseminate information. Arrangements should be made to enable those with poor access to technology to participate, and avoid excluding those who do not speak the dominant working language.

NGOs that want to promote a new standard should enlist the support of one or several states. Friendly states can initiate a formal standard-setting process and take it forward. They can also encourage other governments to become involved.

For officials and NGOs alike, it is crucial to bring national actors into the process. Being closer to local realities, they can contribute valuable insights. If local counterparts are not well-informed and brought on board they can also obstruct progress. It is therefore vital to influence thinking in capitals, to improve the quality of briefings and inputs, change positions, and deepen political and public awareness and support.

Government delegates need allies too. Foreign affairs officials should liaise actively with colleagues in other Ministries (notably Justice, Defence and Interior), who will be expected to implement the new standard.

Governments have an interest in cooperating with NGOs. Government representatives can draw on NGO expertise, while NGOs benefit from the experience that diplomats have of intergovernmental negotiation.

Including experts is also critical. Objective and independent expert analysis can assist negotiators to understand the issues, and the positions of other states, and can help to depoliticise negotiation.

SHARE INFORMATION

Provision of information is vital for successful standard-setting and will become more important if more inclusive processes are established. Participants in standard-setting processes should take care to communicate fully, transparently and promptly with others who are engaged in negotiations, as well as with actors and institutions outside that have an interest in the issue. To build public support and awareness, organisations should use the media as fully as they can.

Government representatives need time to understand the substantive issues behind proposals for new standards. In that respect, NGOs, academic experts and practitioners can be of enormous help by sharing information. When diplomats are under-informed, they tend to be over-cautious and to fall back on 'diplomatic language' that delays the process.

The back-and-forth exchange between delegations and their respective capitals (and, for that matter, between international and national NGOs) naturally slows the pace of discussion but this needs to be balanced against the fact that sound negotiating decisions depend on the quality of information available to the negotiating teams. It takes time to construct an informed debate.

The quality of available information can determine whether room exists for manoeuvre. Negotiators may need to know why a group insists on maintaining its position on a certain issue. They may need information to decide when ground can be conceded in order to advance a negotiation without harming its objective.

In addition, good communication between the parties fosters inclusion and creates trust and a shared sense of purpose. Inclusion can also be fostered by trying to work in different languages.

With respect to the wider public, the media is obviously a valuable tool. This said, issues of confidentiality can arise and media coverage of controversial subjects is not always helpful.

The internet is an invaluable tool for information sharing. It can be updated swiftly and is highly accessible to people across the world. A constraint is that not all actors have the same access to the technology.

PLAY FAIR, PLAY SAFE

Trust plays a central part in diplomatic negotiations. Since it takes time for actors to know one another, and understand their objectives and ways of working, it is sensible to design negotiating processes that will build confidence. In this respect, the importance of open communication and transparency can scarcely be exaggerated.

Over-simple perception of the power relationships between key actors involved in standard-setting processes can lead them to misperceive each other's motivation and behaviour. The passionate advocacy of groups negotiating on behalf of victims may too easily be understood as 'unbalanced', 'unrealistic' or even 'irrational'. The professional formality and caution of government representatives may too easily be interpreted as defensive, or reflecting a determination to oppose constraints on authority. Sharing experience, expertise and information can greatly help to reduce such misperceptions.

The private views of individuals engaged in negotiation may differ from the position of their institutions. Officials may personally disagree with positions they are instructed to adopt publicly; they may privately oppose proposals they advocate publicly, or vice versa. As in any diplomatic process, negotiation occurs at several levels. A position taken at one standard-setting process may

be explained by an event taking place in a different diplomatic forum. A country may block one process in order to secure movement in another. A person's conduct in negotiations may reflect their wish to assert themselves in their own institution. Some actors may behave unprofessionally, in bad faith, or to secure personal benefits or advantage. In short, the negotiation may be secondary. For these and other reasons, building confidence is not straightforward. Since participants usually do not know one another at the beginning, as far as possible decision-making and information about the progress of negotiations should therefore be shared transparently from the start.

At the same time, since the number of people closely involved in a negotiation is relatively small (even over several years), it is possible to know counterparts well. It may therefore be worthwhile to learn the foibles and negotiating tactics of adversaries as well as allies.

Any group that proposes a new standard must expect some governments to be sceptical or opposed. It is obviously sensible to identify such opponents early and analyse the reasons for their resistance.

The importance of information was emphasised earlier. Distribution of accurate, detailed information creates a sense of inclusion that builds trust and support. Combined with a media strategy, this can also help to create momentum.

Sometimes discussions take place on the basis of proposals put before the working group by the Chairperson. In such cases, it is crucial to build good communications with him or her, in order to be able to make inputs when they are most useful.

To overcome inconsistencies and drafting difficulties, it is obviously sensible, wherever possible, to include (or have access to) representatives with technical expertise.

Finally, drafters should foresee the implications of the text for those who will have to implement it. They should consider what difficulties countries will encounter when they implement the new standard. They should consider whether or not it would clash with domestic law or whether officials will face ethical obstacles. They should also ensure that the public understands its purpose.

MAINTAIN THE PROCESS

During a negotiation, it is vital to ensure that all those involved feel a sense of progress and achievement. This can be done in a number of ways. The provision of information helps. Setting and monitoring indicators of progress, including a timetable, can be useful. Securing coverage in the media, and increasing public awareness, can encourage governments and other actors to take action.

Maintaining morale through moments of stagnation is also vital. Actors should leave each stage of negotiation with a sense of achievement.

Though most processes are necessarily lengthy, supporting governments and NGOs can use the time to increase their level of knowledge and build long-term momentum. Good strategic management of a standard-setting process does not always imply moving ahead rapidly.

A long slow negotiation can also increase public awareness. A draft may start to influence national law; over time, it may influence international jurisprudence or other standard-setting processes.

During negotiations, individuals can be highly influential. Indeed, many standards are linked to the names of individuals, in particular Chairs of drafting committees. Even at the level of civil society, strong personalities may come to dominate advocacy and lobbying on particular issues. Their role can be very positive. At the same time, it is important to avoid personalising processes to the point where it is counter-productive or inefficient.

Where possible, it is prudent to make sure that more than one individual in an institution is well informed about a negotiation and the positions of different actors. The turnover of diplomatic and NGO staff makes such cross-briefing almost essential, given the longevity of most processes.

FORESEE POSSIBLE DIFFICULTIES

As mentioned, parallel events on related topics can affect the outcome of a standard-setting process in ways that are difficult to predict. In fact, many unforeseeable events may disrupt negotiation – such as political changes following elections in key countries, changes of staffing in missions, political crises, and changes in the composition of Secretariats. To maintain continuity, government delegations should ideally include diplomats based where the negotiations take place, and specialists from the capital, whose institutional involvement and memory usually go back further in time.

Particular difficulties are likely to occur during the drafting process. For example, definitions are a particular and foreseeable obstacle to progress; as far as possible, delegations should be prepared to justify their preferred definition (or their desire to avoid definition). Whether or not to allow reservations in binding texts is another foreseeable source of conflict: many hold strongly that reservations should not be permitted since all binding standards are “optional” – because states must ratify or accede to them (see textbox, page 13). On such matters, NGOs and NGO coalitions may wish to agree a position and develop arguments to support it.

Finally, NGOs face particular problems in communicating their points. They have less time than governments in official meetings and cannot always speak in informal meetings. Coordination of statements is one essential response. Some NGOs have found it is useful to put together “lobbying kits” that set out the issues for delegates (and the wider public), and the NGO’s positions on them.

BUILD A LONG-TERM POLITICAL STRATEGY

Any strategy needs to be long-term and driven by a vision. At the same time, it must leave room to accommodate changes in circumstance, and adapt to opportunities that may arise during negotiations.

The work that takes place at the negotiating table has been emphasised. Public advocacy plays an increasingly important, often complementary role. In successful processes diplomatic work has been supported by passionate and broad-based NGO campaigns with clearly focused objectives and messaging. These factors have led national capitals to take the issues seriously and, combined with media coverage, they have brought pressure on the negotiators to find compromises that were acceptable to public opinion.

BE PREPARED TO IMPLEMENT

Any strategy designed to create a new standard should include, from the start, plans for implementation.

When starting out to create a new standard, therefore, organisations should already be considering the phase after adoption. Actors should prepare plans to disseminate it in public institutions at home (most of which will not have been involved in the drafting process), as well as programmes to convince others of its value.

Civil society organisations can play a very important role at this stage, by maintaining pressure on states to ratify and implement instruments they have adopted. They can also inform public officials and society in general about the purposes and content of the new standard. It is once again vital to communicate this information effectively, not least through the media.

APPENDIX I: DOCUMENT LIST

- Declaration of Philadelphia (1944) 17
- American Declaration of the Rights and Duties of Man (1948) 2
- Universal Declaration of Human Rights (UDHR, 1948) 1, 16, 21, 38, 60
- Geneva Convention I, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949) 8, 35, 44, 52
- Geneva Convention II, for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949) 8, 35, 44, 52
- Geneva Convention III, Relative to the Treatment of Prisoners of War (1949) 8, 35, 44, 52
- Geneva Convention IV, Relative to the Protection of Civilian Persons in Time of War (1949) 8, 35, 44, 52
- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950) 1, 2, 13
- Convention relating to the Status of Refugees (1951) 48, 49
- Convention on the Prevention and Punishment of the Crime of Genocide (1951) 2
- Convention on the Political Rights of Women (1952) 41
- Convention on the Nationality of Married Women (1957) 41
- Convention against Discrimination in Education (1960) 50
- European Social Charter (ESC, 1961) 2
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) 48
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965) 1, 13, 17
- International Covenant on Civil and Political Rights (ICCPR, 1966) 1, 9, 13, 15, 16
- International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) 1, 13, 15, 29, 31, 51, 65
- Protocol relating to the Status of Refugees (1967) 48
- Declaration on the Elimination of Discrimination against Women (1967) 41
- American Convention on Human Rights (American Convention, 1969) 2
- Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) 2, 53
- Convention concerning Minimum Age for Admission to Employment (ILO Convention 138, 1973) 47
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975) 12, 14
- World Plan of Action for the Implementation of the Objectives of International Women's Year (1975) 41
- Protocol I to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (1977) 8, 44, 52
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- Standard Minimum Rules for the Treatment of Prisoners (1977) 16, 42
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) 1, 7, 8, 11, 13, 29, 30, 41, 45, 53
- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW, 1980) 44
- African Charter on Human and Peoples' Rights (African Charter, 1981) 2, 53
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) 14
- International Code of Marketing of Breast-Milk Substitutes (1981) 51
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984) 1, 8, 12, 13, 14, 19, 53, 61

Siracusa Principles on the Limitations and Derogation Provisions in the International Covenant on Civil and Political Rights (Siracusa Principles, 1984) 15

Inter-American Convention to Prevent and Punish Torture (1985) 2

Declaration on the Right to Development (1986) 14

Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (Limburg Principles, 1986) 15, 29

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT, 1987) 2, 53

United Nations Code of Conduct on Transnational Corporations (1988) 5

Convention on the Rights of the Child (CRC, 1989) 1, 7, 9, 13, 35, 36

Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty (1989) 2

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW, 1990) 1, 9, 60

African Charter on the Rights and Welfare of the Child (1990) 2

Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1990) 2

Turku Declaration on Minimum Humanitarian Standards (Turku Declaration, 1990) 15

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Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) 3, 14

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Vienna Declaration and Programme of Action (1993) 45

Declaration on the Elimination of Violence against Women (1993) 14, 15, 41

Principles relating to the Status of National Human Rights Institutions (Paris Principles, 1993) 33, 34

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Universal Declaration on the Human Genome and Human Rights (1997) 50

Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht Guidelines, 1997) 15, 29

Rome Statute of the International Criminal Court (Rome Statute, 1998) 6, 18, 21, 25, 26, 64

Additional Protocol on the Establishment of the African Court on Human and Peoples' Rights (1998) 2

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador, 1998) 2

Declaration on Fundamental Rights and Principles at Work (1998) 18

Guiding Principles on Internal Displacement (IDP Principles, 1998) 16, 17, 18, 52

Optional Protocol to the Convention on the Elimination of Discrimination against Women (OP-CEDAW, 1999) 1, 8, 29, 41, 61

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999) 2

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders, 1999) 3, 16, 33, 39

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (OP-CRC-AC, 2000) 1, 9, 11, 23, 28, 36, 52

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC, 2000) 1

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Protocol on Trafficking, 2000) 21, 34, 43

United Nations Millennium Declaration (2000) 46

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Crime (Protocol on Smuggling, 2001) 21, 34, 43

Durban Declaration and Programme of Action (2001) 17, 45

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT, 2002) 8, 19, 27, 52, 53, 58

Bangalore Principles of Judicial Conduct (Bangalore Principles, 2002) 15

Convention against Corruption (2003) 45

Framework Convention on Tobacco Control (FCTC, 2003) 51

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) 53

Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights (2003) 5, 40

Declaration on Human Genetic Data (2003) 50,

Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Voluntary Guidelines on the Right to Food, 2004) 36

Council of Europe Convention on Action against Trafficking in Human Beings (2005) 49

International Health Regulations (IHR, 2005) 51

Universal Declaration on Bioethics and Human Rights (2005) 50

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines, 2005) 8, 18, 39, 40

International Convention for the Protection of All Persons from Enforced Disappearance (CED, 2006) 8, 9, 11, 12, 14, 28, 32, 52, 61

Declaration on the Rights of Indigenous Peoples (2006) 14, 31, 32, 40, 58

Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (Convention on the Rights of Persons with Disabilities, 2006) 7, 31, 36, 37, 42, 43, 56

APPENDIX II: ACRONYMS

ASEAN	Association of East Asian Nations
CEIT	Eastern European Group
CFS	Committee on World Food Security
CHR	United Nations Commission on Human Rights
CNCDH-France	National Advisory Committee on Human Rights
CSD	Commission on Social Development
CSW	Commission on the Status of Women
DAW	Division for the Advancement of Women
ECOSOC	Economic and Social Council (of the UN)
ECOWAS	Economic Community of West African States
ExCom	Executive Committee of the High Commissioner's Programme
FAO	Food and Agriculture Organization
GRULAC	Latin American and Caribbean Group
HRC	United Nations Human Rights Council
ICBL	International Campaign to Ban Landmines
ICC	International Criminal Court
ICHRP	International Council on Human Rights Policy
ICJ	International Commission of Jurists
ICRC	International Committee of the Red Cross
ICVA	International Council of Voluntary Agencies
IDP	Internally Displaced Person
IGAD	Intergovernmental Authority on Development
IGWG	Intergovernmental Working Group
ILC	International Labour Conferences (of ILO)
ILO	International Labour Organization
MDGs	Millennium Development Goals
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
OAS	Organisation of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
OP	Optional Protocol
SC	Security Council
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNODC	United Nations Office on Drugs and Crime
WEOG	Western European and Other Group
WG	Working Group
WHO	World Health Organization

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International Council on Human Rights Policy
48, chemin du Grand-Montfleury
P. O. Box 147, 1290 Versoix
Geneva, Switzerland
Phone: +41 (0) 22 775 3300
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As new gaps in protection continue to emerge, the political environment in which standards are negotiated changes all the time. In these conditions, mechanical approaches are unlikely to be effective – but judgement, persistence, alliance building and patience are essential components of success.

ICHRP

48, chemin du Grand-Montfleury, P. O. Box 147
1290 Versoix, Geneva, Switzerland

Tel.: +41 (0) 22 775 3300 Fax: +41 (0) 22 775 3303
ichrp@ichrp.org www.ichrp.org

ICJ

33, rue des Bains, P. O. Box 191
1211 Geneva 8, Switzerland

Tel.: +41 (0) 22 979 3800 Fax: +41 (0) 22 979 3801
info@icj.org www.icj.org

ISHR

Rue de Varembé 1, P. O. Box 16
1211 Geneva 20 CIC, Switzerland

Tel.: +41 (0) 22 733 5123 Fax: +41 (0) 22 733 0826
information@ishr-sidh.ch www.ishr.ch

