

UN 75

Civil Society and the voyage of the great enterprise

The 26th of June 1945 is of momentous importance in world history. On that day, at the Hotel Fairmont in San Francisco, governments gathered to sign the Charter of what was to become the United Nations Organization.

Four months later, on 24 October 1945, the Charter entered into force and the process of setting up the United Nations began.

The significance of that date is further dramatized by the fact that almost simultaneously, preparations were in hand to finalize the Manhattan Project, culminating in the atomic bombs dropped on Hiroshima and Nagasaki in August 1945, bringing to a horrific end a horrendous era of world conflict.

This is what the signature in San Francisco was all about – the end of such conflict and the creation of conditions that would avoid further conflagration. This was to be achieved through internationally agreed human rights standards – and their universal implementation.

For us gathered today, there is a date of perhaps greater significance: and that is 5 May 1945, when the four major powers of the time, China, the United Kingdom, the United States, and the USSR unanimously proposed the addition of human rights to the draft charter.

The inclusion of human rights was the result of pressure from civil society. It created a new dimension by placing the individual at the core of the new organization. Civil society was placed alongside governments in the formulation and implementation of the international human rights standards in the decades to follow.

History has shown the value of this new dimension. Society was now able to take part in the work of the UN on human rights. More importantly, this made it possible to raise human rights issues even when Governments would have preferred not to.

In 1946, in discussing whether the members of the Commission were to be individuals or Government representatives, the point was made that, *“Members, especially of the Commission on Human Rights, must feel free to raise questions which might embarrass governments, and they could hardly do so if they represented governments”*.¹ The value and need for civil society input became clear at the very outset.

¹ Economic and Social Council, First Year, Second Session Official Records, 25 May-21 June 1946 Official Records (Fifth Meeting, 31 May 1946)

In 1950, the Secretary-General reported on the competence of the Commission to take up petitions.

He had this to say, *“Recent developments, particularly those which have taken place during and since the second world war indicate that the status of individuals and of non-governmental organizations in international society is undergoing a fundamental change. While half a century ago it was the almost unchallenged doctrine of international law that only States and not individuals are subjects of international law, an evaluation of the present position does not lead to the same unqualified opinion ...*

He continued, [I quote]: *“The General Assembly ... invited the International Law Commission to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes.* [Comment: that materialised in July 1998 with the Rome Statute of the ICC]

The recognition of obligations of the individual in international law backed by penal sanctions has its counterpart in steps leading towards the recognition of the rights of the individual in international law. ... The question which the Commission is called upon to consider in connexion with the right of petition is one of the basic elements in this development...”²

In 1947, as it started its work, the Commission declared that it had no power to act on petitions or other communications. By 1970 that had changed 180 degrees. Thanks to sustained pressure from civil society, the Commission established procedures for dealing with such complaints, including by investigation. The door to the individual had widened further.

On 29 April 1946, as the United Nations was taking shape, a meeting took place in New York of a small group. They were asked to propose the structure and terms of reference for a future Commission on Human Rights.

Henri Augier, Assistant Secretary-General, spoke of *“a very great enterprise”*.

Within just under a month, on 28 May 1946, the group came back with its proposals. The CHR was launched on 21 June 1946. The great enterprise had embarked on a journey that continues as we speak today.

Civil society emerged as the Commission progressed from its drafting mandate, to seeking methods for implementation.

The role played by Eleanor Roosevelt in this process was vital. Up to 1952, when she left the Commission, Eleanor Roosevelt together with her colleagues, among them Charles Malik of Lebanon, René Cassin of France, Hernán Santa Cruz of Chile,

² E/CN.4/419 IV para 36

C I Hsia of China, developed the Universal Declaration and the first drafts of the Covenants.

The UN appointed John Humphrey of Canada as the first Director of the Division of Human Rights. He is credited with the preparation of the first (handwritten) draft of the UDHR. You can find it at the McGill University Archives

[Anecdotally - I was recruited by JH in 1965 and we remained in touch until the late 1980s.]

John Humphrey was an outstanding figure whose intellectual honesty and determination steered the work during the tough, tense, years of the cold war. He had the talent of navigating a course which drew on the best that governments and civil society had to offer.

Throughout this phase, the input of civil society was vital, with interventions such as that of the International League for the Rights of Man (Max Beer) on 9 May 1950 in the crucial discussion of the Commission on the inclusion of economic social and cultural rights in the Covenant then being drafted.³

The Commission completed its work on the International Bill in 1954. The Bill came into force in 1976. By this time the landscape of the UN and of civil society had dramatically changed. De-colonization produced more Member States. These new States transformed the Commission by adding investigation to the Commission's original mandate as a drafting body. The investigative measures, in turn, led to measures of prevention, epitomised by the technical cooperation programme in 1987 and the launching of human rights education in 1988.

The expansion of the Commission's agenda was reflected in the number and scope of civil society organizations. Amnesty International provides a good example of these dynamics. From an organization focused exclusively on freedom of opinion and religion at its foundation in 1961, it expanded its focus to include torture, and eventually to all human rights.

By the same token, the early studies of the Sub-Commission, led to the focus on the protection of human rights of indigenous peoples, when it appointed José Martínez Cobo to carry out his seminal five-volume study in 1971.⁴

Civil society played a crucial role in the development of special procedures because it facilitated access to victims of human rights violations. This was especially important in the early procedures on the situation in South Africa and in Palestine. In 1981, the situation in Chile - thanks to the pioneering work of Dr Jonathan Fine - produced the first involvement of the medical profession in human rights. That led to the setting up of Physicians for Human Rights.⁵

³ E/CN.4/480

⁴ E/CN.4/Sub.2/1986/7 and Adds. 1-4 (Vols 1-5)

⁵ <https://phr.org/about/history/>

In standard setting, we recall the role of organisations such as the International Commission of Jurists in the drafting of the Convention against Torture and its Optional Protocol. In so doing, we recall with admiration, the leadership of Niall Mc Dermot, its Secretary-General.

Similarly, we must mention the role of Defence of Children International, in the drafting and implementation of the Child Convention.

I am fortunate to recognise the legendary Edith Ballantyne, who led the Women's International League for Peace and Freedom for so many years. The values and issues espoused by WILPF were a constant source of inspiration, even to the hardest delegations. [I believe that she might be watching us today]. Edith's friendship and wisdom continue to be a source of inspiration, dating several decades.

In addition to organizations, individuals or groups of individuals played a crucial part in getting the Commission to take up issues.

I still recall the group of Madres de la Plaza de Maio wearing their white head scarves, as they appeared at a session of the Commission, sitting silently in the public gallery during a late evening session. The impact of their presence was more effective than all the reports and speeches put together, in getting the Commission to take up the issue of disappearances in Argentina, and eventually in the rest of the world.

On the other hand, the genocide in Cambodia in the mid-late 1970s, the failure to address the phenomenon of people flows as a human rights issue in the early 1980s are unforgivable omissions of the Commission. The same can be said of the failure of the Assembly and the Security Council to heed the alert launched by the Special Rapporteur on Extra-Judicial Executions on the genocide in Rwanda in 1994.

It is simply not possible to do justice here to the historic contribution by civil society to the entire human rights programme as it developed over the years. The relationship between civil society and the Commission was not without turbulence and tension, but that made it all the more strong – as I can attest during my years as Secretary to the Commission and as Coordinator of the Vienna Conference.

The value of civil society to the human rights programme is best illustrated by the role it played in the lead up to, and at the World Conference, between 1990 and 1993. Civil society was present and active in each of the four preparatory meetings and at each of the Regional meetings in Tunis, San José, Costa Rica and in Bangkok. At each of these meetings they made important substantive contributions reflected in the outcome of these meetings. At Vienna, over 800 organizations participated, highlighting priority issues in their respective fields, including indigenous peoples, child, racism, development and human rights of women.

I recall vividly at the very outset of the preparations in 1990, I received a delegation announcing the formation of the Women's Caucus Coordination Group. The Group's objective was to put human rights of women on the agenda. Up to then the focus had been the elimination of discrimination against women. Protection of human rights of women had yet to be addressed.

The Caucus was present and active at each and every one of the regional preparatory meetings, and most of the many events taking place around the world.

The success of the Caucus is reflected in the Vienna Declaration and Programme of Action – a new page in the protection of human rights of women.

As a result, the Special Rapporteur on Violence against Women was established in 1994. This was followed by focus on violence against women migrant workers (1995), a Special Rapporteur on trafficking in persons, especially women and children (2004), and the Working Group on discrimination against women in law and in practice (2010).

As the programme expanded to include human rights education and training, civil society provided input for the programmes that were being designed and delivered, especially in the definition of problem sectors and of the priority needs.

In summary, in the course of its existence, the Commission and civil society built a strong and vibrant partnership, with all the ups and downs of any healthy relationship, consistent with the Charter as signed 75 years ago.

The advent of the Human Rights Council in 2006 changed the nature of this relationship. Civil society was no longer a participant, but a part of a group referred to by the Council as 'other stakeholders'. In its Universal Periodic Review, for instance, the Council reduced the contribution of civil society to symbolic proportions. Civil society is not allowed to take part in the main phase of the review. Any written contributions – and there are several – are reduced to a 10-page summary prepared by the Secretariat.

Complaints recorded by the special procedures, with minor exceptions, are no longer spelled out in their individual reports but listed separately in statistical form in a generic document taken up in the UPR. In other words, the general trend in the Council is to reduce the substantive contribution of civil society to negligible levels.

Although the number of organizations continues to increase, their effectiveness in the work of the Council has decreased. Rather than sit and participate at the Council sessions, many times, speakers from civil society have to line up, one after the other, to address the Council from the same spot according to time available.

They are allowed 'side events' – but their historical place is, and should be inside the chamber, as participants.

Fortunately, the treaty bodies have expanded their consultation-time with civil society, and special procedures have largely maintained open doors. But the backbone of the contribution of civil society to the Council itself is in serious jeopardy.

These limitations cannot continue, because the United Nations human rights programme can only survive if it retrieves the oxygen that is vital for its existence. And that is the oxygen furnished by civil society.

The years have shown the vitality of this oxygen. This is further and dramatically underscored by the challenges that have been accumulating in recent years. And more so in recent months when society was faced with yet another pandemic.

This pandemic is characterised by chaos, panic and ignorance of its true nature and effect. Statistics are inconsistent, unclear and of no use whatsoever in discovering its true nature and extent.

The human rights dimensions of the situation created by the response to the pandemic have yet to be fully investigated, as are the challenges it has created.

I underline some of these challenges:

- 1) Strengthening prevention: working to establish the origin of pandemics to minimize their occurrence and/or recurrence;
- 2) Defining the human rights implications of the medical concept of 'safe, secure and effective' treatment;
- 3) optimizing the obligation to enhance the right to health over the quest for maximizing financial gains;
- 4) the emergence of philanthro-capitalism and the involvement of private donors in policy matters that should be strictly inter-governmental;
- 5) Restoring focus on facing up to pragmatic human rights realities and avoiding platitudes;

How are we to address these challenges?

- 1) Restore the oxygen to the Human Rights Council. This can be achieved through the process of review of the Council as mandated in its constitutive Assembly resolution 60/251, which is due between 2021 and 2026.
- 2) Establish a formal relationship between civil society and the Council; create a Chamber for Civil Society with a procedure enabling the Chamber to place issues on the Council's agenda for its consideration and action, where interested or affected parties participate;
- 3) establish a Civil Society Forum in each of the five geo-political regions to coordinate with the Civil Society Chamber to ensure universal coverage of issues to be taken up by the Council;

More than ever, the human rights programme is called upon to assert its role as envisaged in the Charter, 75 years ago. The protection of the individual, lies at the core of the human rights programme, and it must take priority if the Charter is to carry out its objective.

The reforms launched by Kofi Annan starting in 1997 were aimed at putting human rights at the core of the UN. The reform agenda was a consequence of the consensus at the Vienna Conference which also produced a High Commissioner for Human Rights, after several decades of attempts.

When the World Summit in 2005 formally decided on the establishment of a Human Rights Council, it envisaged a Council that *“Should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote effective coordination and the mainstreaming of human rights within the United Nations system.”*⁶

It is a matter of public record that the negotiations on the shape that the Council was to take were tough. The creation of a Charter body – a permanent organ – requires an amendment of the Charter, which not all States are in favour of.

The result was a compromise, which opted for a limited membership of 47 States (the Commission had 53 when it wound up). The other option was to have a body made up of all UN member states.

The limited membership implies that there are States who deserve to sit on the Council, and others who are not. This in itself is an unnecessary distraction, since all States are equally responsible for playing their part in the protection of human rights. Any State considered as a violator of human rights should, all the more, sit on the Council, than avoid accountability by being kept out of it. Moreover, one positive element of the Universal Periodic Review is its universality, where all States are required to take their turn in undergoing the periodic review.

The Assembly resolution setting up the Council called for a review of the status of the Council within five years. The objective was to give time to the international community to establish a principal organ comprising all members of the United Nations. The outcome of the consultations was to put off the review to ‘no sooner than 10 years and no later than 15 years’ from 2011. That is, between 2021 and 2026.⁷ Civil society should act now if it wants to reverse the erosion that has taken place in recent years and to strengthen its participation with the future Council.

This implies addressing, among others, the following issues and trends facing civil society:

1. genuine civil society space, on the lines set out earlier;

⁶ General Assembly, sixtieth session, resolution 60/1 of 16 September 2005.

⁷ General Assembly sixty-fifth session, resolution 65/281 of 17 June 2011; A/HRC/15/60, resolution 16/21 of 25 March 2011.

2. ensuring a pragmatic and honest approach to defining issues and actions; focusing on the real issues taking place as we speak. That implies avoiding platitudes and meaningless reflections and endless consultations;
3. revisiting the approach to business and human rights by enhancing accountability of business for consistency with international human rights standards;
4. priority in protecting the right to privacy in the digital age against interference in the freedom of expression, of movement and of the right to freedom from other invasive practices

In 1945, the international community inserted the individual as a party in the international process, to be protected and to constitute the core of international relations. The relationship between governments and civil society worked well for over 6 decades, but recent years have seen a serious erosion.

It is time to restore people to the Organization.

Civil society must act.

Thank you