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The Office of the High Commissioner for Human Rights

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I. Introduction (including history)

One of the core purposes of the United Nations is the achievement of international cooperation in promoting and encouraging respect for human rights, as stated in Article 1.3 of the UN Charter, and human rights is recognized as the UN's "Third Pillar" alongside peace and security and development. Member States, however, have considered the activities of the Office of the High Commissioner for Human Rights (the Secretariat division responsible for human rights work) and the High Commissioner for Human Rights (the official responsible for leading that work) to be amongst the UN's most sensitive and controversial.

A small Secretariat Division on Human Rights established at the outset of the UN's existence facilitated States' work at the Commission on Human Rights.³ Led from 1946 to 1966 by John Humphrey, whose responsibilities included preparing the first draft of the Universal Declaration of Human Rights, the Division focused primarily on standard-setting activities in the first decades of the UN's existence. Following the adoption of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights in 1966 and the 1968 World Conference on Human Rights in Tehran, the Division also began to undertake activities to support and promote States' implementation of their human rights commitments. The Division was moved from New York to Geneva in 1974, leaving behind only a liaison office with a single staff member. That move, mandated by the General Assembly, was generally understood to have been championed by States seeking to weaken the visibility and relevance of human rights activities at UN headquarters. Nevertheless, the status of the Division was elevated to that of a Centre on Human Rights in 1982, and its Director was upgraded to Assistant Secretary-General in 1983 and then to Under-Secretary-General in 1986.⁴

In 1993, acting on a recommendation endorsed by States at the Vienna World Conference on Human Rights, the General Assembly created the post of UN High Commissioner for Human Rights with the rank of Under-Secretary General.⁵ The creation of that post reflected decades of advocacy by civil society. The idea of such a position had emerged early in the UN's history but was too controversial to be realized until the end of the Cold War when previously crippling polarization lessened and the UN's intergovernmental bodies demonstrated more willingness to take multilateral action to promote human rights. The first proposals for the High Commissioner envisaged an international figure that would expose and press to end human rights violations.⁶ As the World Conference approached, many advocates emphasized the need for it to call for the creation of a UN official with a high degree of independence to develop strategies for responding to human rights violations, including the ability to speak out against violations wherever they

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³ Led by John Humphrey from 1946-1966

⁴ OHCHR Annual Report 2015, p. 45

⁵ UN General Assembly, Resolution 48/141, "High Commissioner for the Promotion and Protection of All Human Rights," UN Doc. A/RES/48/141, December 20, 1993.

⁶ See Roger Stenson Clark, *A United Nations High Commissioner for Human Rights* (The Hague: Martinus Nijhoff, 1972), 39–40. Others called for "an international executive who [could] influence government action through fact-finding, publicity and persuasion." See Richard Gardner, "Foreword," in Clark, *A United Nations High Commissioner*, xi

occurred, and to ensure protection of human rights throughout the UN system.⁷ Some proposed that the official should carry out in-country monitoring and assistance projects. In the conference's outcome document, the Vienna Declaration and Programme of Action, States formally recommended that the General Assembly should begin "consideration of the question of the establishment of a High Commissioner for Human Rights."⁸

Despite the lack of enthusiasm of Secretary-General Boutros Boutros-Ghali and the considerable opposition of States such as Cuba, China, and Indonesia, following public appeals and determined diplomacy by several key states,⁹ the General Assembly adopted Resolution 48/141 by consensus in December 1993. This resolution created the post of High Commissioner for Human Rights, as well as a separate Office of the High Commissioner for Human Rights (OHCHR), based in Geneva with a liaison office in New York, to support the official's work. In 1998, UN Secretary-General Kofi Annan merged the Centre on Human Rights into OHCHR, placing the entire UN human rights apparatus under the High Commissioner's direction.

Since 1993, seven individuals have served as High Commissioner for Human Rights: Jose Alaya Lasso, Mary Robinson, Sergio Vieira de Mello, Louise Arbour, Navi Pillay, Zeid Ra'ad Zeid Al-Husseini, and Michelle Bachelet; further, Bertrand Ramcharan served as acting High Commissioner for Human Rights from 2003-2004 following the tragic death of Sergio Vieira de Mello in Iraq. The High Commissioner role has proved to be a particularly sensitive one within the UN Secretariat, and several High Commissioners have engendered intense opposition and pressure from governments on the Secretary-General; in part as a result of this dynamic, to date, no High Commissioner has remained in the post for the maximum of two four-year terms permitted by resolution 48/141.

Since 1993, the UN's intergovernmental bodies and the High Commissioners have tasked OHCHR with carrying out many different functions, as described below. OHCHR has also grown significantly in size – from 75 staff members in Geneva in 1997, to 1,442 staff in 84 field presences and at UN headquarters in 2019, not including 524 human rights field officers serving in 12 UN peace missions, to whom OHCHR provided support and guidance.¹⁰

II. Legal Framework

The High Commissioner for Human Rights is described in Resolution 48/141 as the "United Nations official with principal authority for United Nations human rights activities," holds the rank of Under-Secretary-General, and is appointed by the Secretary-General with the approval of the General Assembly for a fixed term of four years, with one renewal permitted.

⁷ See Andrew Clapham, "Creating the High Commissioner for Human Rights: The Outside Story," *European Journal of International Law* 5 (1994): 558–559; Felice D. Gaer, "Book Review: The United Nations High Commissioner for Human Rights: The Challenges of International Protection," *The American Journal of International Law* 98 (April 2004)

⁸ World Conference on Human Rights, "Vienna Declaration and Programme of Action," UN Doc. A/CONF.157/23, section II.A., paras 17–18, July 12, 1993.

⁹ These include Canada, Costa Rica, France, Gambia, Germany, Hungary, the Russian Federation, Slovenia, Sweden, and the United States

¹⁰ OHCHR Annual Report 2019

Resolution 48/141 assigns the High Commissioner to function “under the direction and authority of the Secretary-General” but also requires that the General Assembly endorse the High Commissioner, unlike other Under-Secretaries General, over whose appointment the Secretary-General has sole discretion. The High Commissioner’s mandate is placed “within the framework” of the General Assembly, the Economic and Social Council, and the Commission on Human Rights; and the High Commissioner is instructed to “carry out the tasks assigned to him/her by the competent bodies of the UN system,” and “make recommendations to them.” Resolution 48/141 also calls on the High Commissioner to “coordinate the human rights promotion and protection activities throughout the United Nations system.”¹¹ At the same time, Resolution 48/141 calls for the High Commissioner to “promote and protect the effective enjoyment” of all human rights and “to play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world” through such means as engaging in dialogue with and providing advisory and technical services to governments.

This multifaceted mandate has resulted in OHCHR carrying out many different functions. OHCHR serves as a secretariat to several different UN human rights entities, directly carries out human rights investigations, provides technical cooperation to governments, and undertakes human rights research and reporting at the specific request of intergovernmental bodies. Separately, OHCHR also carries out human rights investigations and other activities without specific instruction from the UN’s governmental bodies, sometimes with and sometimes without the consent of governments. OHCHR also provides support and guidance on human rights to other UN system components at the direction of the High Commissioner but subject to the authority of the Secretary-General. Each of these functions is discussed further below.

OHCHR’s structure has evolved to reflect these different mandates and capacities. OHCHR is headquartered Geneva with a smaller office at UN Headquarters in New York, which since 2010 has been headed by an Assistant Secretary-General for Human Rights who represents the High Commissioner. The Geneva office has sections that undertake core management, planning, coordination, and outreach functions and report directly to the Deputy High Commissioner, as well as three substantive divisions:

- (a) The Thematic Engagement, Special Procedures and Right to Development Division (TESPRDD), which develops policy and provides guidance, tools, advice and capacity-strengthening support on thematic human rights issues, including for human rights mainstreaming, and provides support to thematic Special Procedures mandates and mandate holders.
- (b) The Human Rights Council and Treaty Mechanisms Division (CTMD), which provides substantive and technical support to the HRC and the Council’s UPR mechanism and supports the human rights Treaty Bodies.
- (c) The Field Operations and Technical Cooperation Division (FOTCD), which is responsible for overseeing and implementing the Office’s work in the field and provides support to the country-specific Special Procedures, fact-finding missions and commissions of inquiry created by the Council.

OHCHR has also established “field presences” around the world on its own initiative, which at the end of 2019 included 17 stand-alone country offices, 12 regional offices, and 37 human rights

¹¹ UN General Assembly, Resolution 48/141, “High Commissioner for the Promotion and Protection of All Human Rights,” UN Doc. A/RES/48/141, December 20, 1993. para 4(i)

advisers to UN country teams.¹² The staff in OHCHR field presences generally monitor human rights conditions in the country or region concerned, carry out technical assistance programs in cooperation with the government, with the government's consent, and advise the heads the UN Country Teams on human rights issues.

Traditionally, OHCHR has not received funding from the UN budget in an amount commensurate with the status of human rights as one of the three "Pillars" of the UN. Today, OHCHR receives funding from the UN General Assembly representing just over 3% of the regular UN budget (which is separate from the UN peacekeeping budget). Nevertheless, since the establishment of the High Commissioner post, the amount of UN funding dedicated to human rights has grown significantly, from 0.7 per cent of the UN budget.¹³ In 2019, OHCHR received regular budget funding from the General Assembly in the amount of \$106.6 million.

However, OHCHR has encountered significant operational challenges in that while Member States have provided it with increasing amounts of funding, these funds are dedicated to the performance of activities that intergovernmental bodies have specifically instructed OHCHR to carry out. In the view of High Commissioners, the amount of funding provided by the General Assembly for these purposes frequently has not been sufficient to allow them to be carried out capably. On the other hand, the General Assembly generally has declined to provide substantial funding to OHCHR for use in activities that would allow the High Commissioner to undertake greater human rights monitoring pursuant to her/his semi-autonomous mandate, such as the operation of field offices and the carrying out of investigations not mandated by an intergovernmental body. Indeed, the General Assembly rejected the most recent attempt of a High Commissioner to shift a significant number of OHCHR staff positions funded through the regular UN budget from Geneva to the field.

Like many other UN entities, OHCHR has responded to this resource deficit by soliciting "extra-budgetary" funding from governments to allow it to hire staff and expend other resources on activities not specifically mandated by, or not adequately supported with funding from, the UN's intergovernmental bodies. In 2019, OHCHR received \$179 million, more than sixty percent of its operating budget, from voluntary donations (and this was \$142 million less than the total amount of contributions OHCHR had sought for the year). OHCHR's use of and reliance on extrabudgetary contributions has been criticized by some States that would prefer it to perform only activities it has been specifically mandated to carry out. Those who support OHCHR using such funding stress that without it OHCHR's ability to promote universal respect for human rights would be undermined as it would lack capacity to address violations in any situation affected by political dynamics leading to inaction by the UN's intergovernmental bodies.

III. Related instruments (instruments adopted in framework of organisation)

OHCHR has several roles, including: (i) a Secretariat supporting the HRC, mechanisms including Special Procedures that the Council creates, and the human right treaty bodies, (ii) a research and advisory entity providing human rights monitoring, assistance, and expertise to other UN actors under the Secretary-General's direction; (iii) a human rights monitoring, technical capacity providing, research and advisory entity acting at the instruction of the HRC; and (iv) a semi-autonomous actor, carrying out investigations, scoping missions, and technical capacity programs

¹² OHCHR Annual report 2019

¹³ See Tom J. Farer and Felice Gaer, "The UN and Human Rights," in *United Nations, Divided World*, ed. Adam Roberts and Benedict Kingsbury (Oxford: Clarendon Press, 1993); UN General Assembly, Resolution 47/220, "Programme budget for the biennium 1992–1993," U.N. Doc. A/47/49, December 23, 1992.

at the direction of the High Commissioner, operating its own field presences and supervising staff placed within UN country teams entities.

OHCHR's relationship to other UN bodies and actors is complex owing to the diversity and occasional tension between these functions.

For example, the institution-building package of the UN HRC, its resolution 5/1, mandates OHCHR to serve as secretariat for the Council; to produce documentation and facilitate the functioning of the Universal Periodic Review mechanism; and to provide assistance to Member States to facilitate the vetting and appointment of special procedures mandate-holders.

Many HRC resolutions further mandate OHCHR to provide secretariat support to entities created by it, including (as of 2019) 56 'Special Procedures' expert human rights monitoring experts or bodies, and several fact-finding missions and commissions of inquiry created by the Council to investigate particular country situations. OHCHR is also mandated by the General Assembly to provide secretariat support to the human rights treaty bodies created by the ten core UN human rights treaties. In its secretariat functions for these entities, OHCHR provides and arranges logistical, technical, document processing, interpretation, and translation support for the independent experts; provides substantive research support and assists the experts in arranging and conducting meetings and country visits; and assists the preparation of reports to the HRC and to the General Assembly.

The individuals that hold these special procedures, treaty body and other expert positions are not salaried UN employees and work on a pro bono basis. As a result, OHCHR can play a very significant role in fulfilling its secretariat capacity, especially where its staff possess substantial institutional knowledge and memory and subject matter expertise that increase the quality and consistency of the reports and decisions produced by the experts.

However, in part as a consequence of its resource deficit, and perhaps also as a result of an institutional preference by the High Commissioner for activities that OHCHR carries out directly, there have been numerous instances in which the independent experts have considered OHCHR's support to be inadequate to allow them to carry out their work effectively. Many of these experts have therefore sought external specialist support from research assistants, from academic or practitioner colleagues, or from other external non-governmental sources. This has led to tensions between OHCHR and the independent experts, both formally and informally, with OHCHR discouraging and seeking to minimise the experts' reliance on outside research and expert assistance.

There also have been cases in which independent experts have alleged that OHCHR failed to perform its secretariat function in a neutral manner and instead sought to censure or dilute the findings of those experts in circumstances in which they sought to engage on a human rights issue or criticize a government in a manner that OHCHR deemed would give rise to a government potentially retaliating by taking actions detrimental to OHCHR or the UN as a whole. Notwithstanding these episodes, independent human rights mechanisms that receive secretariat support from OHCHR have on numerous occasions expressed concern about reports of human rights violations or put forward interpretations of human rights law that provoked significant opposition from governments, overcoming any institutional pressure.

Separately, the Human Rights Council (HRC) regularly requests OHCHR to carry out monitoring of country-specific human rights situations and to study specific thematic human rights issues, to offer technical assistance to certain governments to address human rights

challenges, or to convene expert consultations on issues, and to prepare reports on these for its consideration. Its reporting and other activities have often been welcomed by many Council members and external stakeholders. However, OHCHR has occasionally come under criticism from governments for activities it has carried out at the HRC's express instruction. For example, in 2020 the U.S. government reacted strongly in opposition to OHCHR's publication of the contents of a database of companies facilitating the existence or expansion or settlements in the Occupied Palestinian Territories despite it being expressly instructed to do so by the Council in a 2016 resolution.

The relationship of OHCHR and the High Commissioner to the HRC is particularly complex as a result of the High Commissioner's mandate to "promote" human rights. The High Commissioner has on numerous occasions undertaken monitoring and reporting on human rights on his or her own initiative with the aim of encouraging the HRC to take action. This, arguably the most sensitive aspect of the High Commissioner's mandate, has led the High Commissioner to produce several unsolicited and controversial reports on human rights violations.

In one recent example, then UN-High Commissioner for Human Rights Zeid Ra'ad al-Husein ordered a "remote" OHCHR investigation into allegations of widespread human rights violations in Venezuela after an official request to the government to permit UN monitors to access the country was ignored. This investigation resulted in the publication by OHCHR of reports in July 2017 and June 2018 that called on the HRC to monitor the situation in Venezuela, and to establish an independent commission of inquiry to do so. In September 2018, the Council adopted its first-ever resolution on Venezuela and instructed the High Commissioner's office to continue its monitoring and reporting on the human rights situation in the country. However, similar initiatives such as OHCHR reports on human rights violations in Kashmir initiated by High Commissioner Zeid in 2018 and continued by his successor in 2019, have not similarly provoked the HRC to take action.

OHCHR's relationship with the UN Security Council is similarly complex. Particularly during the years from 2010-2017, the High Commissioner engaged in a practice of deploying OHCHR staff to carry out 'rapid response' missions to monitor and report on emerging human rights crises, with or without access to the country concerned, and issued reports and press statements reflecting their findings. These reports in turn led the Council to request briefings from the High Commissioner on the human rights dimensions of several crises. In a reflection of the consequence of these trends, many UN Security Council resolutions creating peace operations and political missions then called on the UN Secretary-General to create dedicated human rights units within them; these units are staffed by individuals to whom OHCHR provides guidance and support, amounting to 512 people across 12 peace operations in 2019.

However, interactions between the High Commissioner and Security Council have become increasingly infrequent and contested in recent years as a result of several Member States' increasingly strong opposition to the notion that human rights violations are an appropriate matter of concern for the Security Council, as opposed to the HRC. One incident that particularly epitomized this new era was the failure of a group of Security Council member States to secure a requisite nine of fifteen votes in favour of a proposed briefing by High Commissioner Zeid to the Security Council on human rights developments in Syria in March 2018.¹⁴

¹⁴ <https://www.un.org/press/en/2018/sc13255.doc.htm>

The High Commissioner's, and OHCHR's relationship, with the Secretary-General also is complex. The Secretary-General has tasked OHCHR with aiding in implementing UN-wide initiatives such as the Secretary-General's "Human Rights up Front" initiative aimed at helping UN country teams and agencies respond more effectively to early warning signs of human rights crises. OHCHR also assists UN peace operations and country teams by assisting in implementing the UN's Human Rights Due Diligence Policy that requires all UN entities to assess and mitigate the human rights risks of providing support to non-United Nations forces, and by advising UN officials in peacekeeping and political operations on their policies relating to detention by UN personnel, protection of civilians, and addressing conflict-related sexual violence.

At the same time, OHCHR's work and mandate can bring it and the High Commissioner into tension with the Secretary-General, particularly in cases where the Secretary-General takes the view that vocal criticism of a government on human rights grounds will impede the UN's ability to mediate between parties to a conflict or that UN attention to a sensitive issue will provoke retaliatory actions by governments ranging from expelling UN representatives in the country to threatening to withhold financial or other resources from the UN that would place into jeopardy its ability to operate.

The High Commissioner occasionally undertakes in-person country missions, as does the Deputy High Commissioner, which are preceded by advance OHCHR missions and are generally aimed at increasing the UN's engagement with and attention to human rights challenges in a country. While such visits may only take place with the express consent of the government in question, this form of engagement can provoke significant media attention to the situation in the country and heighten the government's sensitivity to criticism. Similarly, OHCHR also carries out research and promotional initiatives at the High Commissioner's initiative. Some such initiatives, like OHCHR's engagement of non-State actors like faith leaders to promote greater support for human rights, have been viewed positively. Others can provoke opposition from governments when they address human rights issues which are contested within the UN's intergovernmental bodies. Such initiatives include OHCHR's "Free and Equal" public information campaign, launched in 2013, which promotes equality for and fair treatment of LGBTI people, and which successive Secretaries-General have strongly supported notwithstanding resistance from some Member States.

IV. Evaluation – relevance in terms of human rights protection/challenges

Unquestionably, the scope and reach of OHCHR's work has grown exponentially since its creation in 1993, and has substantially exceeded that of its predecessor entity in the UN system. Today, in many places and contexts around the world, OHCHR carries out work that is of great value to human rights defenders, non-governmental organizations, national human rights institutions, government authorities benefitting from technical capacity and assistance programs, and governments and other actors that support multilateral cooperation towards more effective respect for human rights.

Nevertheless, as scholar and politician Michael Ignatieff has previously observed, there is an inevitable "role conflict" inherent in the functions that OHCHR is expected to carry out under the High Commissioner's direction. Since the High Commissioner post was created, advocates have insisted that the official live up to the expectation that s/he will be a 'conscience for the world' and, with OHCHR's support, speak out in opposition to serious human rights violations and call for accountability of perpetrators whenever they come to her/his attention. The several High Commissioners have demonstrated differing approaches to speaking out publicly against

human rights violations, and those that have appeared frequently reluctant to do so, particularly when doing so would provoke the ire of governments likely to retaliate against OHCHR or the UN, have been criticized for their reticence.

Yet over the past two decades, the High Commissioners have also sought to establish a permanent presence for OHCHR in countries and in regional offices around the world. They have done so on the theory that engaging governments through dialogue and providing technical assistance aimed at building State capacity to protect human rights is more likely to result in concrete improvements in their human rights performance than criticism alone; and that OHCHR can provide more effective assistance and protection to human rights defenders if it has a presence in or near their countries than if its reach is largely confined to UN premises in Geneva and New York. The High Commissioners have been fairly successful in this endeavour, resulting in a significant expansion of OHCHR's reach. In pursuing this expansion into the field, OHCHR has also become more dependent on voluntary financial contributions from governments, as UN Member States have declined to provide financial support for the bulk of its field activities through the regular UN budget.

However, each successful engagement with a government to secure cooperation, and even a permanent in-country presence for OHCHR also creates a significant deterrent to High Commissioners to excessively provoke these government actors. They must constantly balance the costs of losing hard-fought access to a country and the officials most likely to be able to implement meaningful changes to laws and policies against the gains likely to be realized by drawing public attention to the fact of ongoing human rights violations. They must also assess the risk that by being present in a country or otherwise monitoring it but not publicly speaking out about serious human rights violations, OHCHR could actually hamper the efforts of human rights defenders to secure international recognition of and attention to the violations they are documenting, as well as protection and redress for the victims of those violations. These challenges have provoked criticism of OHCHR's engagement with several countries, particularly of recent OHCHR reports on Sri Lanka and Venezuela in which the vocabulary used to describe human rights violations and recommendations for further action appeared to have been softened from that used in earlier reports as a consequence of OHCHR's increased access to and technical cooperation activities with the governments of those countries, and not because the human rights situation on the ground had substantially changed.

As noted above, there is also potential "role conflict" inherent in the High Commissioner's mandate to undertake activities to promote human rights and to coordinate the UN's human rights activities, on the one hand, and OHCHR's role as a secretariat for independent human rights mechanisms like the special procedures and treaty bodies on the other. This is particularly true in cases where those independent actors seek to address human rights violations in countries with which OHCHR is also engaged in its own capacity. Serious concerns have been raised that OHCHR has prioritized its role as a semi-autonomous human rights actor over its support function for other UN human rights mechanisms, particularly in cases where has arisen between the priorities of those different roles. This has had a detrimental effect on the impact and reach of the UN human rights mechanisms and has laid bare the extent of their dependence on OHCHR's support.

V. Conclusion and outlook

The roles that OHCHR plays today are far more wide-ranging and impactful from those envisaged for the UN's human rights secretariat in 1993, let alone in the UN's formative years.

At the same time, OHCHR, and the UN more broadly, is facing a more concerted assault on the foundational human rights principles set out in the Vienna Declaration and Programme of Action which recommended the creation of the High Commissioner for Human Rights than ever before. In recent years, on the initiative of China, the HRC has adopted two resolutions setting out a narrative that reconceives human rights promotion as "mutually beneficial cooperation," and discourages "confrontation" as a mode of raising human rights concerns with governments. Simultaneously, China has declined repeated entreaties by the High Commissioner for permission to carry out an in-person mission to its Xinjiang region, according to parameters acceptable to her, to investigate allegations of widespread arbitrary detention, torture and ill-treatment, and discrimination against its Uighur Muslim minority community. In the face of these repeated rejections, the current High Commissioner has raised alarm about the allegations of widespread violations, but in contrast to the approach taken in Venezuela by her predecessor, she has not tasked OHCHR with undertaking a "remote investigation" into them.

The task of leadership necessarily requires the High Commissioner to make political choices as to which human rights 'battles' to fight, and with limited resources. This choice is a high-stakes decision that can have repercussions for the High Commissioner's ability to maintain access to countries and key officials for the purpose of pressing for changes and to solicit resources from states. It can even affect the length of his or her tenure. On the other hand, these choices also affect the High Commissioner's credibility with stakeholders and the utility of OHCHR's public reporting to aid human rights defenders in seeking protection for victims of violations.

Given these challenges, it is particularly important that the High Commissioner also prioritise defending the independence of the UN independent human rights mechanisms –not only the High Commissioner and OHCHR, but also Special Procedures and treaty bodies, particularly in a time when the principle of the universality of human rights is more contested than ever before.

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