

Australian National University, Canberra

**UN's Role in Promoting Human Rights
March 6, Canberra**

Ladies and gentlemen, dear friends,

Before I start to talk about the role of the United Nations in the promotion of human rights, let me begin with a personal memory.

Thirteen years ago, my country, the Czech Republic, lacked freedom and democracy, human rights and fundamental freedoms were not respected and I was a member of an NGO fighting for democracy, for basic human rights and fundamental freedoms and a better life for everyone. Today I have behind me the experience as Minister of Foreign Affairs and Deputy Prime Minister of the Czech Republic, and I am a Member of the Czech Parliament. I have the great honor and privilege to be the President of the 57th session of the United Nations General Assembly. I believe, I am still fighting for democracy, for basic human rights and fundamental freedoms and for a better life for everyone.

Frequently, human rights or the violation of human rights, are understood in a narrow sense, limited to physical abuse and violence. But human rights include civil and political rights, as well as, economic, social and cultural rights. Interconnection of civil and political rights and economic, social and cultural rights is a fact and each of these aspects of human rights is interrelated and cannot exist separately. People that are hungry or illiterate care very little about their empowerment of the right to vote and are only now beginning to understand their power to bring about social change. On the other hand, people deprived of their right to vote can do very little to change their lives. Their lives are in the hands of their government that is not elected by them and that does not always care about their needs. I am sensitive to the fact that human rights, in the agenda of the United Nations, includes civil and political rights, as well as the right to adequate nourishment, the right to shelter, the right to live free from poverty, the right to health and life without HIV/AIDS, the right to education, the right to development, the right to equal treatment regardless of your nationality, race or gender or the right to rebel against tyranny and abuse of the rule of law.

As the President of the 57th session of the United Nations General Assembly, I set up priorities. Even though promotion and protection of human rights and fundamental freedoms is not specifically cited among them, it goes as a link across all of them. Sustainable development, eradicating poverty or conflict prevention are issues that are an integral part of human rights and fundamental freedoms.

I always believed in the indispensable role the United Nations plays in maintaining international peace and security, enhancing economic, developmental and humanitarian cooperation, and promoting respect for human rights and fundamental freedoms. United Nations was founded as a reaction to the atrocities of the Second World War in which basic human rights and fundamental freedoms of people were massively violated. Promoting and encouraging respect for rights and freedoms for all

without distinction is one of the main objectives embodied in the United Nations Charter. Under my presidency I have among other issues, focused on the strengthening of the United Nations system. I strongly believe that the draft resolution adopted on the last day of the Main Session of the General Assembly is a great contribution of all the Member States (and I stress it was adopted by consensus) to reform the United Nations in order to strengthen the role it plays in promotion and protection of peace and security.

Since the tragic events of the 11 September, as the world community agreed on and united to struggle against terrorism, we must also pay special attention to protection of human rights and fundamental freedoms while fighting terrorism. It is a very challenging task these days, but even while fighting terrorism, the universality of human rights and fundamental freedoms must be respected. Breaching this principle would be an unacceptably high price for our security.

The **Charter of the United Nations** as a multilateral treaty, embodies the general principle of “*cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without any distinction*” as one of the main goals of the organization (Art.1 Para 3). Even the preamble of the Charter contains a reaffirmation of “*faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small*”. However, the general provisions of the Charter had to be substantiated through various General Assembly Resolutions and by international treaties. The most important among these instruments is the Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly on 10 December 1948. Its preamble states: “*Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms....*”. Many resolutions and international treaties followed the Universal Declaration. Among them I would emphasize the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, both adopted in 1966 entering into force in 1977. These three documents together created the “Bill of Human Rights”. They were followed by many other international instruments such as the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, the 1979 Convention on the Elimination of all Forms of Discrimination against Women, the 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the 1989 Convention on the Rights of the Child. The process of setting of international human rights standards and its codification is still developing and besides the UN Member States, many international organizations, agencies, and for the last couple of decades the nongovernmental organizations also, are participating. The first important step towards the international protection of human rights and fundamental freedoms is a broad ratification of pertinent international treaties followed by implementation of the obligations by domestic legislation.

In 1993 International Conference on Human Rights took place in Vienna. On the basis of the Vienna Declaration and Programme of Action the General Assembly established the Office of the United Nations High Commissioner for Human Rights. It plays the leading role on human rights issues and emphasizes the importance of

human rights at the international and national level. Its activities cover the stimulation and coordination actions for human rights, promotion of universal ratification and implementation of international standards, assistance in the development of new norms, support of human rights organs and treaty monitoring bodies, as well as, responding to serious violations of human rights, undertaking preventive human rights action, promoting the establishment of national human rights infrastructures, undertaking human rights field activities and operations, providing education information advisory services and technical assistance in the field of human rights. The Office is headed by the High Commissioner for Human Rights with the rank of Under-Secretary-General. The High Commissioner advises the Secretary-General on the Policies of the United Nations in the area of human rights; ensures that substantive and administrative support is provided for the projects, activities, organs and bodies of the human rights programme; represents the Secretary-General at meetings of human rights organs and at other human rights events. It is the main but not the only, pillar of the promotion and protection of human rights and fundamental freedoms within the United Nations. The first High Commissioner For Human Rights since 1993 until last year was, H.E. Ms. Mary Robinson, the former president of the Republic of Ireland. In 2002 Mr. Sergio Vieira de Mello from Brazil was appointed by the Secretary-General.

United Nations also plays a pivotal role in the field of human rights by exercising general political pressure. Within the United Nations, the General Assembly (according to the art. 10 and 13 of the Charter) and the Economic and Social Council (according to the art. 62 Para 1 and 2 of the Charter) could ask the Member States of the United Nations for information or reports on the status of human rights and fundamental freedoms in their respective countries. As a result, the General Assembly as well as the Economic and Social Council can make recommendations. To fulfill better its function, the Economic and Social Council established the Commission on Human Rights as its subsidiary body. It is composed of 53 States that meet each year since 1947 in regular session in March and April for a period of six weeks in Geneva. Over 3,000 delegates from member and observer States, as well as from various non-governmental organizations participate. Apart from its regular sessions, the Commission can also meet exceptionally, to consider urgent human rights situations, between its regular sessions in a special session, provided that a majority of the members of the Commission so decide. Until now, there has been already 58 regular and 5 specials sessions of the Commission. During its regular annual session, the Commission adopts about a hundred resolutions and additionally, some decisions on matters of relevance to rights of the individual. It is assisted in this work by the Sub-Commission on the Promotion and Protection of Human Rights, a number of working groups and a network of individual experts, representatives and rapporteurs mandated to report to it on specific issues. These special procedures and mechanisms of the Commission on Human Rights are mandated to examine, monitor and publicly report either on human rights situations in specific countries or territories (known as country mechanisms or mandates) or on major phenomena of human rights violations worldwide (known as thematic mechanisms or mandates). To promote the work under Special procedures and the Commission as such, for the last couple of years, some Member States have introduced a standing-invitation to the Special

Procedures of the Commission to visit the country and to monitor all aspect of human rights within their mandate.

(During the recent sessions, the Commission has shown increasing tendencies to become a ring for solving political problems rather than fulfilling its basic function- the promotion and protection of human rights. The states participating in the sessions are divided basically into two groups defending the interests of the “North” and the “South”. More and more topics are brought to the attention of the Commission that have very little to do with human rights. As a result, the work of the Commission is diverted and the Commission focuses less and less on the most important issues. Countries “less focused” on human rights become more often members of the Commission as they have understood that it is the way to slow down the development of human rights standards and to weaken the criticism aimed at the human rights problems in their own countries.)

Less political and more technical way of monitoring the promotion and protection of the human rights and fundamental freedoms, is through the establishment of specific committees referred to as the “treaty bodies system”. Each of the following treaties are monitored by a specific committee:

- International Covenant on Civil and Political Rights,
- International Covenant on Economic, Social and Cultural Rights,
- International Convention on the Elimination of All Forms of Racial Discrimination,
- Convention on the Elimination of all Forms of Discrimination against Women,
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and
- Convention on the Rights of the Child,

The State parties to these human rights instruments are required to submit periodic reports on compliance with their obligations arising from each of the treaties. Expert bodies are established to consider these reports and to make recommendations in order to improve the promotion and protection of human rights. Most of the bodies are also competent to deal with individual complaints on violations of the treaties.

As an example of functioning of the system, let me describe more precisely the Human Rights Committee.

The Human Rights Committee (HRC) is an independent expert body established to monitor compliance with the International Covenant on Civil and Political rights. It is located in the UN headquarters in Geneva. The Committee is entrusted with powers of supervision over the implementation of the Covenant, which has been ratified by 149 states. The Committee reports to the General Assembly of the United Nations through the Economic and Social Council, conducts its sessions in UN facilities, is financed by the UN budget and receives all administrative services from the UN secretariat. The Committee serves three main functions. It receives periodic reports from the states parties to the Covenant on their compliance with the human rights standards set out in the Covenant and issues observations therein. It also makes “general comments” on the provisions of the Covenant. In addition, the Human Rights

Committee may receive communications from individuals and/or states alleging violation of human rights by state parties to the Covenant that have accepted the competence of the Committee to review such petitions. So far, 104 states have accepted the jurisdiction of the Human Rights Committee to receive individual communications. The procedure for dealing with communications is essentially quasi-judicial (although in inter-state cases, the Committee primarily provides its good offices in an attempt to find an amicable solution or facilitate conciliation). The Human Rights Committee admits evidence, receives submissions and makes its views available to the parties. To date, the Committee has received 1132 individual complaints. It has considered each communication on its merit and issued its views on some 410 cases, while confirming a breach of the Covenant in 318 cases. Of the remaining number of communications, some were found to be inadmissible, and some were discontinued for various reasons. Some are still pending before the HRC. By contrast, no inter-state communication has ever been lodged with the Committee. I should add that the principal texts governing the structure, responsibilities and competence of the Human Rights Committee are the Covenant and the Optional Protocol. The Optional Protocol authorizes the Committee to address individual communications and outlines the procedure for handling such complaints. As indicated above, the Optional Protocol has been adopted by 104 of the state parties to the Covenant. Other rules governing the work of the Human Rights Committee are to be found in the Human Rights Rules of Procedure.

(The main problem of the treaty-body system is ironically the growing number of the state parties. The state parties do not manage to fulfill their obligations to submit a number of reports in stipulated period of time. As a result the state parties submit their reports late. This results in increasing amount of work for each committee leading to postponement of the consideration of the reports. Some of the human rights issues are also covered by more than one treaty. For example the right to be free from torture is covered by the International Covenant on Civil and Political rights, as well as the International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In practice this means a “double reporting” and “double checking” in compliance with the obligations. The whole process is slowed down and therefore less effective. The situation is complicated by the fact that the obligations, as well as, the extent of the sessions of the committees are established by the treaties themselves. Suitable solutions such as extending the sessions or overcoming the “double-reporting” would most probably require the amendments of the instruments followed with the appropriate national procedures. Similarly, consideration of individual complaints is problematic. The whole procedure is quite clear, the problem arises from the character of the “view” of the committee. All the treaties are silent about the legally binding character of the views and also on the obligation of the state to implement these “views”. The question stays: if the views are not legally binding what consequences do they have for the state parties? The answer is not clear. The interpretation of the treaties leaves a loophole in this regard. The only means to enforce the “views” is political. As a result, the whole system of the individual complaints suffers from the lack of legal certainty.)

United Nations also offers technical cooperation in the field of human rights. States may receive, at their request, technical assistance in the promotion, protection of

human rights and creating of appropriate legislation. Technical cooperation projects are undertaken in specific countries and also at the regional and international levels. Such projects might include training courses for, inter alia, members of the armed forces, police forces or legal profession. Advisory services for the incorporation of international human rights norms and standards into national legislation are also the part of the technical services. Financed mainly by voluntary contributions, technical cooperation is a quickly expanding area of the United Nations human rights programme. The Inter-American Institute for Human Rights based in San Jose in Costa Rica is one example of these activities. To raise awareness, major international conferences have been organized by the United Nations such as the International Conference on racial Discrimination held in Durban, South Africa, last year.

United Nations system of the promotion and protection of human rights and fundamental freedoms is complex in both senses – the form and the methods. There can be two different forms of protection, the direct and the indirect protection. The indirect protection includes the creation of an international environment that is conducive to the realization of human rights, as well as the elaboration of norms and standards; education, teaching, training, research and the dissemination of information and the provision of the advisory services in the field of human rights. As an example of the direct action, United Nations may provide protection by way of food, shelter, and medical care to a population in distress from armed conflict. All these direct and indirect actions are taken with the agreement of concerned Member States and within the international law. In order to safeguard and defend basic human rights and fundamental freedoms, United Nations seeks to use all available methods. These may be anticipatory, preventive, curative, mitigatory and or remedial.