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INTRODUCTION TO THE INTERNATIONAL LAW OF HUMAN RIGHTS

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1 Human rights prior to the United Nations
2 United Nations' concern with human rights
3 Universal Declaration of Human Rights
4 Civil and political, economic, social and cultural rights
5 Individual and collective rights
6 Universality and indivisibility of human rights
7 Arguments over cultural relativism
8 The United Nations System and Human Rights: A Mud Map
8.1 Charter bodies
8.2 Treaty bodies
9 Internet resources

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1. Human rights prior to the United Nations

Throughout history, societies have recognised the basic dignity of the human being.

The development of the concept of human rights places particular emphasis on the value of the individual and his or her **rights against the society**. This development has been closely linked to the evolution of western political philosophy. In this context, human rights are considered **inherent** and **inalienable**; that is, the birthright of all human beings, not granted or bestowed by a sovereign, and not capable of being given or taken away.

Philosophical ideas about the rights of man were reflected in the 1776 American Declaration of Independence and the 1789 French Declaration on the Rights of Man and the Citizen.

The **League of Nations**, established after the First World War, was active in the protection of minorities and the inhabitants of the colonial territories of the defeated powers.

The **International Labour Organisation**, established in 1919 in recognition of the fact that "universal and lasting peace can be established only if it is based upon social justice", is concerned with the protection of workers' rights.

2. United Nations' concern with human rights

The horrors of the **Second World War** resulted in the acceptance of human rights as a cornerstone of the post-war international order. The establishment of the United Nations in 1945 introduced a period in which the promotion of respect for human rights and

fundamental freedoms everywhere in the world has become a major concern of the international community.

The Charter of the United Nations contains a number of references to human rights. The Preamble provides:

> We the peoples of the United Nations determined ... to reaffirm 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 ...

Article 1, para 3 of the Charter provides that the **purpose** of the UN is to

> achieve international co-operation 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 distinction as to race, sex, language, or religion.

Three conclusions can be drawn from the human rights provisions of the Charter:

a) The promotion and encouragement of respect for human rights and fundamental freedoms is to be undertaken **for all**. The Charter endorses a **universal**, all-inclusive notion of human rights.

b) Human rights do not apply only to “citizens” or “men” or particular groups, such as national minorities or the inhabitants of colonial territories, but to all persons regardless of nationality, sex, race or other status.

c) The universality of human rights is closely related to the notions of **equality or non-discrimination**, reflected in the words **without distinction as to race, sex, language or religion**.

d) The elimination and prevention of discrimination has been a major objective of UN activities in the field of human rights.

e) Human rights are to be advanced in a framework of **international co-operation**. Human rights are matters of concern beyond national borders and their promotion and protection an obligation of the international community.

The Charter does not further specify the content of human rights. At its first session in **1947**, the newly established **UN Commission on Human Rights** authorised a preliminary draft international bill of human rights.

The **International Bill of Rights** consists of four parts:

- **Universal Declaration of Human Rights** (1948)
- **International Covenant on Economic, Social and Cultural Rights** (1966)
- **International Covenant on Civil and Political Rights** (1966)
- **First Optional Protocol** to the International Covenant on Civil and Political Rights (1966)

3. Universal Declaration of Human Rights

The Universal Declaration of Human Rights **(UDHR)**, although not a legally binding treaty, is regarded as the most fundamental expression of international human rights standards. It was proclaimed by the UN General Assembly as "**a common standard of achievement for all peoples and all nations**."

The UDHR is regarded as an **authoritative interpretation** of the human rights provisions of the UN Charter. It has been the basic source of **subsequent international standards** elaborated to protect and promote human rights. It has become a **yardstick** by which the degree of countries' compliance with international human rights standards is measured.

4. Civil and political, economic, social and cultural rights

The 1948 UDHR encompasses two major categories of human rights:

- **civil and political rights**, and
- **economic, social and cultural rights**.

Civil and political rights are concerned to protect the individual from the **arbitrary exercise of power by the State**. Catalogues of civil and political rights generally include:

- rights pertaining to the life, integrity, liberty and security of the person
- rights with respect to the administration of justice
- the right to privacy
- freedom of religion and belief
- freedom of opinion and expression
- freedom of movement and residence
- freedom of assembly and association
- the right to political participation

Economic, social and cultural rights are concerned with the **economic, social and cultural well-being** of persons. They include:

- the right to work and to just and favourable conditions of work
- trade union freedoms
- the right to an adequate standard of living, including food, clothing and housing
- the right to health, rest and leisure
- the right to education
- the right to take part in the cultural life of the community

During the course of drafting the International Bill of Rights, and in the context of the Cold War, it was decided to address these two categories of rights in separate instruments. This resulted in the drafting and adoption by the UN General Assembly of:

- **International Covenant on Economic, Social and Cultural Rights**, and
- **International Covenant on Civil and Political Rights**.

The Preamble to both Covenants emphasises the **interdependence of the two categories**, recognising that:

> in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everybody may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Various **reasons** have been advanced **for this division**, amongst others, the different nature of the rights and the different measures required to secure their implementation.

A common claim made about **civil and political rights** is that they are "**negative**" rights; that the State is simply required to refrain from action interfering with the freedom of individuals to pursue happiness and prosperity.

Economic, social and cultural rights, it is claimed, are "**positive**" or "**distributive**" rights; an active response is required by the State to devise and implement strategies and programmes and to commit resources to promote the progressive realisation of economic, social and cultural rights.

It is **no longer accepted wisdom that any clear distinctions** can be made between the two categories of human rights. Both categories entail legal obligations on the part of States. Issues of measurability arise in relation to both.

The protection of **civil and political rights** requires not only State abstention from interference, but also the commitment of **significant resources** and the ongoing maintenance of developed infrastructure. Necessary for the protection of civil and political rights are, for example, properly trained lawyers, judges and law enforcement officers, a functioning court system, appropriate detention facilities and conditions, the provision of legal aid, a developed press, efficient and accountable public administration, an effective trade union movement and targeted policy-making to ensure the elimination of discrimination.

Numerous **economic, social and cultural rights**, on the other hand, are capable of **immediate application** by the judicial and other organs of the State; for example, equal remuneration for work of equal value, rights to form and join trade unions and to strike, protection of children from economic and social exploitation, the provision of compulsory primary education, the liberty of parents to chose schools for their children, the right to establish educational institutions and freedom for scientific research and creative activity.

5. Individual and collective rights

Another distinction often made is that between **individual and collective rights**. Many human rights are by their very nature the **rights of individuals**.

Some human rights **combine individual and collective aspects**. For example, the freedom to manifest religion or belief can be exercised individually or in community with others. With respect to other human rights, collective aspects prevail. This is the case with the rights of the family and trade union freedoms.

There are also rights which give **attention to the special needs of groups as such**. By virtue of their nature and subject matter these are **collective rights**. Collective rights include the rights of ethnic minorities, the rights of indigenous peoples and peoples' rights.

Peoples' rights include the right to **self-determination**, to **development**, to **peace and security** and to a **safe and healthy environment**.

The **African Charter on Human and Peoples' Rights** (1981) was the first human rights instrument to recognise the relationship between individual and collective rights and to enumerate a catalogue of peoples' rights.

Critics of collective rights have argued that individual and collective rights are inherently irreconcilable. Increasingly it is accepted that individual and collective rights are concerned with conceptually distinct claims and can exist concurrently. Collective rights can be interpreted and applied in a manner consistent with individual human rights.

6. Universality and indivisibility of human rights

Although the UN Charter accords the promotion of human rights a central place amongst the purposes of the United Nations, there have been **numerous challenges to the universality and indivisibility of human rights**.

In the context of the **Cold War**, there were deep ideological differences between "individualistic" Western and socialist concepts of human rights. Marxist theory endorsed State dominance of economic and social life. Civil and political rights were regarded as bourgeois concepts which accorded the individual too great prominence in society.

With the **end of the Cold War**, the debate over the hierarchy between civil and political and economic, social and cultural rights has assumed a **North-South dimension**. In this connection, it is sometimes asserted that human rights, especially civil and political rights, are a **Western construct of little relevance in non-Western societies**. A corollary of this view is the argument that attempts to impose human rights values on developing countries amount to **cultural imperialism**. It is claimed that **imperatives of economic development** compel developing countries to accord collective economic rights priority over individual freedoms. Restrictions on civil and political rights are justified as necessary in order to create the necessary conditions for economic development.

Arguments against universality, indivisibility and in support of prioritisation and hierarchies are **difficult to sustain**. Relevant provisions of the UN Charter and the UDHR are based upon recognition of the universal applicability of human rights. Numerous UN declarations and resolutions have affirmed the universality and indivisibility of all human rights.

The **1968 Teheran International Conference on Human Rights** affirmed that:

> The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.

The **Declaration on the Right to Development**, adopted by the UN General Assembly in **1986**, provides:

> All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights. Article 6(2)

The **Vienna Declaration and Programme of Action**, adopted on **25 June 1993** at the World Conference on Human Rights provides:

> All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic

and cultural systems, to promote and protect all human rights and fundamental freedoms. Para 5

7. Arguments over Cultural Relativism

Cultural relativism is the broad term given to describe the long running and controversial debate within human rights discourse, regarding whether notions of human dignity are universal to all or specific to a certain culture. Those that assert the latter argue that certain norms of dignity and justice can be found within ones culture, and where the two clash, local values trump universal values.

There continue to be **profound North/South differences** over human rights issues, with some Asian and Pacific (as well as African) governments **challenging the legitimacy of international action** to protect human rights. They have employed a combination of the following arguments:

- the notion of individual human rights is **alien to Asian/Pacific cultures** in which Confucian philosophical traditions assert the primacy of communitarian principles, the importance of consensus and respect for authority

- robust economic growth demonstrates that a **different development strategy** works for Asia and the Pacific. Economic development will create the necessary environment for the realisation of civil and political liberties. In the meantime, concerns over individual human rights must not stand in the way of a "collective" right to development;

- **countries from the "North**" have been **selective** in their criticism of the human rights records of countries from the North. The legitimacy of such criticism is undermined by those countries' **own records** on human rights.

Non-governmental organisations (NGOs) and community groups in Asia do not necessarily share the views and concerns of Asian governments. In connection with preparations for the 1993 World Conference on Human Rights in Vienna, a regional preparatory meeting was held in Bangkok. At the same time, 240 representatives of more than 110 human rights and development NGOs from some 26 countries across the Asia-Pacific region met to review the human rights situation in the region and formulate strategies for the future promotion and protection of human rights. On **29 March 1993** they adopted the **Bangkok NGO Declaration on Human Rights**. The Bangkok NGO Declaration stated:

There is emerging a **new understanding of universalism** encompassing the richness and wisdom of Asia-Pacific cultures. As human rights are of universal concern and are universal in value, the advocacy of human rights can not be considered to be an encroachment upon national sovereignty.

We affirm our commitment to the indivisibility and interdependence of human rights, be they economic, social and cultural, or civil and political rights. There must be a holistic and integrated approach to human rights. **One set of rights cannot be used to bargain for another**.

We emphasise the need for **balanced and sustainable development**, bearing in mind maximisation of people's development, integrated approaches on civil, political, economic, social and cultural rights; equity and social justice; income distribution and fair resource allocation.

8. The United Nations Human Rights System: A Mud Map

The United Nations system for the promotion and protection of human rights consists of two main types of body:

- bodies created under the UN Charter, including in particular the Human Rights Council (so called "**Charter-bodies**"); and
- bodies created under the international human rights treaties (so called "**treaty-bodies**").

Most of these bodies receive secretariat support from the Treaties and Commission Branch of the Office of the High Commissioner for Human Rights ("**OHCHR**").

8.1 Charter bodies

The main Charter bodies are:

- Security Council
- General Assembly
- Secretariat General
- Economic and Social Council (**ECOSOC**)
- Human Rights Council
- Commission on the Status of Women (**CSW)**
- Commission on Sustainable Development (**CSD**)
- Commission on Social Development
- Commission on Crime Prevention and Criminal Justice

Human Rights Council (HRC)

On **15 March 2006**, the General Assembly adopted resolution 60/251 to establish the Human Rights Council, also based in Geneva, in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly, with responsibility for '"promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner".

All the mandates, mechanisms, functions and responsibilities of the Commission were transferred to the Human Rights Council.

The HRC consists of 47 member States, based on equitable geographical distribution. The members serve for a 3 year term, and are not eligible for immediate re-election after 2 consecutive terms. The Office of the United Nations High Commissioner for Human Rights ("**OHCHR**") acts as the secretariat for the HRC.

The Council's first session was held in Geneva from 19-30 June 2006.

At the conclusion of its 5th session, held 11-18 June 2007, the Council adopted a resolution entitled "United Nations Human Rights Council: Institution Building" which set out the basic structure of the Council's institution building machinery, consisting of four components:

- Universal Periodic Review Mechanism
- Special Procedures
- Human Rights Council Advisory Committee
- Complaint Procedure

The **Universal Periodic Review Mechanism** provides for the review of human rights adherence of all UN Member States, on a 4.5 year cycle. The review will be carried out by a working group composed of the 47 member States of the Council, at three sessions per year of 2 weeks each. (*See the Chapter on The UPR, Basic Facts and Guide for NGOs*)

Special procedures are the names given to the mechanisms established by the Commission on Human Rights, and assumed by the Human Rights Council, to address:

- the human rights situations in specific countries or territories (known as **country mechanisms or mandates**); or
- major phenomena of human rights violations worldwide (known as **thematic mechanisms or mandates**).

Special procedures consist of either an individual who serves as a special rapporteur, special representative or independent expert, or a working group usually composed of 5 members coming from each region. (See attached annex for a complete list of special procedures.)

Special procedures are independent, part-time, unpaid and serve in a personal capacity for a maximum of 6, but usually 3 years. The mandates are defined by the resolution creating them. Mandates usually call on holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories or on major phenomena worldwide.

In carrying out their mandates, special rapporteurs and other mandate-holders undertake country visits (sometimes referred to as fact-finding missions). Other activities include responding to individual complaints, conducting studies and providing advice on technical cooperation at country level. Some special procedures mechanisms intervene directly with Governments on specific allegations of violations of human rights that come within their mandates. The intervention can relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process, in general, involves the sending of a letter to the concerned Government requesting that preventive or investigatory action be taken, and well as information and comments on the allegation.

Many of the special procedures provide **individual complaint mechanisms** in cases where direct intervention is sought in individual cases. The following minimum information must be provided for all special procedures in order for the complaint to be assessed:

- Identification of the alleged victim(s);
- Identification of the alleged perpetrators of the violation;
- Identification of the person(s) or organization(s) submitting the communication (this information will be kept confidential);
- Date and place of incident
- A detailed description of the circumstances of the incident in which the alleged violation occurred.

To facilitate the examination of reported violations, **questionnaires** relating to a number of thematic mandates are available to persons wishing to report cases of alleged violations.

The Resolution also establishes a new **complaint procedure** “to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.” The procedure will retain the confidential nature of the earlier procedure established pursuant to ECOSOC resolution 1503 (XLVIII) of 27 May 1970.

Two working groups will be established:

- **Working Group on Communications,** to undertake an initial screening of communications based on admissibility criteria; and
- **Working Group on Situations,** to present the HRC with a report (including recommendations) on the basis of the information and recommendations provided to it by the Working Group on Communications and on consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms.

The **Human Rights Advisory Council (HRCAC**) has replaced the former sub-Commission on the Promotion and Protection of Human Rights to support the work of the Human Rights Council. HRCAC functions as a think tank of 18 independent experts interacting with States, national human rights institutions, NGOS and other civil society entities. HRCAC will convene twice a year, or as required by HRC.

8.2 Treaty bodies

There are ten human rights treaty bodies that monitor implementation of the core international human rights treaties:

- Human Rights Committee (**CCPR**)
- Committee on Economic, Social and Cultural Rights (**CESCR**)
- Committee on the Elimination of Racial Discrimination (**CERD**)
- Committee on the Elimination of Discrimination against Women (**CEDAW**)
- Committee against Torture (**CAT**)
- Subcommittee on Prevention of Torture (**SPT**)
- Committee on the Rights of the Child (**CRC**)
- Committee on Migrant Workers (**CMW**)
- Committee on the Rights of Persons with Disabilities (**CRPD**)
- Committee on Enforced Disappearance (**CED**)

The treaty bodies consist of independent experts (10-23). They meet 2-3 times per year for 2-3 weeks, in Geneva and New York. Unlike the Charter bodies, their mandates extend only to States parties to the particular treaty. They:

- examine State party "**periodic reports**" every 2-5 years, and make "**concluding observations**" (the examination often includes consideration of "**shadow NGO reports**");

- make "**general comments"** or "**general recommendations**" that explain the content of particular articles, or address particular issues in relation to implementation of the treaty;

- four of the treaty bodies (HRC, CERD, CAT and CEDAW) can, under certain conditions (mainly, upon **exhaustion of domestic remedies**) receive petitions or "**individual communications**") from individuals who claim that their rights under the treaties have been violated;

- theoretically, receive "**Inter-State communications"**; and

- CEDAW and CAT can investigate "**systematic violations**".

The treaty bodies coordinate their activities through an annual meeting of chairpersons of human rights treaty bodies and through the inter-committee meeting.

9. Internet resources

www.un.org

http://www.ohchr.org

http://www.ohchr.org/english/bodies/hrcouncil/

www.umn.edu/humanrts

www.amnesty.org

www.hrw.org

www.spfo.unibo.it/spolfo/HRLAW.htm

www.derechos.org

www.ichrdd.ca