

International Law and Human Rights

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International law has traditionally been defined as the law that governs the relations between states amongst each other. Indeed, it used to be referred to as the “law of nations.” International law covers a wide variety of topics, such as the use of force, territory, the law of the sea, state responsibility, and even outer space activities. Until quite recently, only states were considered to be “subjects” of international law, i.e., only states could have rights and obligations under international law. The rules laid down were agreements by states which benefited states. However, today it is clearly established that there are many other actors on the international stage. The rights conferred on individuals by a large number of global and regional human rights treaties are examples of this. In addition, it is now clear as well that individuals can be held responsible under international law, principles exercised by, *inter alia*, the International Criminal Tribunal for the Former Yugoslavia.

Human rights as concept has, and still is, continuously developed through history. Individuals have acquired rights, and responsibilities, through their membership in groups—their family, community, religion, and so on. It is interesting to note that the preamble to the charter of the United Nations, agreed on in 1945, says that the peoples of the United Nations are determined “to *reaffirm* faith in fundamental human rights” (my emphasis). However, it was not until the United Nations had been established that we started seeing the kind of agreements between states in relation to human rights that we are used to today, accompanied by implementation mechanisms.

Article 1 of the Universal Declaration of Human Rights (UDHR) announces that all humans are born free and equal in dignity and rights. Today, 60 years after the adoption of the Declaration, the precise meaning of different human rights is still debated. However, there is broad consensus that all humans are entitled to some basic, fundamental rights. The UDHR is a non-binding declaration passed by the General Assembly of the United Nations on 10 December 1948, partly in response to the atrocities that had taken place throughout the world during the Second World War. The drafters of the declaration believed in the liberty and equality of individuals, and both civil and political rights, as well as economic, social, and cultural rights, were included in the UDHR.

The UDHR has, even though it is a non-binding declaration, provided the inspiration for many treaties which have contributed to the development of human rights and international law throughout the world. Examples include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both from 1966, and the European Convention on Human Rights from 1950.

Treaties are legally binding instruments which states can choose whether or not to ratify. They define both the rights and obligations of states. If a state fails to live up to its obligations under the treaty, the rules of state responsibility will apply, and the violating state has to make reparation for any damage caused. In the context of human rights treaties, there will generally be an obligation to put a stop to the violation and, if appropriate, provide the victim with redress.

In the 2005 report by former Secretary General of the United Nations, Kofi Annan, "In Larger Freedom: Towards Development, Security and Human Rights For All," he states that the impressive normative human rights framework that has been

established over the past six decades must be strengthened. In addition, concrete steps must be taken to reduce selective application, arbitrary enforcement, and breach without consequence. The world, he states, must move from an era of legislation to implementation.

Indeed, many of the treaties created both by the United Nations and various regional systems do, as previously mentioned, provide for some sort of implementation mechanism. If human rights remain only as ideas and “good intentions,” people will not be provided with the protection that they are entitled to. These systems for overseeing the implementation by states of their human rights obligations show very clearly how individuals are gaining a stronger position in international law. Victims of human rights violations can bring proceedings in an international forum against a state on the basis of international law. The different systems that are in place around the world provide for varying levels of protection. For example, the implementation of the European Convention on Human Rights is overseen by the European Court of Human Rights in Strasbourg, France, and is widely considered to be the most effective trans-national judicial process for examining individual human rights complaints. The judgments handed down by the European Court of Human Rights has led to a number of changes in the law, practice and policy in the member states. Over nearly the past six decades, a body of case law has been built up, dealing with such varied issues as prison standards, length of detention and trials, custody and care of children, immigration, and protection of property. In response, there has been an improvement of the standards in detention centres and prisons, criminal procedural codes and practice have been changed, policies of taking children into care have been revised, deportation orders lifted, and compensation for wrongfully expropriated property paid.

Since the UDHR was adopted, it has been accepted by states around the world to take on international legally binding obligations that directly benefit individuals and protect their human rights. States have also accepted, albeit to differing degrees, to have international bodies overseeing the implementation of these obligations. International lawyers, in the form of judges, advocates or state representatives, and NGOs, all take part in this process. Human rights have, through the application of international law, developed from ideas to rights which can be enforced and enjoyed. However, international law has also developed through the expansion of human rights, by enlarging the group of actors in international law and creating systems for human rights protection.

Although individuals everywhere have benefited from the protection that international law can afford, it can also place obstacles in the path of human rights protection. States are still sometimes reluctant to accept intervention in what they consider to be their domestic affairs, with reference to the principle in international law of state sovereignty. However, it is important not to lose sight of the fact that the changes described above have all taken place in a relatively short time span of 60 years, and the one trend that we can clearly identify in international law in this period is a constant reinforcement of the position of individuals, and their possibilities to assert the rights they have as human beings.