

International Human Rights Law

Concept: International Human Rights Law

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Description Human rights have been legally codified in a range of international treaties, conventions, declarations, and protocols. The three primary agreements, collectively known as the International Bill of Rights, are the 1946 Universal Declaration of Human Rights, and the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. This core framework has been supplemented by more specific agreements, including the 1948 Genocide Convention, the 1965 Convention on Racial Discrimination, and the 1984 Torture Convention. Major regional agreements include the 1950 European Convention on Human Rights, the 1969 Inter-American Convention on Human Rights, the 1981 African Charter on Human and Peoples' Rights, and the 1994 Arab Charter on Human Rights (not yet in force). These are complemented by a range of regional monitoring and judicial bodies.

Embedded in human rights is the notion of fundamental respect for the autonomy, dignity, and well-being — physical, psychological, and spiritual — of all individuals. These universal rights and protections inherently transcend communal collectivities and political borders, arguably signifying the emerging status of the individual as the basic unit of the global human condition. Traditionally, individuals were generally seen to be subsumed by communities and governments. Therefore, their well-being was considered to be beyond the purview of outside scrutiny. However, such matters are now firmly established as being of fundamental global concern. Governments are bound by human rights standards domestically, and are obliged to employ diplomatic and other channels to promote global observance of these protections.

An enduring debate concerns the relative priority, if any, amongst human rights. There are three broad conceptual categories: "First Generation Rights" are civil and political rights (e.g., freedom of thought, speech, and association); "Second Generation Rights" are economic, social, and cultural rights (e.g., work, leisure, social security, and education); "Third Generation Rights" are a more recent conception and partially revert to collective concerns, particularly those of underdeveloped states (e.g., economic development, democracy, and humanitarian assistance). Arguably, governments struggling with the delicate task of maintaining social cohesion and fostering economic development should not be unduly constrained by strict human rights standards. Moreover, political cultures in the developing world are commonly more accepting of group rights and community sentiments. The term "cultural relativism" implies that the interpretation of human rights should be undertaken flexibly, having regard

to local cultural sensitivities and historical circumstances. Critics argue that this approach threatens the most vulnerable individuals (e.g., women and children). Although civil and political rights are the most firmly established, perhaps reflecting the disproportionate influence of Western values on the international legal system, the *1993 Vienna Declaration of Human Rights* states that "all human rights are universal, indivisible and interdependent, and interrelated."

The underlying basis of human rights also remains subject to political, legal, and philosophical debate. For example, the natural law tradition proposes that human rights have always existed. In other words, legal codification reflects such rights, but does not actually create them. A contrasting position proposes that human rights have been created anew in the post-World War II era, as sovereign states have consented to abide by universal standards of conduct.

The precise legal status of human rights in relation to the sovereignty of states also remains an enduring tension. Human rights are expressed as a fundamental purpose in 1946 United Nations (UN) Charter, but the principles of state sovereignty and non-intervention in the domestic affairs of states are similarly proclaimed. How can the inner mechanisms and practices of states towards their citizens and residents be subject to human rights standards if their domestic affairs are beyond external scrutiny? Until recently, human rights considerations have been largely subordinated to state sovereignty. Isolated and sporadic violations have typically gone unanswered by the global community. Even full-blown atrocities have rarely prompted intervention in offending states' jurisdiction. However, human rights are perhaps beginning to co-exist more equally with the principle of state sovereignty, as evidenced by the establishment of the permanent International Criminal Court in 1998, which may prosecute individuals for human rights atrocities. Moreover, customary international law has arguably moved toward authorizing collective and forcible intervention in situations where grave, repeated and large-scale human rights violations are occurring.

Enforcement of human rights standards remains a challenge, but several legal mechanisms and political dynamics function collectively to promote compliance. The agreements themselves have mandated self-reporting by states, and provide a range of complaint procedures. The United Nations System contains a number of subsidiary bodies and specialized agencies where compliance initiatives are formulated and implemented, including the High Commission for Human Rights. The UN General Assembly may conduct studies, make recommendations, and pass resolutions for compliance. States increasingly link human rights considerations to other aspects of foreign policy. Similarly, many international intergovernmental organizations (e.g., The World Bank) require states' compliance as an eligibility condition for development assistance. Local, regional, and transnational non-governmental advocacy groups and networks fulfill a crucial monitoring and reporting role, and have helped facilitate a global

human rights ethic. Finally, given the heightened attention paid to human rights, businesses are increasingly cautious concerning their own activities and the governments they deal with.

Suggested
Reading:

Donnelly, Jack. 2002. *International human rights*. 3rd ed. Boulder, CO: Westview Press, Inc.

Dunne, Tim and Nicholas J. Wheeler. eds. 1999. *Human rights in global politics*. Cambridge: Cambridge University Press.

Falk, Richard. 2000. *Human rights horizons: The pursuit of justice in a globalizing world*. New York: Routledge.

Howard, Rhoda E. 1995. *Human rights and the search for community*. Boulder, CO: Westview Press.