



ODUMUNC 2013
Issue Brief for the
Human Rights Council (HRC)



Responsibility of States to Enforce International Human Rights Law

By: Gulshan Chattha

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Introduction: Human Rights Law or International Humanitarian Law (IHL) has become a major issue worldwide, as international organizations, governments, scholars and activists deliberate on the fundamental relationship between institutions and individuals. In many countries people are not assured basic legal rights or institutional protection from violence and other harm.¹ Other countries make exceptions from their legal protections for individuals or groups deemed dangerous. And other countries enforce their protections arbitrarily to protect favored groups and individuals.

The UN system promotes universal humanitarian values. In 1948 the United Nations completed *The Universal Declaration of Human Rights* (UDoHR), committing all signatory governments to assure basic protections and prevent atrocities. There is controversy over what rights all humans have but there is no doubt that every human is entitled to some form of under international law, guaranteeing basic rights to themselves and freedoms. But the UN system ultimately relies on the decisions of its member states, who alone have sovereign authority over the interpretation and application of law.

Although IHL is increasingly emphasized and effective, many countries do not recognize or enforce it in their state, or allow it to be applied arbitrarily to favored groups. Many states view international human rights law as something enforceable only against their enemies, not themselves. And more and more states are losing effective control over their territory and with it the ability to enforce IHL. Instead non-governmental organizations (NGOs) are emerging as major agents for promotion of internal humanitarian law.

Background to Human Rights Implementation: Historically under the Westphalian international system (1648 to approximately 1989) the legal rights of residents in a country were the exclusive responsibility of each country's domestic law. State sovereignty was interpreted throughout this period to be absolute, granting every ruling government complete authority over its people. Sovereignty allowed for enormous disparities between countries, and made it extremely difficult if not legally impossible to intervene in the affairs of a country suspected of human rights abuses. In practice, historically great powers did act against human right violators occasionally, usually when provoked by concern for co-religionists. To the British,

¹ <http://www.un.org/en/documents/udhr/>



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for example, this meant intervening diplomatically and militarily over treatment of Christians in the Ottoman Empire.

International Human Rights law emerged in the late Nineteenth Century with the rise of Liberalism, based on the assumption that individuals have a kind of sovereignty in parallel with the sovereignty of the state. The state remained more powerful, but was expected to respect or accommodate rights of individuals. The state also was expected increasingly to intervene on behalf of individuals to assure level playing field so their rights were not abused by other actors in society, such as businesses, crime, and sometimes economic forces or even families.



Photo: U.S. Special Ambassador Eleanor Roosevelt with the Universal Declaration of Human Rights (UDoHR), 1948

Although the implementation of International Human Rights Law did not occur until after WWII in 1948, it was being discussed as early as 1899 at the Hague Peace Conference of 1899. Many scholars were wondering why innocent civilians of states would be abused and tortured, because of another states interest. It was the states responsibility to protect its civilians even during war, and the best solution would be international human rights. Unfortunately, the



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Hague Peace Conference failed because of WWI. After WWI, the League of Nations attempted to make International Human Rights a major issue, but failed because of its own internal issues. Human Rights would not be discussed again until after the atrocities of WWII would occur, and creation of the United Nations. The creation of the U.N. ensured Human Rights became a major topic that would be discussed continuously to protect humans from ruthless states. International Human Rights Law was first created on 10 December 1948 with the adoption of "The Universal Declaration of Human Rights".² This was the result of the atrocities experienced in WWII.

During WWII, there was no regard for human life and millions of innocent civilians were killed for no rational reason in various torturous ways. The most disturbing aspect of WWII was Nazi Holocaust, mass murder of civilians and prisoners of war, as well as Allied strategic bombing to kill innocent civilians, including use of the atomic bomb against civilians, and Japanese use of chemical and biological weapons against civilians in China.³ Even women and children, innocent bystanders were targeted. States recognized WWII had gone too far, and did not want to see another war using the same methods. The solution was an International Human Rights Law.

Once International Human Rights Law was adopted the dominant issue became enforcing international laws. The problem with enforcing is that the United Nations has no military or any other means to support the law. International law must be enforced by states, even when states are the problem. States are not willing to give up their sovereignty to be punished by the U.N. This is where the question of responsibility of states to enforce International Human Rights Law occurs. The U.N. can only do so much, before overstepping the boundary of states' rights. The U.N. actually tends to pit states against states, lacking any independent ability to take action unless the states were willing to comply.

² The Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/index.shtml>

³ <http://www-cs-faculty.stanford.edu/~eroberts/courses/ww2/projects/chemical-biological-warfare/weapons.htm>



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Photo: the International Criminal Court, The Hague

The International Criminal Court: The international community realized the dilemma of states after WWII, when many were asking for justice from the leaders that carried out the atrocities that took millions of lives.⁴ The question was who would try these leaders. Special tribunals were sued after World War Two, such as the Nuremberg trials in Germany and proceedings against Japanese leaders in the Philippines. Special tribunals were created in the 1990s to deal with atrocities in Yugoslavia and Rwanda. The final solution was creation of the International Criminal Court (ICC) through the 1998 Treaty of Rome.

The ICC, based in The Hague, Netherlands, has begun to try major cases of genocide and other atrocities.⁵ It remains controversial. Some countries, led by Iran, Russia and the United States, refuse to cooperate unless they are accepted from the ICC; they want the country to operate against their enemies, not their allies or themselves. Other object to the country because it has been sued almost exclusively against war crimes in Africa, leading to charges it is a racist organization.

⁴ <http://www.icc-cpi.int/menus/icc/about%20the%20court/frequently%20asked%20questions/2>

⁵ "The international criminal court: an introduction", <http://aiic.net/page/1660>



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Although an immediate solution was created to punish individuals the question of enforcing International Human Rights Law remained. Within the United Nations system there is wide agreement on the need for a deliberative body to work on these issue and promote acceptance and enforcement of IHL. But the U.N. system relies on member states, who can be contemptuous or selective in their application of IHL. This problem invites painful disputes on principles and the actions of specific states. In 2006, the United Nations Human Rights Council (HRC) was created in Geneva to balance the needs of states and individuals. The HRC meets three times a year to discuss topics associated with human rights. The problem with this council is that countries can refuse to attend the meetings. In fact, many prominent countries have boycotted the meetings for various reasons.

Current Situation: States have various opinions on International Human Rights Law. In today's world most states agree International Human Rights Law should be a norm, but don't agree on what rights human's do have. There is no state in the world, which is fully complying with the International Human Rights law, but most are determined to try to follow it. There seems to be a correlation between a state's development and the quality of Human rights law. First world states have stricter laws and a better environment protecting their citizens. Third world states do not have the resources and usually have more issues with human rights law.

The main question with Human Rights Law is the responsibilities of states to enforce International Human Rights Law. These laws have been established because it is necessary to have a standard on how states can treat humans. Some states believe as a sovereign nation no other state has a right to interfere with their policies. Other states try to enforce this standard in their territory and other countries. Although a state may not be abiding by all of the International Human Rights Laws, many feel they are still obligated to weigh in on other states enforcement and policies.

The problem with Human Rights law are different types of laws, and also the different environments states are in, this effects the enforcement of the laws. There are some states that recognize the problems within their countries, while others ignore them and deny their existence. Currently there are many states that recognize the responsibility of states to enforce international human Rights laws, while others continue to ignore this issue. The major regional organizations which try to promote human rights law are the African Union, the Council of Europe, and the Organization of American States. Leading Non-Governmental Organizations (NGOs) are Human Rights Watch (based in New York) and Amnesty International (London).



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There are also many countries that are criticized for violating Human Rights Law and International Humanitarian Law:

- China, Cuba, Equatorial Guinea, Eritrea, Iran, Myanmar, North Korea and Sudan for surprising the freedom of minority groups and/or political dissenters.
- Others are criticized for using law arbitrarily to punish political opponents, including Cambodia, Georgia, Russia, Tajikistan, Uzbekistan and Zimbabwe.
- Countries that have been cited for failing to protect minority groups include Afghanistan, Iraq, Pakistan, Saudi Arabia and United Arab Emirates for not protecting Shi'ites. Iran is criticized for persecution of religious minorities. Turkey has suppressed the language rights of Kurds.
- Palestinians have demanded UN recognition of their rights against border closures, and attacks on civilian by Israel.
- Of special note are disputes within Europe over treatment of Roma (Gypsy) minorities in Bulgaria and Romania and other European countries. Several European countries have been criticized for denying equal rights to Muslims, forbidding Islamic dress (Belgium and France), or building minarets (illegal in Switzerland).
- The United States is criticized for assassinations aboard (targeted killing or drone strikes), special rendition (capturing individuals for interrogation in countries known to use torture) and refusing to apply standard legal procedures for prisoners (called internees to evade internal legal) at its military base in Guantanamo, Cuba. The United States also has been criticized for refusing to extend universal adult voting rights.

Issues for the HRC

- The HRC is mandated to address specific human rights problems, including those of member states.
- Does Human Rights Law extend over the sovereignty of each state, or is it optional for states?
- Do humanitarian legal responsibilities begin at home or with suspected violators?
- The role of the international community assuring the rights of people with disabilities, women, minorities and children.
- Should human rights law focus on specific states and Non-State Actors (NSAs), or focus on universal principles applicable to all?
- Does the international community have an obligation to intervene against abusive governments to assure the human rights of vulnerable peoples?



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