HUMAN RIGHTS TREATIES AND AGREEMENTS

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Summary

The concept of human rights is a product of modern history with its roots in a number of religious, philosophical, and political theories that developed mainly in eighteenth- and nineteenth-century Europe. These centuries could be considered domestic precedents for a twentieth-century active international law involvement with human rights. After the timidity of the League of Nations, the United Nations became actively involved in human rights standards setting. Under its auspices, and with the active support of states belonging to other legal traditions that broadened the Western view, an impressive number of human rights conventions have been adopted proclaiming rights and freedoms for all. Also at the regional level, especially at European, American, and African intergovernmental levels, important work has been done in the field of human rights codification in order to make their own views in human rights law binding rules.

1. Introduction

At the very beginning of the new millennium, it has almost become a cliché to reflect on the twentieth century and draw conclusions on its contribution to humanity. Although the history of human rights protection can be traced back to developments before the twentieth century, it is undoubtedly one of the great achievements of that century to have made human rights and fundamental freedoms a domain of law that has radically transformed the thinking of humankind. While in the nineteenth century human rights were still to a great extent something reserved for the very few, the question has now been settled whether human rights are really "human" and thus relevant for all individuals everywhere. Such an achievement could not have materialized without international law proclaiming rights and freedoms for all. As the Universal Declaration on Human Rights emphasized, "the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." This article will in general discuss how international law transformed the fabric of human rights law, and in particular which standards were established at the international and regional levels through human rights treaties and agreements.

2. The International System of Human Rights Protection

2.1. Early Developments in Human Rights Law

The concept of human rights is a product of modern history with its roots in a number of religious, philosophical, and political theories. It is, as Henkin stated, essentially a twentieth-century synthesis of an eighteenth-century thesis and a nineteenth-century antithesis. Indeed, during the eighteenth century, French and English thinkers developed theories on liberty, equality, and the division of power between government and governed that after their first application in Britain (the Glorious Revolution of 1688) strongly influenced two of the greatest revolutions of modern history: the French and the American. Locke considered political societies to be based upon the consent of the people who compose them, each of whom agrees to submit to the majority. In such a society, sovereignty belongs to the people and is therefore limited by the necessity to protect its individual members. Therefore, as defended in his *Treatise of Civil Government*, every individual has the right to life, liberty, and property. Together with Hobbes, Grotius, Paine, and Rousseau, he also advocated the idea of social contract. What these thinkers had in common was that they favored the equality of citizens and the existence of a status under the law valid, as against the ruler whose authority derived from the consent of the people. In other words, the authority of the monarch was conditioned and thus owed duties toward his subjects.

Those who drafted the declarations accompanying the abovementioned revolutions drew substantially upon these blossoming philosophical sources in order to advocate radical ideas. "All men are born and remain equal in right," proclaimed the preamble of the Declaration of the Rights of Man and Citizens (1789). "No class of people has the inherent rights to oppress another: relations between peoples have to be governed by justice and not by favor of the privileged heredity." And the American Declaration of Independence (1776) in natural law phraseology considered it "self-evident" that all

Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Rights of the People to alter or abolish it and to institute new Government, laying its Foundation on such Principles and organizing Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

The American and French declarations became inexhaustible sources of inspiration for subsequent anti-despotic revolutions, and morally legitimized the whole democratization movement. The nineteenth century advanced in various aspects the human rights idea, but in general the century witnessed continued and even renewed resistance to human rights ideas developed a century earlier.

From a strict international law approach, the eighteenth and nineteenth centuries were domestic precedents that lay the groundwork for a twentieth-century active international law involvement with human rights. These centuries were thus of little relevance, for in traditional international law it was only the relations between states that mattered. How a state behaved with its own nationals remained an issue about which states retained full autonomy, as the doctrines of state sovereignty and domestic jurisdiction reigned supreme and thus maintained a fence between two separate legal orders **(see *International Law and Sovereignty in the Age of Globalization*).** The bulk of matters that would be classified as belonging to the fabric of human rights today remained within state domestic jurisdiction. However, even during this heyday of traditional international law, certain human rights issues pierced the veil of state sovereignty and became the object of international law, either through being transformed into customary law or being regulated by treaties. Already in the seventeenth century Grotius and his fellow early international lawyers had recognized the doctrine of humanitarian intervention that was later transformed into a customary rule by which one or more states could use force when another state maltreated its own nationals in such a brutal way or on such a large scale as to shock the international community. States could, of course, by treaty limit their sovereignty and accept that matters otherwise belonging to domestic jurisdiction would become matters of international concern. The classic examples dating from the late nineteenth century were treaties to abolish the slave trade, to ban piracy, to protect Christian minorities in the Ottoman Empire, and finally to protect sick and wounded soldiers or prisoners of war.

The beginning of the twentieth century brought important changes in the approach to international law through transforming it slowly from a law of coexistence to one of cooperation. The law that earlier focused on defining the jurisdiction of the states, forming what was called the “concert of nations,” gradually concentrated on creating common projects necessitating the contribution of several members of the international community. One such common projects was the League of Nations created in 1919 from the ashes of World War I in order to establish a new world order and prevent new wars. Although the Covenant of the League of Nations contained no legal provision specifically addressing human rights questions, Article 22 of the Covenant created the international mandate system for former colonies of defeated powers. Those who

drafted the Covenant believed that for these territories "inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization." The mandatory powers responsible for administering the territories (i.e. the states who received the primary responsibility to develop the mandates, including the U.K., France, South Africa, and Belgium) had to guarantee freedom of worship and of conscience and prevent discrimination among racial, religious, and linguistic groups. The mandatory powers also agreed to provide the Mandate Commission of the League with annual reports on the manner in which they had discharged their responsibilities.

As a constituent part of the peace package negotiated after World War I, a number of minority treaties were signed between the principal allied and associated powers and states of central and Eastern Europe, but also the International Labour Organization (ILO) was created with responsibility for promoting better working conditions and supporting the right of association. The aim of the minority treaties was "to assure full and complete protection of life and liberty to all inhabitants of the territory without distinction of birth, nationality, language, race or religion." The minorities were entitled to "free exercise, whether in public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or moral" and allowed "the same treatment in law and in fact" as the other inhabitants of the state. The League of Nations functioned as a guarantor of the system, for minorities could petition the Council of the League when their rights were violated.

Although in the interwar period international concern for human rights protection was thus growing, international involvement with human rights is essentially a post-World War II development. The horrors of this war did indeed shock the world's conscience and demonstrated the need for an adequate international system of human rights protection that could have prevented such large-scale violation of the most basic human rights **(see *International Law and the Use of Force*).**

2.2. The Charter of the United Nations

The creators of the United Nations (U.N.) learned from the defunct League of Nations how to manage world peace and security better. The preamble of the Charter of the U.N. therefore proclaims that "the people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind" and that they "reaffirm faith in fundamental human rights." As a result, it is one of the purposes of the organization, as enunciated in Article 1(3),

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.

While the Charter of the U.N. neither defines what is meant by the term "human rights" nor provides for a catalog of human rights as, for instance, do numerous state constitutions, it nevertheless defined in a set of provisions how this purpose of the organization was to be achieved. Articles 13(1), 62(2), and 68 of the Charter mandate the U.N. General Assembly and the Economic and Social Council (ECOSOC) to initiate

studies and make recommendations regarding the realization of human rights for all. Article 55 considers "universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" one of the preconditions for stability and well-being, matters necessary for peaceful and friendly relations among nations. Therefore, as stipulated in Article 56, all members of the U.N. "pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55." Of course, U.N. policy with regard to human rights had to take into account the "domestic jurisdiction" clause of Article 2(7) of the U.N. Charter that prevents "the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."

Although the provisions referring to human rights are indeed vague, they have nevertheless contributed to lifting human rights protection from the domestic to the international sphere. As a result, any member state of the organization that violates international human rights standards can no longer hide behind the armor of state sovereignty to prevent international scrutiny. The liberal interpretation of the domestic jurisdiction clause, the mandate of certain U.N. organs, and the obligation of member states to cooperate with the organization in the promotion of human rights and fundamental freedoms have made the U.N. the forum for discussing human rights and building an international consensus on several core human rights issues. Over the years, the U.N.'s view has been clarified in an impressive number of resolutions. Through adopting these resolutions, the U.N. undoubtedly established international standards and contributed to the development and crystallization of rules of customary law on human rights. It has equally contributed to codifying common standards and safeguard mechanisms through drafting and adopting binding human rights treaties and conventions. Over the years, it has developed a special implementation system (also referred to as Charter-based supervising mechanisms) by which special bodies can report on violations and issue recommendations to states.

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Biographical Sketch

Stefaan Smis is a member of the Department of International Law of the Vrije Universiteit Brussels in Belgium. He obtained his Ph.D. at the Vrije Universiteit Brussel in the international law of self-determination. His main areas of research are human rights protection, border issues, and regionalization in Africa. He has contributed chapters in books and published in various international journals.