

HUMAN RIGHTS AND INTERNATIONAL RELATIONS

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Contents

1. Introduction
 2. The Universality of Human Rights
 3. The United Nations
 4. The International Covenants on Human Rights
 5. Other Human Rights Activities by UN Bodies
 6. Council of Europe
 7. European Union
 8. Organization for Security and Cooperation in Europe
 9. Organization of American States
 10. Organization of African Unity
 11. Non-Governmental Organizations
 12. Humanitarian Intervention
 13. International Adjudication
 14. Conclusion
- Bibliography
Biographical Sketch

Summary

The question is discussed as to what extent human rights are universal or subject to "cultural relativism". The United Nations is the main international organ by which international standards of human rights, such as the international covenants on civil and

political rights and on economic, social and cultural rights have been established and that helps to supervise the implementation of these rights. At the regional level, these functions are performed in the framework of the Council of Europe, the European Union, the Organization for Security and Cooperation in Europe, the Organization of American States, and the Organization for African Unity. Non-governmental organizations perform an important role in reminding governments of their international obligations by issuing reliable reports. A relatively new phenomenon to supervise such implementation is "humanitarian intervention". In recent years, international adjudication of perpetrators of violations of human rights has made progress.

1. Introduction

Human rights are nowadays a permanent feature of international relations. The concept of human rights, or rather "rights of men", was already known in the eighteenth century. The Virginia Bill of Rights of 1776 was incorporated in 1791 in the United States Constitution and the French Declaration of the Rights of Man and Citizen was coined in 1789. But only since 1945 did it acquire a place of its own in international relations. The preamble to the Charter of the United Nations mentions explicitly the notion of fundamental human rights. Article 1, paragraph 3 calls one of the purposes of the United Nations: "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." This led in 1948 to the adoption by the UN General Assembly of the Universal Declaration of Human Rights, which was proclaimed as a "common standard of achievement for all peoples and all nations". Part of the East-West conflict, known as the Cold War, was fought out in terms of disputes about human rights.

Human rights were incorporated in the UN Charter and the Universal Declaration as a reaction to the outrageous crimes against humanity committed by the German national socialists between 1933 and 1945. The imprisonment, torture and killing of more than six million Jews, gypsies, homosexuals and political opponents of the Nazis was the largest-scale violation of fundamental human rights in modern times. Concepts such as "genocide" and "crimes against humanity" are inseparably linked to this period in world history. The victorious allied powers wanted to prevent such events from ever happening again. They based themselves, among other matter, on the "four freedoms" formulated by United States President, Franklin Delano Roosevelt in 1941: freedom of speech and expression, freedom to worship God, freedom from want and freedom from fear.

Since the adoption of the Universal Declaration of Human Rights, an extensive set of declarations and binding treaties containing more detailed standards of human rights have come into being, both at the global and at the regional level. In addition, a complex system of supervisory mechanisms has been adopted. Human rights play an important role in the foreign policies of many states. A major issue of contention is the question to what extent human rights are universal in nature or regionally and culturally determined. Non-governmental organizations report on human rights violations and remind governments of their obligations in this field. The question whether states are entitled to

refer to “humanitarian intervention” by military means in case of gross and massive human rights violations remains highly controversial. A rather recent phenomenon is the establishment of international tribunals that deal with perpetrators of violations of human rights and international humanitarian law.

2. The Universality of Human Rights

Universal human rights instruments are based on the assumption that they reflect universally accepted norms of behavior. This is important, among other things, for the role of the United Nations in the supervision of the observation of these international standards. Unless human rights -- or at least a nucleus of such rights -- are universally accepted, the United Nations would lack the basis on which its supervision activities are founded.

That assumption governed the approval in 1948 of the Universal Declaration of Human Rights by the General Assembly of the United Nations. Its preamble states that 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”. No member-state of the United Nations voted in 1948 against adoption of the Universal Declaration of Human Rights. Eight states -- the Soviet Union and five of its allies, plus Saudi Arabia and South Africa -- abstained. However, the acceptance of these texts does not mean that the universal nature of human rights is a foregone conclusion. Often-heard criticisms of the Universal Declaration are the following:

- It was drafted at a time when most Third World nations were still under colonial domination; developing nations that later incorporated the standards of the Universal Declaration in their national constitutions or accepted them as members of the Organization of American States or the Organization of African Unity are supposed to have done so under western pressure.
- Furthermore, the rights contained in the Universal Declaration are said to reflect mainly western ideological views, rather than values dominant in non-western societies.
- The Declaration uses an individualistic approach to human rights, which is supposedly not suitable for societies that emphasize collective values.

At first sight, the question of the universality of human rights seemed to be resolved at the World Conference of Human Rights held in Vienna in 1993. In the Final Declaration of that Conference it was stated: “All human rights are universal, indivisible and interdependent and interrelated.” However, this was followed by the ominous addition, that has since then been quoted on many occasions, that “(...) the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind.” The precise meaning of this addition, which clearly reflected a political compromise, has remained unclear. Yet, it is precisely the scope and meaning of these “regional particularities” that are at stake, if one raises the question of the universality of human rights.

Governments consider it of importance to pay at least lip service to the universal character of human rights. This includes the governments of countries such as China, Singapore and Malaysia that have often been cited as being critical of the notion of the universal nature of human rights.

There is a big difference between universalism in standard setting and universalism in implementation. With regard to the latter there can be little doubt: there is none. Consultation of the annual reports of Amnesty International and other human rights organizations, but also of organs of the United Nations and the United States Department of State, demonstrate that there exists no universal respect for human rights. The American political scientist, Jack Donnelly, has made the point that emphasis on the individual is one of the most important differences between modern western and non-western views of human dignity. He has argued that the protection of the individual against the demands of society was originally not part of traditional non-western thinking. This does not necessarily mean that in modern times no truly “universal” norms have been developed. It is at least conceivable that conceptions of human rights, which were originally western, have been accepted or will be accepted by non-western societies, and vice-versa. The fact that the protection of individual rights is based on western ideas does not rule out that these ideas were adopted elsewhere and have been developed into norms that have universal validity.

There are indications that indeed at least certain human rights have gained universal acceptance. All governments, whatever their ideological or cultural background, condemn systematic and gross violations of human rights, such as genocide, torture or involuntary disappearances. But not only is there a growing interest among non-western actors in individual rights, the idea of collective rights is increasingly being accepted in the West as well as in the East. That is not only true for the right of self-determination, which is listed prominently in the two international human rights Covenants of 1966 (Article 1). It is also true for the rights of indigenous people(s) that receive increasing attention in western countries as well. It is also increasingly being suggested to recognize rights of (ethnic, religious, racial and linguistic) minorities, next to those of *members of* such minorities (as mentioned in Article 27 of the International Covenant on Civil and Political Rights).

Since 1948, the principles of the Universal Declaration have been repeatedly reaffirmed in international gatherings, such as the world conferences on human rights held in Teheran in 1968 and in Vienna in 1993. The declaration adopted at the Vienna Conference states explicitly: “The universal nature of these rights and freedoms is beyond question.” These rights are considered “a legitimate concern of the international community.”

The differences between East and West used to be in the emphasis they put on the rights of society as a whole versus individual rights, on economic and social rights versus civil and political rights, and on the protection of national sovereignty versus a strengthening of international supervision. The differences between the South and the North relate mainly to the importance that is attached to the right of self-determination, peoples’ rights in general and the emphasis that is put, for example in the African Charter on Human Rights and Peoples’ Rights, on *duties* toward society next to individual rights. The said differences are not static in nature, but evolve over time. Thus, views about human rights have changed from Stalin’s reign over the Soviet Union to those of Gorbachev, Yeltsin, and Putin over present-day Russia. Also in western countries views about certain economic and social rights are not static. Also, the various ideological “camps” are not monolithic. Within each “camp” there are differences of view and

interpretation over the importance to be accorded to certain specific human rights.

Whatever the nature of cultural differences may be, universal acceptance of international human rights standards is not to be excluded. The reason is that just about all governments like to be seen as civilized and decent. They insist on defending their policies and ask for international understanding. That is also the reason why non-governmental organizations can use the instrument of the “mobilization of shame” with a certain measure of effectiveness. They base themselves on standards that are internationally accepted and report on violations of such standards. Governments do not like to be seen as violating human rights, even if they do so with an appeal to allegedly different cultural values. This opens the possibility for an international discussion about the way in which the values, on which international declarations and treaties are based, can be applied in practice. Such discussions may lead to an international consensus, which is an indispensable precondition for greater respect of human rights in the world. Not so very long ago, slavery and torture were accepted in most societies. Nowadays, both are considered as violations of human rights and universally prohibited. The prohibition of racial discrimination is seen as moving in the same direction.

3. The United Nations

Unlike the League of Nations Covenant, the UN Charter contains specific articles on human rights. One of the principal purposes of the organization, according to Article 1, paragraph 3 of the Charter, is international co-operation to promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. In this task, the General Assembly was given the power to initiate studies and make recommendations to governments (Article 13). The United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion (Article 55). One of the tasks of the Economic and Social Council (ECOSOC) is to make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all (Article 62, paragraph 2). This general authority was supplemented with the specific requirement that the Economic and Social Council should set up a commission for the promotion of human rights (Article 68). Finally, one of the basic objectives of the Trusteeship System is to encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion (Article 76).

For the first time in history, the United Nations formulated fundamental human rights for all mankind. The ambitious new work began in 1946, when the Commission on Human Rights was created. It meets annually in the spring for five or six weeks. Enlarged over the years, it includes representatives of 53 states, elected for three-year terms by the General Assembly. It has a broad mandate touching on any matter relating to human rights. The Commission carries out studies, usually drafted by rapporteurs or by the Bureau of the High Commissioner for Human Rights in Geneva, which is a division of the UN Secretariat. It drafts international instruments relating to human rights for ratification by governments. It also undertakes special tasks assigned to it by the General Assembly or the Economic and Social Council. It investigates allegations of violations of human rights, and receives and processes communications related to such

violations. Under what is called the “1503 procedure”, the Commission deals in closed meetings with confidential communications about violations of human rights. Private complaints are discussed first in the Sub-Commission on the Promotion and Protection of Human Rights. If that body concludes that there seems to be “a consistent pattern of gross and reliably attested violations of human rights”, it refers the complaint to the Commission, which may then investigate further. The fact that such complaints are dealt with, may already have a certain corrective effect, the more so because it is now common practice that the chairman of the Commission will announce, after the meeting, the names of the states that have been discussed under the 1503 procedure.

In its public meetings, the Commission may discuss human rights situations in all parts of the world. ECOSOC resolution 1235 allows both members and non-members of the Commission to raise violations of human rights all over the world. This may lead to resolutions with recommendations to be submitted to ECOSOC and to the General Assembly. It may also lead to further study of the problem, for example by a working group or special rapporteur. The latter possibility has been widely used by the Commission by the appointment of country rapporteurs on countries where human rights are being violated. Furthermore, it has appointed thematic rapporteurs on summary and arbitrary executions, torture, religious intolerance, mercenaries, freedom of opinion and expression, the independence of judges and lawyers, the sale of children, child prostitution and child pornography, contemporary forms of racism, racial discrimination and xenophobia, violence against women, internally displaced persons, missing persons in the Former Yugoslavia, toxic wastes, the right to education, the effects of foreign-debt burdens on human rights, and human rights and terrorism. Working groups deal with the problem of involuntary disappearances, arbitrary detention, the right to development, and the possible development within the United Nations system of a permanent forum for indigenous peoples. Their reports are discussed by the Commission in public meetings.

The Commission may invite representatives of non-member states or liberation movements to take part in its deliberations on a non-voting basis. Specialized agencies and certain other intergovernmental organizations also may take part in discussions on topics of concern to them. Finally, a unique feature of the Commission on Human Rights is that representatives of non-governmental organizations with consultative status are seated on the floor of the Commission. They have the right to address the Commission, take part in its debates and to have written statements circulated as United Nations documents.

No member of the United Nations, whether a party to the Covenants or not, complies with all obligations to protect human rights. A steady stream of reports from such non-governmental organizations as Amnesty International, the International Commission of Jurists, and the United States “watch” committees, brings to light numerous violations of fundamental human rights, especially in the civil and political realm, in many countries.

The Commission deals also with the annual reports of the Sub-Commission on the Promotion and Protection of Human Rights. The 26 members of the Sub-Commission are selected in their personal capacity, although it is common knowledge that some of

them retain close relations with their government. The Sub-Commission deals with studies on a broad range of human rights, which it submits to the Commission. The Sub-Commission has also an important role in the initial phase of the 1503-procedure.

4. The International Covenants on Human Rights

The most comprehensive development of the Universal Declaration of Human Rights can be found in the two international Covenants on human rights, adopted by the General Assembly in 1966. Like the Universal Declaration, the Covenants carry the mark of the political context of their time of birth. The then new influence of the Afro-Asian states led to an emphasis in both documents on the right of every people to self-determination. Furthermore, the Covenants state that all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising from international economic co-operation that is based on the principle of mutual benefit and international law. "In no case," the Covenant on Economic, Social and Cultural Rights proclaims, "may a people be deprived of its own means of subsistence." Thus the former colonial countries insisted that nations should be able to govern their own political and economic destinies without imperialistic control.

Each of the Covenants establishes a method of supervision of compliance by governments. The Covenant on Economic, Social and Cultural Rights requires that parties periodically furnish reports to the UN Secretary-General on the measures they have adopted and progress made in achieving the observance of the included rights. These reports are submitted to the Committee for Economic, Social and Cultural Rights, a committee of eighteen individual experts, which was established in 1985 by the Economic and Social Council. This Committee considers the national reports and submits its findings to the Economic and Social Council for consideration.

Finally, if it adheres to an Optional Protocol, a state allows its subjects to communicate to the Committee that they are victims of violations by that state of any rights set out in the Covenant. The Committee, after having determined that the communication is admissible under the Protocol, must bring it to the attention of the state concerned. Over the years, the Committee has built up an impressive body of case law and it has formulated a number of general recommendations that constitute an important source of interpretation of many substantive articles of the Covenant.

Capital punishment, though not forbidden in the Covenant, is limited to the most serious crimes in accordance with the law in force at the time of the commission of the crime. It shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. In 1989, the General Assembly adopted a Second Optional Protocol, against the death penalty that is adhered to by 47 states (2002).

Both Covenants were unanimously adopted by the General Assembly and recommended to the members for accession on 16 December, 1966. They entered into force in 1976. By the year 2002, 148 states had ratified the Covenant on Civil and Political Rights; 102 states had ratified the first Optional Protocol. The other Covenant has been ratified by

145 states. The United States ratified the Covenant on Civil and Political Rights in 1992, with a great number of reservations, interpretations and “understandings”, which put great limits on its impact. By 2002, China had ratified the Covenant on Economic, Social and Cultural Rights and signed the Covenant on Civil and Political Rights.

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Biographical Sketch

Peter René Baehr is emeritus professor of human rights at Utrecht and Leiden University. He studied political science at the University of Amsterdam and Georgetown University, Washington D.C., where he obtained his doctoral degree. He has taught international relations at the University of Amsterdam; was executive secretary and head of staff of the Scientific Council for Government Policy, The Hague; taught

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Recent publications in English include: *The Role of Human Rights in Foreign Policy* (2nd ed. 1996); (together with Leon Gordenker), *The United Nations at the End of the 1990s* (3rd ed. 1999); *Human Rights: Universality in Practice* (2000); (together with Monique Castermans and Fred Grünfeld), *Human Rights in the Foreign Policy of the Netherlands* (2002).