

AN INTRODUCTION TO INTERNATIONAL HUMAN RIGHTS LAW

The following is intended only as an introductory guide to International Human Rights Law. For further, in-depth, information please visit: <http://www.un.org/law/>

Human Rights Instruments and Enforcement Mechanisms

On 10 December 1948, the Member States of the United Nations adopted the Universal Declaration of Human Rights (UDHR). Two decades later in 1966, following much discussion around the “categorising” of rights, what was originally intended as a single treaty on international human rights became two documents: the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

Since 1948 a number of further human rights instruments have been drafted and adopted by the international community: the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1963), the Convention on the Elimination of All Forms of Discrimination against Women (1970), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Rights of the Child (1989) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

In addition many other instruments for the protection of human rights exist, these include declarations, resolutions, recommendations and principles.

International Law

In the absence of an international law making body Article 38 (1) of the Statute of the International Court of Justice (ICJ) is recognised as the starting point for the sources of international law:

1. The Court whose function is to decide in accordance with international law such disputes as are submitted to it shall apply:
 - a. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
 - b. International custom, as evidence of a general practice accepted as law;
 - c. The general principles of law recognized by civilized nations;
 - d. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Treaties

When accepted by the international community as *Jus Cogens*, “Standards and norms which are accepted and recognised by the international community of States as a whole and from which there may be no deviation and which may only be modified by a subsequent norm recognised, by the international community as *Jus Cogens*”, the strength of such human rights instruments and their ability to empower the individual at local, national and international level should not be underestimated.

In terms of international law, a treaty is a written agreement between States and/or supranational organisations that is enforced by international law. A treaty always contains articles wherein the signing parties expressly agree to a legally binding engagement.

The parties to a treaty are legally bound to fulfil and implement the obligations contained in the treaty. A State signatory to a treaty cannot appeal to its national law to justify the non-adherence to these obligations. It is legally required to uphold the terms of the Treaty.

Essentially, (human rights) treaties are benchmarks, or standards, which guide States in their relations with their citizens and with citizens of other nations and enable the monitoring and evaluation, by the international community, of how States conduct their local, national and international affairs in relation to the inherent rights and freedoms of individuals under their influence or “control”. Human rights treaties focus on the individual and on his or her relation to others and society.

Declarations

These instruments, such as the Convention on the Rights of the Child (1989) are not binding in a legal sense however, as with treaties, they serve to establish recognised standards that are often referred to by national and international courts and bodies in their conclusions, recommendations and decisions.

It is worth noting that the UDHR was a recommendation of the General Assembly and was not intended to be a legally binding document, yet over the last sixty years many of the rights enshrined in the Declaration have become *Jus cogens*. Respect for human rights has come of age and is now part of international customary law.

International Customary Law

International Customary Law is the rules of behaviour followed by States. To be characterised as customary, State practice must be constant and uniform.

Customary law on treaties is set out in the Convention on the Law of Treaties (1969). This treaty is not limited to written agreements between States. A State that is not a party to the Convention on the Law of Treaties is still obliged to observe customary law on treaties. A State Party cannot withdraw itself from its treaty obligations by referring to treaty obligations with other States or to its national law: “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail”. Customary international law relating to human rights includes the prohibition of slavery and torture.

National Law

The way in which international duties are incorporated into national law depends on the legal system of a country. Some countries, such as Germany, Spain and The Netherlands, adopt a monistic approach meaning they automatically accept international law as part of their domestic law.

Others, including the U.K., adopt a dualistic approach that requires specific legislation to create domestic compliance. The dualistic approach of the U.K. is evidenced by the recent (2000) incorporation of the European Convention on Human Rights (ECHR) into domestic law.

Monitoring and Evaluation of State Compliance

Some human rights treaties have established bodies and procedures through which state compliance can be measured:

Reporting

The UN human rights treaties require State Parties to report periodically on the steps they have taken to implement their commitments at national level.

Individual Complaints Procedures

Individuals can bring complaints of violations of human rights directly before some international human rights bodies. Some treaties, such as the American Convention on Human Rights, the European Social Charter, and the International Convention on the Elimination of All Forms of Racial Discrimination allow groups and/or NGO's to submit complaints or communications regarding the violation of rights protected under such treaties.

The individual complaints procedure is possible under the International Covenant on Civil and Political Rights, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹

The International Criminal Court (ICC)

In July 1998 in Rome, 120 Member States of the United Nations adopted a treaty to establish, for the first time in the history of the world, a permanent international criminal court. This treaty entered into force on 1 July 2002, sixty days after sixty States have become parties to the Statute through ratification or accession.

"The long-held dream of a permanent International Criminal Court is nearing reality," United Nations Secretary-General Kofi Annan said recently. "Our hope is that, by punishing the guilty, the ICC will bring some comfort to the surviving victims and to the communities that have been targeted. More important, we hope it will deter future war criminals, and bring nearer the day when no ruler, no State, no junta and no army anywhere will be able to abuse human rights with impunity."

The Court has a mandate to try individuals rather than States and to hold them accountable for the most serious crimes of concern to the international community: genocide, war crimes and crimes against humanity, and, eventually, the crime of aggression. A common misperception is that the Court will be able to try those accused of having committed such crimes in the past, but this is not the case. The Court will have jurisdiction only over crimes committed after 1 July 2002, when the Statute entered into force.

Genocide is defined as a list of prohibited acts, such as killing or causing serious harm, committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.

As set out in the Statute, *crimes against humanity* include crimes such as the extermination of civilians, enslavement, torture, rape, forced pregnancy, persecution on political, racial, national, ethnic, cultural, religious or gender grounds, and enforced disappearances - but only when they are part of a widespread or systematic attack directed against a civilian population.

The "widespread or systematic" qualification for crimes against humanity is very important, as it provides a higher threshold, requiring a particular magnitude and/or scope before a crime qualifies for the Court's jurisdiction. This differentiates random acts of violence - such as rape, murder, or even torture - that could be carried out, perhaps even by soldiers in uniform, but which may not actually qualify as crimes against humanity.

War crimes include grave breaches of the Geneva Conventions and other serious violations of the laws and customs that can be applied in international armed conflict, and in armed conflict "not of an international character", as listed in the Statute, when they are committed as part of a plan or policy or on a large scale. ²

REFERENCES

1. Tammi, L, *Universal Human Rights – A Quest for Consensus*, (2005)
2. United Nations, online at: <http://www.un.org/News/facts/iccfact.htm> (2005)