

KIIT University
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RESEARCH PAPER ON

“HUMAN RIGHTS COUNCIL”

Human Rights Principles and Human Rights Abuses

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TABLE OF STATUTES (CONVENTIONS/ DECLARATIONS)

CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women.
ICCPR	International Covenant on Civil and Political Rights
NATO	North Atlantic Treaty Organization
UDHR	Universal Declaration of Human Rights

TABLE OF ABBREVIATIONS

CAT	Convention Against Torture
CEDAW	Convention on The Elimination of All Forms of Discrimination Against Women.
CERD	Committee on The Elimination Of Racial Discrimination
DPI	Department of Public Information
ICCPR	International Covenant on Civil And Political Rights
KLA	Kosovo Liberation Army
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
UDHR	Universal Declaration of Human Rights
UNFPA	UN Population Fund

CHAPTER-1, ABSTRACT

Background of the Research Paper:

- The HRC- HRC (replacing UNCHR), an inter-governmental body within the UN system responsible for strengthening the promotion and protection of HR around the globe and for addressing situations of HR violations and make recommendations on them.
- The status quo of HR in international law is *the principle of the universality of HR*. The Principles are intended as a coherent and comprehensive identification of the obligation of the States to respect, protect and fulfill the HR of all persons. Wherein, Universal HR are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International HR law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect HR and fundamental freedoms of individuals or groups;

The objectives of my study are:

- Why and What UNHRC has strived to find out and enforce sanctions on human right abuses across the world.
- Pointing out the problems of enforcement and sanctions with regard to HR in international law and different conflicting approaches and principles of HR in international law.

And the present Research Study would involve:

- Concern with the protection of HR, foundation of HR international law;
- various approaches to concept of HR;

- principle of respect for HR in international law;
- factors leading to formation of the HRC-

HRC's fulfillment of the purpose of UN Charter's requirements ¹like:

- i. Article 1- To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for HR and for fundamental freedoms for all without distinction as to race, sex, language, or religion;
 - ii. Article 56- all members pledge themselves to take joint and separate action in cooperation with UNO for the achievement of the purposes set forth in A55;
 - iii. Article 68- Council may set up commissions in the economic and social fields and for the promotion of HR.
- Position of States in respect to UNHRC;
 - UN Framework and Global Impact;
 - Recent developments in HRC (principles against unchecked surveillance; Guiding Principles on Business and HR).

¹ <http://www.un.org/>- CHARTER OF THE UN

CHAPTER-2, IDEA OF INTERNATIONAL HR

²Concern with the protection of HR , in the USA and elsewhere, has been one of the most striking developments in international law since the end of World War II , but still widespread violations of HR, show attempts to provide international protection are not very effective.

Oppenheim, the leading authority on international law in the UK at the beginning of this century, viewed that - wrong, committed by nationals of a State, is a matter exclusively within their domestic jurisdictions and the biggest disadvantage of it being many governments seeking shelter under such a doctrine and hiding their actions behind the cloak of national sovereignty.

--AND ITS CONCERN ACROSS THE WORLD:

I. The Liberal Tradition of The Western Democracies:

In England, Magna Carta of 1215:

Guaranteed to citizen freedom from imprisonment or from dispossession from his property and from prosecution or exile, unless, by the lawful judgment of the law of the land (including right to free trial)

The French Declaration of the Rights of Man and Citizen, 1789:

Its aim is the conservation of the natural and alienable rights of man, i.e. liberty, property, security, resistance of oppression; acknowledging that man has natural right, root to the positive law.

² “HR IN THE WORLD” – An Introduction to the study of the international protection of HR.
- By A.H. ROBERTSON and J.G. MERRILLS

Both American and French Declaration's objective was to protect the citizen against arbitrary power and establish the rule of law.

II. The Universal Tradition:

First international conference on HR in Tehran, 1968:

Recognition and protection of rights to liberty and security, freedom of movement, right to property, and certain economic and social rights. It recalls the essential problem of the continual conflict between the positive law of the sovereign and the unwritten law of the Gods or of nature (natural law).

III. The Socialist Concept:

The emphasis on role of the state as the source of citizens' rights leading to a belief in absolute sovereignty of the state and a refusal to admit any international control or interference over its actions- also provided in the UN Charter as well in the post-war agreements in the field of HR; exception to this rule being- under the trusteeship system (Chapter XII of UN Charter) and in colonial territories- when violations of HR are taken place in a mass scale which also endangers international peace and security. In theory, the State can do no wrong but in practical sense; wrongs ranging from petty wrongs to concentration camps can be committed in its name. Hence there is a need to protect the individual, which is what HR is all about.

IV. Developing Countries and HR

There are two main categories of HR- Traditional approach of Western Democracies gives more importance to civil, political on one hand and on the other, developing States specifically exhibiting concern for economic, social and cultural rights. Hence, in totality should recognize civil and political, economic and social and cultural rights to be interrelated.

--UNFPA:

It recognizes that a rights-based approach should be founded on an analysis of gender and social exclusion to ensure that programmes reach vulnerable segments of the population, especially poor women and young people, mainly of the vulnerable section.

According to UNFPA- HR are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. These rights are all interrelated, interdependent and indivisible.

CHAPTER-3, HR Principles

These Principles would include³:

- **Universal and inalienable and Interdependent**

The principle of universality of HR is the cornerstone of international HR law. This principle, as first emphasized in the UDHR in 1948, has been reiterated in numerous international HR conventions, declarations, and resolutions. The 1993 Vienna World Conference on HR, for example, noted that it is the duty of States to promote and protect all HR and fundamental freedoms, regardless of their political, economic and cultural systems.

Inalienability- They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

Indivisibility- civil and political rights (the right to life, equality before the law and freedom of expression); and economic, social and cultural rights (the rights to work, social security and education)

- **Equal and non-discriminatory**

Non-discrimination is present in all the major HR treaties and provides the central theme of some of international HR conventions such as the International CERD and the CEDAW. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the: “All human beings are born free and equal in dignity and rights.”

³ Published in UNFPA website -<http://www.unfpa.org/index.html>

- Both Rights and Obligations

HR entails both rights and obligations. The obligation to respect means that States must refrain from interfering with the enjoyment of HR, i.e. States must take positive action to facilitate the enjoyment of basic HR. At the individual level, while we are entitled our HR, we should also respect the HR of others.

- Participation and Inclusion:

All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.

CHAPTER-4, Principles of International HR Law

International HR law codifies HR, such as the right to life, the right to freedom of thought and expression and the right to health and housing in various international treaties.

The UDHR is generally known to be the foundation of international HR law. Adopted in 1948, the UDHR has inspired a rich body of legally binding international HR treaties. It continues to be an inspiration to us all whether in addressing injustices, at all times.

Applicability:

International HR law is applicable to the territory of a state but also extends to any territory which is under its effective jurisdiction, even if it is outside its borders. Effective jurisdiction refers to the de facto level of control of one state over another territory or people, for example during an occupation.

Derogations and limitations of HR Law:

In exceptional cases, such as in times of public emergency which threaten the life of the nation, a state can derogate from some of its obligations under HR law. E.g. is the right to peaceful assembly. The derogation must be proportional and must not be introduced on a discriminatory basis.

Certain HR can be limited, but only if such limitations are provided for by law and necessary for the protection of national security or public safety etc. Examples are the right to freedom of expression and the freedom of association.

Fundamental HR, such as the right to life and the prohibition on torture and slavery, can never be derogated from or limited.

Enforcement of HR Law by UN:

By becoming parties to international treaties, through ratification States assume obligations and duties under international law to undertake to formulate and abide by the legislations compatible with their treaty obligations. Hence, domestic legal system provides the principal

legal protection of HR guaranteed under international law. But where domestic legal proceedings fail to address HR issues, victims can avail remedies at international level to ensure that international HR standards are met and enforced at municipal levels too. The UN bodies and representatives dealing with the enforcement of international HR law through UN HR Treaty Bodies (quasi- judicial courts-implementation of the ICCPR, CAT) and the UN HRC.

The HR Committee has, together with CAT, CERD, CEDAW, a mandate to receive complaints from individuals and states regarding violations of any of the HR conventions against that State or another State.

The treaty bodies and NGOs also require all state parties to the HR conventions to submit reports, where they describe the implementation of the respective convention in their country. And they analyze the reports and remarks like criticism of certain state policies.

CHAPTER-5, UNCHR

I. Factors leading to formation of UNCHR-

Under the articles provided in UN Charter providing for HR protection and promotion

- U/A 55-UN to promote universal respect for and observance of, HR and fundamental freedoms for all without distinction as to race, sex, language or religion;
- U/A 56- joint and separate action of the - implying member to act individually, irrespective of their action or failure to act, of other.
- U/A 68- set up Commission on HR
- U/A 76- promotion of HR and fundamental freedoms for all one of the basic objectives of the trusteeship system.

-UNHRC

II. Hence in 1946 UNCHR was set up and under it-

- i. Universal Declaration was adopted, intended to impose establishment of goals to work towards. It may become the Magna Carta of all mankind (said by Mrs. Roosevelt). Its impact has been widespread to such an extent that it can be regarded as a part of customary law.
- ii. The ICCPR was also formed containing legal obligations – to protect and ensure individuals' rights recognized in the Covenant- to be assumed by and measure of implementation. HR Committee was established under this covenant to consider complaints of violations of HR on an inter-state basis.

III. Henceforth, The UNHRC became the successor to the UNCHR on 15 March 2006, since CHR which had been heavily criticized for allowing countries with poor HR records to be members, such as Sudan, China, Cuba and Zimbabwe.⁴

⁴ <http://news.bbc.co.uk/2/hi/europe/4810538.stm>

- i. The 47-nation UNHRC will replace the current 53-country UNCHR.
- ii. The new council will comprise members who are elected by secret ballot by an absolute majority of the General Assembly.
- iii. There will be periodic reviews of membership, and any state accused of systematic HR violations could be suspended.
- iv. The US would cooperate with its functioning and would not create any obstacles in it.

“All victims of HR abuses should be able to look to the HRC as a forum and a springboard for action.” - *Ban Ki-moon, UN Secretary-General, 12 March 2007, Opening of the 4th HRC Session*

CHAPTER 6, INSTANCES OF HR ABUSES BY ONE NATION TOWARDS ANOTHER

The Preamble to the UDHR adopted on 10 December 1948 emphasizes that ‘recognition of the inherent dignity and of the equal and inalienable rights (founded by John Locke -to restrain arbitrary power) of all members of the human family –is the foundation of freedom, justice and peace in the world’.

--PRINCIPLE OF RESPECT FOR HR IN INTERNATIONAL LAW:

-Prof. Grigory Tunkin:-

1. All states have a duty to respect the fundamental rights and freedoms of all persons within their territories
2. States have a duty not to permit discrimination by reason of sex, race, religion or language
3. States have a duty to promote universal respect for HR and to cooperate with each other to achieve this objective.

HR is not directly regulated by international law; they’re implemented by the State in the light of its socio-economic advancement. Hence, after 1980s the 3rd world war view was taken as to-concern with the equality and sovereignty of states and according to which-

The basic rule of international law providing that the states have no right to encroach upon the preserve of the states) as well as socio and economic rights.

But as an exception to the above basic rule –

The 19th century appeared to accept a right of humanitarian intervention in exceptional circumstances to avoid a humanitarian catastrophe, by using military action.

--INSTANCES OF HR ABUSES:

- I. ⁵Kosovo Crisis (1989-99) - NATO's justification of air bombing on Kosovo (initially without UN authorization), designed to support diplomatic efforts to make the Milosevic (Serbian leader Slobodan Milosevic) regime withdraw forces from Kosovo, and cooperate in bringing an end to the violence spread by Serbian military and police forces versus Kosovar Albanian forces and facilitate the return of refugees to their homes.

It was fought by the forces of the Federal Republic of Yugoslavia, which controlled Kosovo before the war, and the Kosovo Albanian rebel group (or the KLA) with air support from NATO.

Hence, NATO forces have been at the forefront of the humanitarian efforts to relieve the suffering of the refugees who managed to flee Kosovo by the Serbian "ethnic cleansing campaign". NATO has also assisted the UNHCR with co-ordination of air surveillance, humanitarian aid flights as well as supplementing these flights by using aircraft from member countries.

- II. ⁶Israeli-Palestinian conflict (around 2006-07)- The HRC's special rapporteur on the HR Watch forced it to view the international HR and humanitarian law violations committed by Israeli and Palestinian armed groups. Israel was condemned by the UN. Israel to a significant degree implemented the Commission of Inquiry reports' recommendations that each party to investigate [the incidents transparently and in good faith; The Palestinian Authority has also implemented the reports' recommendations by investigating assassinations, torture and illegal detentions.

- III. Israeli-Lebanese conflict (2006) - A High-Level Commission of Inquiry was established, in pursue of the directives of UNHRC, with allegations that Israel with systematic planning targeted and killed Lebanese civilians. Israel was again condemned by the UN.

⁵ "INTERNATIONAL LAW"- By Malcolm N. Shaw pg 306

⁶ http://en.wikipedia.org/wiki/United_Nations_Human_Rights_Council--- Israeli-Palestinian conflict and Israeli-Lebanese conflict

CHAPTER 7, RECENT DEVELOPMENTS OF UNHRC

I. UN announces 12th November for HRC elections⁷:

UN Watch is a Geneva-based HR organization founded in 1993 to monitor UN compliance with the principles of its Charter. It is accredited as a NGO in Special Consultative Status to the UN ECOSOC and as an Associate NGO to the UN DPI.

- a) GENEVA— The UN had announced that elections for 14 influential seats on its HRC will be held on November 12th 2013, with the world body for the first time confirming UN Watch's report from earlier this month that candidates include China, Russia, Saudi Arabia, Vietnam and other regimes criticized for widespread HR abuses. According to a new and updated chart published by UN Watch⁸, compiled from the UN website and diplomatic sources, the Assad regime of Syria is still running, as is Cuba⁹.
- b) UN Watch executive director Hillel Neuer said that Syria's bid is expected to fail. And The U.S., the EU, UN chief Ban Ki-moon and High Commissioner for HR Navi Pillay must start speaking about the outrageous candidacies from China, Russia, Cuba, and Saudi Arabia, otherwise these and other serial abusers will surely win.
- c) China's official bid claimed that Chinese Government respects and follows *principle of the universality of HR*.
- d) Neuer denied it. The truth being that the Chinese Communist Party is keeping Nobel Peace Laureate Liu Xiaobo behind bars, is denied the basic freedoms of

⁷ Published by UN WATCH on July 29, 2013

⁸ <http://www.unwatch.org/> the UNHRC turned a blind eye to the world's worst violations, granting impunity to all of the worst violators of HR

⁹ <http://www.miamiherald.com/> 05.03.13 Cuba committed "fraud ... on a massive scale" to influence a UN review of its HR record by using hundreds of "front groups" to submit remarks in favor of Cuba, a watchdog group reported Thursday.

assembly, speech and religion to billions of individuals, and crushes Tibetans, Uighurs (who speak a particular type of script) and other minorities.

- e) Neuer said by electing massive abusers of HR to the very body charged with protecting them, the UN is not fulfilling its objectives behind replacement of UNCHR by UNHRC. For instance, the council already includes Kazakhstan, Pakistan, Mauritania, Venezuela, and other countries with dismal HR records and candidates like Algeria, China, Cuba, Russia and Saudi Arabia have one thing in common: they systematically violate the HR of their own citizens
- f) In recent years, UN Watch successfully led international coalitions of NGOs to block the attempted election of Syria and Sudan.

II. High Commissioner, UNHRC - statement to the Sri Lankan Media on August 31, 2013¹⁰:

Being highly critical in the UNHRC reviews of the actions of the Sri Lankan authorities tasked with the responsibility of safeguarding 'the right to life', which was constantly threatened by the vicious and violent attacks carried out by the Tamil Tigers over a long period of time, to carve out a separate mono-ethnic Tamil ruled racist state by force of arms.

South Africa was a member of UN (made up of 193 countries). However, it must be stated that South Africans of Tamil descent were known to have funded the LTTE and even joined the ranks of the Tamil Tigers having undergone military training in South Africa itself.

As the High Commissioner for HR has not shown the same degree of energy and determination to challenge HR violations and contravention of humanitarian law in nations such as Iraq, Afghanistan, Pakistan, Libya, Kashmir, etc., where the offending party is a global power or a regional power.

¹⁰ Posted on September 20th, 2013 in – Lankaweb news

III. HRC: International coalition endorses principles against unchecked surveillance¹¹:

GENEVA: Over the past several years, government surveillance has grown to disturbing proportions, as highlighted most recently by the revelations regarding the unchecked surveillance programs operated by the United State's National Security Agency and the UK's Government Communications Headquarters.

With this in mind, a collection of civil society organizations, including Bolo Bhi, an internet freedom group, HR Watch, Reporters Without Borders, etc presented the 13 Principles in a HRC side event. The meeting was organized by the UN member States of Austria, Germany, Liechtenstein, Norway, Switzerland and Hungary.

The 13 Principles set out for the first time an evaluative framework for assessing surveillance practices in the context of international HR obligations.

Navi Pillay speaking at the HRC stated in her opening statement to the HRC that Laws and policies must be adopted to address the potential for dramatic intrusion on individuals' privacy which have been made possible by modern communications technology.

The right to privacy is often understood as an essential requirement for the realization of the right to freedom of expression. An infringement upon one right can be both the cause and consequence of an infringement upon the other.

IV. The HRC Endorses "Guiding Principles" for Corporations¹²:

In 1999, the then UN Secretary-General Kofi Annan launched the Global Compact, an effort to encourage corporations to abide by basic principles on HR, labor, environmental protection, and corruption. Thousands of businesses around the world have agreed to participate in the Global Compact.

¹¹ Article Published: September 20,2013 in- The Express Tribune- newspaper of Pakistan

¹²<http://www.unglobalcompact.org/>.

Guiding Principles on Business and HR

- a) In 2005, the UNCHR requested that the UN Secretary-General appoint an SRSG with a mandate to:
- Identify and clarify standards of corporate responsibility and accountability for businesses and HR;
 - Clarify the implications for businesses of concepts;
 - Develop materials and methodologies for undertaking HR impact assessments of the activities of multinational corporations and other business enterprises.
- b) The Guiding Principles provide an authoritative global standard for addressing negative effects on HR linked to business enterprise and activities thereof, wherever such impacts occur.

The Guiding Principles complement the Global Compact by establishing a framework to guide participants in fulfilling their commitment to respect HR. This includes guidance on implementing effective policies and procedures and communicating annually with stakeholders on progress.

CHAPTER-8, CONCLUSION

HRC, an inter-governmental body within the UN system, established for the purpose of international promotion and protection of HR, but many a times it has failed to do so by involving nations committing human rights abuses like, China, Russia, Saudi Arabia, Vietnam, etc. But it has been, on the other side, successful in solving issues like Kosovo Crisis, Israeli-Palestinian/ Lebanese conflicts, Cuban Conflict, etc.

It follows a Universal Periodic Review mechanism -which serves to assess the human rights situations in all United Nations Member States,

The Advisory Committee which provides it with expertise and advice on thematic human rights issues and

The Complaint Procedure which allows individuals and organizations to bring human rights violations to the attention of the Council. National human rights institutions may serve as effective means of addressing individual human rights violations. Individuals or groups of persons may file petitions with HRC against individual perpetrators too, by following HRC Complaint Procedure.¹³

And they have helped HRC to achieve its objectives in various conflicts and wars as discussed above.

¹³ <http://www.ohchr.org/EN/HRBodies/HRC>

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