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# Human Rights & International Law: Mutually supportive or Dichotomous Concepts

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## ABSTRACT

*With the growing ambit of international law and the increasing human rights violation across the globe, understanding the relationship between international law and human rights has become imperative. The question of whether international law agencies and covenants can be used to secure peace in the world has become increasingly important.*

*Are human rights a part of international law? Are human rights an object of international law? If yes, then what is the relation between these two concepts. Should these concepts be treated differently or as part of the same global objective? This Article seeks to answer these questions briefly. It studies the history and emergence of human rights and international law.*

*The meaning of human rights has been well defined in the Universal Declaration of Human Rights and many other international covenants. These are the basic form of rights that are available to every person worldwide, irrespective of any other factor. International law, on the other hand, is a set of rules and norms that govern the relationship between different states and nationals. International law has emerged from the development of different nations. The relationship between international law and human rights can be well studied from the date of inception of these concepts. The roots of these two concepts intertwined at the beginning of the revolutionary era. To understand this, the history of these two areas must be studied.*

*The research done for this Article addresses the core questions of the emergence of each concept and how they have developed to be a part of one another. It briefly studies the relation between them and their interdependency.*

*“The rights of every man are diminished when the rights of one man are threatened”*

- **John F. Kennedy**

Human rights are the fundamental rights that are vested in every human being. These are the key rights that belong to every person regardless of where they are from, what they believe in and how they carry on their life. Human rights are inherent to all human beings, regardless of

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race, sex, nationality, ethnicity, language, religion, or any other status.<sup>2</sup> Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education<sup>3</sup>, and many more. Everyone is entitled to these rights without discrimination. Human rights reflect the minimum standards essential for people to live with dignity. In today's political scenario, human rights protect people against abuse by those who are more powerful. They are a significant piece of how individuals communicate with others at all dimensions in the public arena - in the family, the network, schools, the work environment, legislative issues and worldwide relations. Since human rights are an important part of every human being worldwide, they become a subject of utmost importance in international law.

International law or law of nations is a set of rules, norms and standards that are applied by different states & entities and are legally recognized. According to Bentham's classic definition, international law is a collection of rules governing relations between states. Over the past decades, international law has evolved from being a collection of rules governing relations between states to an independent system of law that overlooks all aspects of human & state interaction. It not only governs relations between states but is majorly concerned with the relationship between a state & its citizens. International law supports order in the world and the attainment of humanity's fundamental goals of peace, prosperity, respect for human rights, and protection of the natural environment.

Referring to the above statement, whether human rights & international law are two projects that are very different or mutually supportive, Human rights & international law have come a long way since the 19th & 20th centuries. Individuals have become the main tenet of international law. Individual & state are the main subjects of international law. Every individual is entitled to human rights which must be protected by the State. Thus, the purpose of international law is not different from the purpose of human rights.

Human rights are the essential rights that everyone in the world is entitled to. To understand their true nature, it is important to know the meaning of 'right' and the effects of 'having a right'. Typically speaking, a right is a moral or legal entitlement to have or do something. Having a right to something means entitlement to that thing. When we speak of someone having a right to X, it means that the person is to be entitled to X. If X is threatened or denied, the right holder is authorized to make special claims to retain his right or for suitable remedies. Thus, any person who has been denied a human right, they have the power to claim

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<sup>2</sup> Preamble, Universal Declaration of Human Rights 1948

<sup>3</sup> Preamble, Universal Declaration of Human Rights, 1948

and remedy that right. Human rights, as stated by the United Nations, include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more.

However, these rights need to be protected. The rights of an individual need to be protected against the rights and arbitrary acts of other individuals. The State acts as a protector of these rights. When it comes to human rights the right-holder is the individual and the duty-bearer is the State.

To understand the effects of human rights, it is important to look into the history of Human rights which is not a recent invention. Throughout history, concepts of ethical behavior, justice, and human dignity have been important in the development of human societies. These ideas can be traced back to the ancient civilizations of Babylon, China, and India. They contributed to the laws of Greek and Roman society and are central to Buddhist, Christian, Confucian, Hindu, Islamic, and Jewish teachings. Ideas about justice were prominent in the thinking of philosophers in the Middle Ages, the Renaissance, and the Enlightenment. An important strand in this thinking was that there was a 'natural law' that stood above the law of rulers.<sup>4</sup> This meant that individuals had certain rights simply because they were human beings. According to J.F. Kennedy, "the rights of man come not from the generosity of the state, but the hand of God." This source of human rights, coming from natural law was highly criticized and thinkers such as Burke and Thomas Hobbes gave new ideas and dimensions to the sources of human rights. He criticized the theory of human rights as natural law. Hobbes drew a distinction between rights and law.

One of the most important theory was that of the Categorical Imperative given by Immanuel Kant. According to Kant, "An innate right is that which belongs to everyone by nature... This innate principle of freedom already involves ...innate equality, that is, independence from being bound by others to more than one can in turn bind them." According to his categorical imperative,

- (1) Act in such a way that the maxim of your action should be a general law (or act the way you would want everyone to act)
- (2) Act in such a way that humanity is always treated as a goal, and never as just a means to an end, both for yourself and for others.

Kant's theory gave light to a new aspect of individual rights and the relationship they shared.

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<sup>4</sup> Introduction to Human Rights, Australian Human Rights Commission  
<https://humanrights.gov.au/our-work/education/introduction-human-rights>

Just like the contrasting views about the sources of human rights, there are two different views on the nature of human rights. There lies a debate that whether human rights are universal or relative. These two views are universality & cultural relativism. The partisans of universality claim that human rights are and must be the same everywhere. Advocates of cultural relativism claim that rights & rules about morality are encoded in and depend upon cultural context. However, on their face, human rights instruments are on the ‘universal’ side of the debate. This is so as human rights are basic rights and are essential to every human being irrespective of their religion, culture, sex, etc. The landmark document to support the ‘universality’ view is the Universal Declaration of Human Rights. Parts of the UDHR have clearly become customary international law. The two Covenants, with states parties from all the world’s regions also speak in universal terms: ‘everyone’ has the right to liberty, ‘all persons’ are entitled to equal protection, ‘no one’ shall be subjected to torture. Neither in the definitions of rights nor in the limitation clauses does the text of these basic instruments make any explicit concession to cultural variation.<sup>5</sup>

Significant development in thinking about human rights took place in the seventeenth and eighteenth centuries, during a time of revolution and emerging national identities. The American Declaration of Independence (1776) was based on the understanding that certain rights, such as ‘life, liberty and the pursuit of happiness’, were fundamental to all people.<sup>6</sup> Similarly, the French Declaration of the Rights of Man and the Citizen (1789) challenged the authority of the aristocracy and recognized the ‘liberty, equality and fraternity’ of individuals. These values were also echoed in the United States’ Bill of Rights (1791), which recognized freedom of speech, religion and the press, as well as the right to ‘peaceable’ assembly, private property and a fair trial. Atrocities during World War II made clear that previous efforts to protect individual rights from government violations were inadequate. Thus was born the Universal Declaration of Human Rights (UDHR) as part of the emergence of the United Nations (UN).

With the emergence of the United Nations the umbrella of international law has widened and covered various aspects since the World War II. It is a rapidly developing complex of rules and influential—though not directly binding—principles, practices, and assertions coupled with increasingly sophisticated structures and processes. In its broadest sense, international law provides normative guidelines as well as methods, mechanisms, and a common

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<sup>5</sup>Henry J Steiner, Philip Alston and Ryan Goodman. *International Human Rights in Context: Law, Morals, Politics*. Oxford University Press.

<sup>6</sup> Introduction to Human Rights, Australian Human Rights Commission  
<https://humanrights.gov.au/our-work/education/introduction-human-rights>

conceptual language to international actors—i.e., primarily sovereign states but also increasingly international organizations and some individuals.

The UN Charter was made with the purpose of securing world peace and ensuring security & sovereignty of all the states. Sovereignty refers to the power of a state to make and apply its own laws and to control its affairs without the interference of other states. In international affairs, the idea of state sovereignty is that nations can control their external and internal affairs and that countries should not interfere with another country's internal matters. However, its meaning has been changing across historical and political contexts and has also been heavily contested at any given time and space. Recently, upholding the concept, by reference to the State or in general, has become a ground of major contention among international lawyers and theorists; while some argue that the concept of sovereignty, or at least of State sovereignty is obsolete and should be abandoned in favor of new concepts. Thinkers such as Peters propagate sovereignty as derived from and geared towards humanity that is the legal principle that human rights, interests, needs, and security must be respected and promoted. State sovereignty is not merely limited by human rights, but should be seen to exist only in function of humanity. Thus, these views provide a mixed concept of sovereignty that has been developing over the years. There is still no clear cut definition and understanding of state sovereignty when studied under public international law.

## CONCLUSION

As expressed above, there is a close-knit relation between international law and human rights, I would like to highlight some important points which depict the correlation between human rights, state sovereignty & international law:

- The term “human rights” was mentioned seven times in the UN's founding Charter, making the promotion and protection of human rights a key purpose and guiding principle of the Organization. In 1948, the Universal Declaration of Human Rights brought human rights into the realm of international law. Since then, the Organization has diligently protected human rights through legal instruments and on-the-ground activities.
- The modern human rights era can be traced to struggles to end slavery, genocide, discrimination, and government oppression. The UDHR was the first international document that spelled out the “basic civil, political, economic, social and cultural rights that all human beings should enjoy.” The declaration was ratified without opposition by the UN General Assembly on December 10, 1948. With the formation

of the UDHR the international law entered into a new era. Henceforth, human rights started to become a priority for international law lawyers, activists, NGOs.

- Under international human rights law, individuals are not direct subjects of international law but states assume obligations and responsibilities to respect the rights of all human beings subject to their jurisdiction. Thus, individuals may perhaps be said to be *objects* of international law. In international law, human rights are recognized in three principal ways: international treaties, covenants & conventions, customary international law and resolutions of the UNGA.
- The UN Charter not only provides for provisions that protect individuals but also that govern state relations and seeks to protect the sovereignty of the states. Articles 2,3,5,8 & 14 are provisions that protect individuals from torture & inhuman treatment and are concerned with the right to life, liberty & protection against discrimination.
- Article 2(1) of the Charter states that the organization is based on the principle of the sovereign equality of all its members. The Charter further provides that all members of the UN must settle their international disputes with peace as to not endanger world peace & security.

Thus, International law, state sovereignty & human rights are not so different altogether. The inter relationship between the three makes them what they are today. The importance of international law, state sovereignty & international human rights can only be studied together.

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