



The Evolution of Human Rights Protection from Domestic to International: An Appraisal

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Abstract:

This article examines the historical development of human rights, with a focus on the necessity for international protections as opposed to internal protections. This study employed qualitative research methods and incorporated knowledge from academic publications, judicial rulings, and international human rights treaties. In the beginning, domestic legislation was primarily used to address human rights issues. The Second World War's destruction revealed how inadequate domestic law was in defending human rights, prompting the realization that outside action was required. Thus, international law was given authority over issues relating to human rights. The legal framework for current international human rights legislation was largely established by the United Nations Charter. The Universal Declaration of Human rights (UDHR) and other international agreements on human rights codified a more comprehensive standard for protecting human rights. The establishment of a specialized forum to discuss these issues through the establishment of the United Nations Human Rights Council (UNHRC) and International Criminal Court (ICC) strengthened the defence of human rights even more. By tracing the emergence of human rights, this review highlights the paradigm shift from relying primarily on domestic legislation to recognizing the need for international protection.

Keywords: International law, evolution of human right, domestic, international, protection

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INTRODUCTION

Human rights have undergone a significant transformation throughout history, shifting from being primarily a domestic issue protected by domestic law to being recognized as requiring international protection. Before the outbreak of Second World War (WWII), human rights concerns were thought to be the matters best handled within the confines of individual states, but this viewpoint has undergone a profound change. It became painfully clear from the horrors seen throughout this international conflict that depending simply on local law is insufficient to defend human rights. As a result, the need for human rights protection on a worldwide scale became increasingly apparent to the international community, opening the door for their inclusion in the body of international law (Shelton, & Carozza, 2013).

An important turning point in this change was the adoption of the UN Charter, which laid the groundwork for the enhancement of modern IHRL. This significant declaration provided the foundation for a worldwide system intended to safeguard the rights and dignity of everyone. It also sparked the enhancement of subsequent IHRL, most notably the 1948 UDHR, which represented a wider and more comprehensive set of human rights concepts. The UNHR Council was founded as a result of the conviction that a dedicated entity was needed to address human rights issues. This group has made a substantial contribution to the defence and promotion of human rights on a global scale. In the interim, the creation of the international code council ICC has granted jurisdiction for the accomplishment of IHR protection, enabling the punishment of individuals accountable for grave human rights breaches. These institutional changes highlight both the contemporary era's expanding IHRL and the increased priority put on defending and upholding human rights on a global scale (Cassel, 2001).

The historical advancement of human rights is examined in this article, which shows how national concerns gave way to the demand for international safeguards. This study observes how World War II's lessons and later advancements, such as the UDHR, the UNHR Council, and the ICC, have impacted the expansion of IHRL. By doing this, it tries to highlight the value of the international legal framework and procedures for assuring the preservation of human rights in the modern world and provide light on how those rights have changed over time.

RESEARCH METHODOLOGY

This study uses qualitative research to investigate the development of human rights as well as the shift from regional to global protection. It draws information from scholarly works, legal decisions, and international conventions of human rights. The process of collecting data is methodical and includes an exhaustive literature review. Using thematic analysis, patterns and significant insights are identified, and the results are presented cogently. Although some statistical data may be utilized, the emphasis is on qualitative analysis. The study aims to provide a comprehensive account of the emergence of human rights, while recognizing the limitations of qualitative research.

THE ORIGIN OF THE CONCEPT OF HUMAN RIGHTS

Humans are born with certain rights, which are referred to as human rights. The view of human rights dates back to the ancient Greek civilization of the Western world. The autonomy of human rights by the school of wisdom in the fifth century B.C. laid the theoretical groundwork for the

modern expansion of human rights. Ancient Roman legal scholars were the first to develop the view of human rights. They valued individual liberty and believed that state law was still subject to a superior natural law (Lauren, 2011). Through their discussions of natural rights, equal rights, essential freedom, natural human rights, and freedom of expression and thought, modern Enlightenment philosophers like Locke, Rousseau, and Kant established a systematic framework of human rights. Human rights have already begun to take root in Eastern societies, and Guanzi, a political scientist during the Spring and Autumn and Warring States periods, proposed that civil rights and human rights are the sources of state power and emphasized the importance of the state being responsive to and people-oriented toward its citizens. Respect for the personality and dignity of the individual was the fundamental criterion of love and equality in ancient China, where human rights were closely linked to the concepts of love and compassion equality. The introduction of personality is attributed to Confucianism. For example, Confucius believed that the greatest value of a person is their human dignity. Moreover, Mencius proclaimed, "I desire both life and righteousness. One cannot simultaneously possess sanctity and life. In the modern era, Shen Jiaben further enriched and developed the concept of personhood, and the theory of personhood gradually took shape in this period. In the development of the human rights perspective, three generations of human rights theories have evolved, developed by Karel Vasak, the former director of the UN Peace and Human Rights Division (Buergenthal, 2006). Human rights theory's earliest iteration, also known as traditional human rights theory, was born out of opposition to the authoritarian control of the state and placed a strong emphasis on the freedom of political rights. The second era of human rights, also known as societal human rights, favors equality with regard to people's rights in the areas of economy, society, and culture and believes that the state ought to remain in charge of making sure that everyone has equal opportunities. A multicultural framework of values that fosters brotherhood and elevates individual human rights to the status of collective human rights is the third era of human rights concept. It was created in the context of emerging human rights like the entitlement to growth, the freedom to the environment, and the right to information. It was inspired by the United NUDHR (Howard-Hassmann, 2012).

ANALYSIS OF THE DEVELOPMENT TREND OF INTERNATIONAL HUMAN RIGHTS LAW

The change from domestic to international human rights protection reflects the growing tendency of international human rights laws (IHRL). International obligations of states to uphold fundamental human rights in compliance with international law, through international agreements, or in accordance with international customs are referred to as IHRL, or international protection of HR. States are also required to cooperate and monitor one another in certain areas to prevent and support the realization of these rights and freedoms. Human rights were considered to be a country's internal affairs under traditional international law, and other nations had no right to interfere. However, as modern international law has evolved, more emphasis has been placed on the protection of HR under international law, with the Charter's HR provisions serving as the most prominent example. The three aims of the United Nations—peace, development, and human rights—are established in Article 1 of the Charter, which also outlines the general aims for which States must act. The main human rights provisions in Articles 55 and 56 have the effect of making Member States legally obligated to scrupulously abide by the provisions (Landman, 2005). The UN General Assembly has invoked Article 56 of the Charter to urge States to take individual or collective actions in accordance with the Charter to persuade the South African Government to

renounce its policies after noting in its resolution 616 on the racial situation in South Africa that those policies increased racial discrimination and were against the provisions of the Charter. Additionally, the protection of human rights around the world depends on Articles 13(1), 62(2), 68, and 76 of the Charter. The human rights of protection have evolved into a worldwide concern since the Second World War, when they came to the attention of the entire international community and were no longer just addressed at the domestic law level. The incorporation of human rights regulations in the Charter reflects this internationalization of HR protection and the significance that nations have attached to it. On the grounds of not meddling in their domestic affairs, Member States cannot escape their legal obligation to act if their citizens' human rights are violated (Dzehtsiarou, 2011). The Charter created the Commission on HR and granted the UNGA and the Economic and Social Council specific rights around human rights. The Charter also introduced the idea of "promoting universal respect for and compliance of human rights and fundamental freedoms" and changed the protection of HR from a fragmented and limited protection previously to a universal protection for all people worldwide. An enormous amount of IHRL was created in response to this, and a new area of international law—IHRL—emerged.

NEW DEVELOPMENT OF IHRL ESTABLISHMENT AND IMPROVEMENT OF INTERNATIONAL HUMAN RIGHTS PROTECTION MECHANISM

One is the Charter-based HR protection system, which mainly includes the UNHR Council, UN Women and UNICEF, among which the UN human rights protection mechanism is an important part of the ongoing UN reform program. Another system is the IHR agreement bodies based on international HR conventions. In addition, the creation of international tribunals and courts related to HR protection guarantees the effective implementation of the Charter and conventions (Viljoen, 2012).

United Nations Human Rights Protection Mechanisms

The UNCHR gave rise to the UNHR Council. While the UNCHR has made a substantial contribution to the promotion of global human rights protection, it has also had several issues, including a loss of professionalism and credibility, and is frequently criticized by the international community. In accordance with GA resolution 60/251, the HR Council was replaced by the UNHR Council on March 15, 2006. Following the creation of the HR Council, several efforts have a significant impact on the defense of international human rights. First, as a subsidiary body of the UN GA, the HR Council has been elevated to a higher status than the Commission on HR, and is more conducive to organizing violence, protecting victims, and strengthening cooperation among states. Second, a universal review mechanism has been established. As a unique system of report review within the UN system, the universal review mechanism aims to improve the situation of human rights protection in member states and reduce human rights violations in each country. Unlike the Commission on HR, which treats every member state equally in terms of its human rights situation, members are subject to review during their term of office, and China was reviewed as a member of the Council on February 9, 2009. This measure can urge countries to improve the living standard of their people and human rights situation. Third, it provides for clear penalties. For instance, if the requirements are satisfied, the Council might choose to suspend a member for violating human rights. This action encourages the Human Rights Council to carry out its mandate of defending human rights and has a

dissuasive effect on governments' willingness to reduce and prevent human rights breaches (Stamatopoulou, 1998).

In addition to the HR Council, other UN human rights organizations have developed, including UNHCR and UN Women. The Committee on the Rights of the Child has suggested the appointment of an independent expert to look into the effects of armed conflict on children, with its current Special Representative, Ms. Leila Tirougui, from Algeria (Moriijn, 2011).

International Human Rights Treaty Bodies

Since the collapse of the Cold War, there have been an increasing number of human rights agreements in the international community. Currently, the United Nations has nine fundamental human rights conventions, which serve as the foundation for corresponding committees. The most important feature of these treaty bodies is their professionalism, which reflects the international community's continuous focus on the protection of special groups in human rights legislation by adjusting to human rights issues in specific areas. For instance, in an effort to end discrimination against women and advance gender equality, the CEDAW was adopted. This was done to strengthen the protection of women as a vulnerable group under IHRL (Hampson, 2008). As of February 2017, there are 189 States parties to the Convention, which gives legal binding force to the principles and stipulates that they must be applied to all women in order to uphold their rights as women, as well as the measures that can be taken to achieve the goal of upholding women's rights. The UN CEDAW was founded in 1982 with the mandate to oversee States parties to the 1979 Convention on the CEDAW's work on women's concerns and evaluate the national reports that States parties provided regarding their efforts to advance women. To effectively protect women's rights, the UN has also continued to grow and enrich the Convention according to the shifting global landscape. The vast movement of migrants and refugees across the world poses hazards to women including early and forced marriages, the denial of women's rights to sexual and reproductive health, and other harmful practices. As a result, Novosad emphasized, member states should be held more accountable for achieving gender equality and the empowerment of all women and girls. Novosad emphasized the importance of adhering to the rules of the CEDAW (Krommendijk, 2015).

International Courts and Tribunals Related to Human Rights Protection

After the Second World War, the atrocities committed by the invaders led to the realization that human rights violations were not always committed by the state, but sometimes individuals were the ones behind the atrocities, and that if the state alone was held responsible without punishing the individuals who violated human rights, it would lead to the phenomenon of individuals using the state as a shield to commit atrocities. The formation of the Nuremberg International Military Tribunal and the International Military Tribunal for the Far East were historically important in establishing individual responsibility for war, as they tried Axis leaders known as "Class A war criminals" and established the Nuremberg Principles. The Nuremberg Principles established that individuals who commit crimes under international law should be held personally responsible and punished (Mackenzie & Sands 2003).

The creation of the ICTY and ICTR is significant in terms of global human rights protection. Both the ICTY and ICTR were established to bring cases against those who violated law while living in the former Yugoslavia. Their geographical and chronological reach is constrained because both

tribunals were created by the UN Security Council to look into breaches of the law of war in the internal wars of the former Yugoslavia and Rwanda, rather than for other international crimes. The Rome Diplomatic Conference authorized the ICC Statute on 17 July 1998, and the ICC was subsequently established on 1 July 2002 to provide universal jurisdiction against those who breach international law. The ICC Statute adopts the Nuremberg Principles, which hold that individuals who commit crimes that constitute violations of international law should be held personally responsible and punishable, and that official status, governmental or superior orders should not be used as grounds for exemption from responsibility under international law. The ICC should only have jurisdiction over the four core crimes of genocide, crimes against humanity, war crimes, and aggression. Additionally, those accused of crimes contrary to international law should be entitled to a fair trial and their cases should be handled in accordance with due process. Currently, the Central African Republic, Mali, the Democratic Republic of the Congo, and Uganda have all referred cases that occurred on their soil to the ICC (Mackenzie, 2010). The Security Council has also reported matters in Libya, Sudan, and Darfur to the ICC. In these instances, the Court was presented with 12 cases of alleged war crimes and crimes against humanity, and 29 suspects were sought; 17 of them were eventually apprehended or turned themselves in, while the other suspects are still unknown. Furthermore, on March 31, 2011, Pre-Trial Chamber III gave the prosecutor permission to start an investigation into the situation in Côte d'Ivoire. The creation of the ICC eliminates the drawbacks of such ad hoc courts, ensures the efficiency of global monitoring mechanisms for human rights, and is unquestionably a powerful deterrent to international crimes. It also represents a significant advance in the promotion of universal human rights protection (Hussain & Chandio, 2023).

CONCLUSION

The main aim of 'Human Rights' is to improve the physical, social, cultural and spiritual well-being and welfare of the whole humanity globally. The protection of human rights has reached a significant turning point in its history, as it has shifted from being addressed solely by national authorities to being acknowledged as an issue of international significance. The horrors of the Second World War served as a wake-up call, highlighting the limitations of relying on domestic legislation alone to safeguard human rights. This realization prompted a paradigm shift that led to the incorporation of human rights concerns into international law. The UN Charter laid the foundation for much of the existing international human rights legislation. It created a framework for the development of widely recognized principles and values that are meant to protect the rights and dignity of everyone. After UDRH and other IHRD were adopted, the standard for the defence of human rights was set even higher and expanded to cover a larger spectrum of liberties and rights. The UNHR Council and the ICC's founding have reinforced the commitment of the international community to upholding human rights. These groups not only improved the protection of human rights but also gave citizens a way to denounce violations of those rights and held the most egregious offenders in contempt. They serve as an example of how global human rights law is continually changing and adjusting to meet the demands of the modern world. As a result, the evolution of a more thorough and efficient system of protection for human rights has depended on the transformation of human rights from solely domestic concerns to global issues. Individual rights and dignity are now preserved and protected on a worldwide level thanks to the expansion of the scope and implementation of human rights principles as part of international law. But if one wishes

to create a more just and equal world for everyone, one must continue to work toward advancing IHR.

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