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Preparation Paper/Study Guide:

Human Rights Council (HRC)

“Relevance of Human Rights in the 21st Century”

Introduction

At VIMUN the United Nations Human Rights Council (UNHRC) will enter in a constructive debate on the existing international human rights codifications. This is due to the persistent disproportion between global commitments and de facto implementation at national level, the enduring criticism of the universal and liberal conception of human rights and an increasing number of regional documents, which do not always merely supplement the international human rights documents, but also partly contradict them and instead provide alternative concepts and values.

Therefore the aim of the UNHRC's meeting is (i) to discuss the apparent problems of implementing existing human rights treaties, (ii) to debate alternative human rights conceptions and documents, and most importantly (iii) to consider the question of re-drafting international human rights law in order to possibly include the wide array of human rights ideas and conceive a new human rights declaration, which could then serve as a more adequate guideline to tackle human rights violations.

Like UNHRC's predecessor, the Commission on Human Rights, which helped author the Universal Declaration of Human Rights and improved human rights standards, the UNHRC certainly has the power to influence the development of new human rights standards. As stated in [the General Assembly's Resolution 60/251](#) one of the tasks of the UNHRC is to "make recommendations to the General Assembly for the further development of international law in the field of human rights". Nonetheless, it should be noted that resolutions passed by the UNHRC are not legally binding under international law.

History of Human Rights - from the Magna Carta to the Modern Human Rights Regime

The idea of certain inalienable rights pertaining to every human being has existed for centuries. Despite the inherent inequalities and the sometimes exclusive notion of who is human and who is not, many ancient societies had developed traditions, philosophies and documents which deliberated the idea that everyone (or originally a certain group) is entitled to a number of rights, by virtue of their humanity. Thus there exist several precursors of contemporary human rights documents. This is true for many distinct cultures and religions.

Western human rights proponents frequently point to the English Magna Carta of 1215, which codifies individual rights and liberties, mostly for noblemen. In fact this document was by no means a beacon of freedom, but rather a text reforming the late English feudal system. Furthermore, it reveals the common characteristics of all early human rights documents: linking innate rights to membership in a well-defined group. Nevertheless, subsequent documents including some aspects of human rights often referred to the Magna Carta, since theoretically it limited the power of the crown considerably and hence established a basis for a liberal theory of human rights. Further historical antecedents of contemporary human rights law asserting individual rights include the English Bill of Rights (1689), the Virginia Bill of Rights (1776), the French Declaration on the Rights of Man and Citizen (1789), the US Constitution (1789) and Bill of Rights (1791).

With the advent of the 20th century and two sanguinary World Wars, and especially the invention of the totalitarian state as well as the dark chapter of the state-organized genocide by the National Socialists and its collaborators in Europe, the unequivocal need for a codification of human rights, first and foremost understood as individual rights, was once again put on the top of the agenda. The debates that followed were chiefly based on the central notion of an inherent dignity of all human beings. Following the establishment of the United Nations one major goal was drafting some form of international legal document which should be of aid to prevent the future atrocities. Drawing on the experience of the League of Nations, which despite its failures can be regarded as the first international organization which attempted to protect individuals (indirectly through the medium of states) by composing "minority treaties" to secure inhabitants of the former German, Austro-Hungarian and Russian empires, the UN intended to provide a more comprehensive framework to stop state brutality.

Between January 1947 and December 1948 the Universal Declaration of Human Rights was drafted by the then eight-member Commission on Human Rights headed by Eleanor Roosevelt. Ideological divisions between "the West" and "the East" hampered quick progress, which led to the decision to first of all develop a general manifesto and afterwards produce a covenant, which focuses on the enforcement of human rights and which was eventually delayed by 18 years due to the Cold War. The Universal declaration of Human Rights needed to combine the Western demands for political freedom as well as the Eastern demands for economic and social rights. Eventually, Article 1 to 21 provide civil and political liberties, whereas Article 22 to 27 emphasize the rights of social security. In fact, the first two articles establish the document's premise

that all humans share universal equality and that this equality is based on the fundamental dignity bestowed upon humanity. This equality of human dignity translates to universality of human rights. Included in the notion of universality is the idea that these rights are automatically extended to everyone and may not be denied to an individual human being for any reason. Although the Declaration itself is in fact not legally binding it has created international human rights standards that are codified in various international treaties. On December 1948 the General Assembly unanimously passed the Universal Declaration of Human Rights with eight abstentions coming from Belarus, Czechoslovakia, Poland, the Soviet Union, Ukraine, Yugoslavia, Saudi Arabia and South Africa.

After having set forth the general principles in the Declaration, conventions which defined the specific rights and their limitations were eventually passed in 1966 and entered into force one decade later due to the delay caused by the Cold War conflicts. The International Covenant on Economic, Social and Cultural Rights recognizes, for instance, the right to work (Art. 6), to form and join trade unions (Art. 8), to social security including social insurance (Art. 9), to an adequate standard of living, including food, clothing and housing (Art. 11) and to the highest attainable standard of health (Art.12) and to education (Art. 13, Art. 14). Up to date the Covenant has 70 signatories and 160 parties, with US having signed but not ratified it. The International Covenant on Civil and Political Rights recognizes the right to life (Art. 6), the prohibition of torture (Art. 7), slavery (Art.8) and arbitrary detention (Art. 9), the right to a fair trial (Art. 14), the freedom of movement and freedom to choose a residence (Art. 12), the protection of the rights to freedom of thought, conscience and religion (Art. 18) and the freedom of opinion and expression (Art. 19) as well as the right of peaceful assembly, amongst others. This Covenant was signed by 74 states and has 167 parties in total.

These two treaties account for most of the provisions listed under the Universal Declaration of Human Rights. Furthermore, they make the provisions binding for those nations who are parties to the covenants. The two covenants together with their optional protocols and the Universal Declaration of Human Rights are commonly known as the [International Bill of Human Rights](#).

Criticism of the Universal Declaration of Human Rights

The drafting committee of the Universal Declaration of Human Rights was composed of eight persons, from Australia, Chile, China, France, Lebanon, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America. The United Nations Secretariat, under the guidance of John Humphrey (from Canada), drafted the outline to serve as the initial working paper of the committee. In fact the committee was intended to be representative of the then 58 UN member states and the different creeds and ideologies and tried to form a broad consensus, yet the composition could be accused of an over-representation of Western countries.

Despite the great approval for the final draft, there has been serious criticism right from the outset. Apart from the main conflict between “the West” and “the East”, i.e. between liberal/ political rights and social/ economic rights, the issue of religion was another predominant one.

Catholic groups in Europe and Latin America had called for inserting a reference to God as the foundation on which all the human rights depended. However, in a speech delivered in 1995, Pope John Paul II called the Declaration “one of the highest expressions of the human conscience of our time”. Some members of the Muslim community opposed freedom of marriage and religion citing that this violated the religious rules laid out in the Qur’an. During the debates of the General Assembly the Saudi Arabian delegate argued that the freedom of converting to another religion was not granted by the Qur’an to Muslims. Other Arab countries backed this statement. These countries have criticized the Universal Declaration of Human Rights for its perceived failure to take into account the cultural and religious context of non-Western countries. In 1981, the Iranian representative described the Declaration as “a secular understanding of the Judeo-Christian tradition”, which (partially) contradicts Islamic law. In 2002 the Sudanese director-general of the Khartoum International Centre for Human Rights, Ahmad Al-Mufti, stated: “Islam adds new positive dimensions to human rights, since, unlike international instruments, it attributes them to a divine source thereby adding a new moral motivation for complying with them”.

Whereas Western and Communist human rights conceptions usually did not question the principle of universality, the issue of religion contributed to the rise of cultural relativism. Universal validity should grant everyone the human rights enshrined in the declaration regardless of religion, gender, nation, etc. Cultural relativism is the assertion that human values vary considerably according to different cultural perspectives. Thusly, the cultural, religious, ethnic context is rendered important. Defining the human rights enshrined in the Declaration as universal was then regarded as a Eurocentric view and a neo-imperialist attitude. The main argument which evolved (especially in African and Asian countries) was that those human rights relate to individuals, not to collective units such as the family, which ultimately entails profound disrespect for the

social order and the traditional values of other societies. Freedom became synonymous to arbitrariness and egoism and danger to the society as a whole.

Another major point of criticism, connected to the previous one, was that individuals are always members of a social group and as such cannot solely be granted rights without obligations to the communities they live in.

In the course of time another form of human rights was advocated, mainly by Asian governments. It was the collective, not individual, right to development by a society. This concept was undoubtedly a result of the "North-South" divide and the Asian countries striving for economic prosperity.

In 1990s several (authoritarian) Asian countries also attempted to define common "Asian values" as opposed to the "Western values". Amongst other aspects they included social harmony, the dominance of social and economic welfare of the community over individual rights, collectivism and political unity. These Asian values and particularly the right to development were also expressed in the Bangkok Declaration on Human Rights, drafted in 1993. According to this view, in the absence of economic development, the right to development should have precedence over civil and political rights. At the World Conference on Human Rights held in Vienna in 1993, some Asian representatives also argued that the Universal Declaration of Human Rights had been drawn up by only a handful of countries, without the participation of many Asian countries. Therefore it should not be regarded as universal.

A dominant stumbling block for the Universal Declaration of Human rights and other human rights documents has always been the principle of state sovereignty. When passing the Declaration Poland, Yugoslavia and the Soviet Union already claimed that the Declaration interfered in internal affairs of sovereign states and hence violated the Article 2 (7) of the UN Charter. The question of circumscribing sovereignty in order to prevent human rights violation remains fiercely contested.

As it is clear that all human rights apply equally to every human being. For example Article 2 states:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion (...)"

Yet do all human rights have an equal strong meaning? This not the case. One has to differentiate between different modes of validity of human rights. Article 4 of the International Covenant on Civil and Political Rights gives us an idea which rights are inalienable and can never be changed, touched or violated. If a public emergency like war or a natural catastrophe occurs it might be necessary to violate human rights except of the following:

□ In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

□ No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

The articles mentioned consist amongst others of the following rights: the right to life, the ban of torture and medical or scientific experimentation, the ban of slavery and the right to freedom of thought, conscience and religion. These are the so called inalienable rights which accord before all other human rights the highest worthiness of protection.

Regional human rights declarations

Please consider that there are different regional declarations of human rights too.

1. European Convention of Human Rights
2. Cairo Declaration on Human Rights in Islam,
3. Arab Charter on Human Rights
4. Bangkok Declaration on Human Rights
5. ASEAN Human Rights Declaration

These play important roles as they developed in special ways according to their very own regional background with different national and regional particularities and historical, cultural and religious backgrounds.

Honourable Delegates,

the Chair Team expects you to arrive very well prepared and to actively take part in the sessions. The topic of international human rights is highly interesting but may not be underestimated in its complexity. As we can not expect of each delegate to be a law student nonetheless be so kind to study the statutory acts and learn about the ways human rights law is applied and reviewed. We kindly expect you to send in a position paper. This should contain your country's position on the topic with possible suggestions on a solution and should be no longer than one page. A good position paper not only shows us that you are well prepared and motivated but will also count in the evaluation for the Best Delegate Awards.

Very much looking forward to a wonderful VIMUN and to meeting you all in August,

sincerely,

Valerie Sanders, Johannes Tropper

Further reading

Basic information

Site of the UNHRC

<http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>

Site of the UN on Human Rights

<http://www.un.org/en/rights/>

Statutory Acts

Universal Declaration of Human Rights

<http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>

International Covenant on Economic, Social and Cultural Rights

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

Declarations and Reservations

http://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty

International Covenant on Civil and Political Rights:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

Declarations and Reservations

http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-4&chapter=4&lang=en

European Convention on Human Rights

<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

Bangkok Declaration on Human Rights

<http://www.law.hku.hk/conlawhk/conlaw/outline/Outline8/Bangkok%20Declaration.htm>

ASEAN Human Rights Declaration

<http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>

Cairo Declaration on Human Rights in Islam

<http://www1.umn.edu/humanrts/instree/cairodeclaration.html>

Arab Charter on Human Rights

<http://www1.umn.edu/humanrts/instree/loas2005.html?msource=UNWDEC19001&tr=y&aud=3337655>