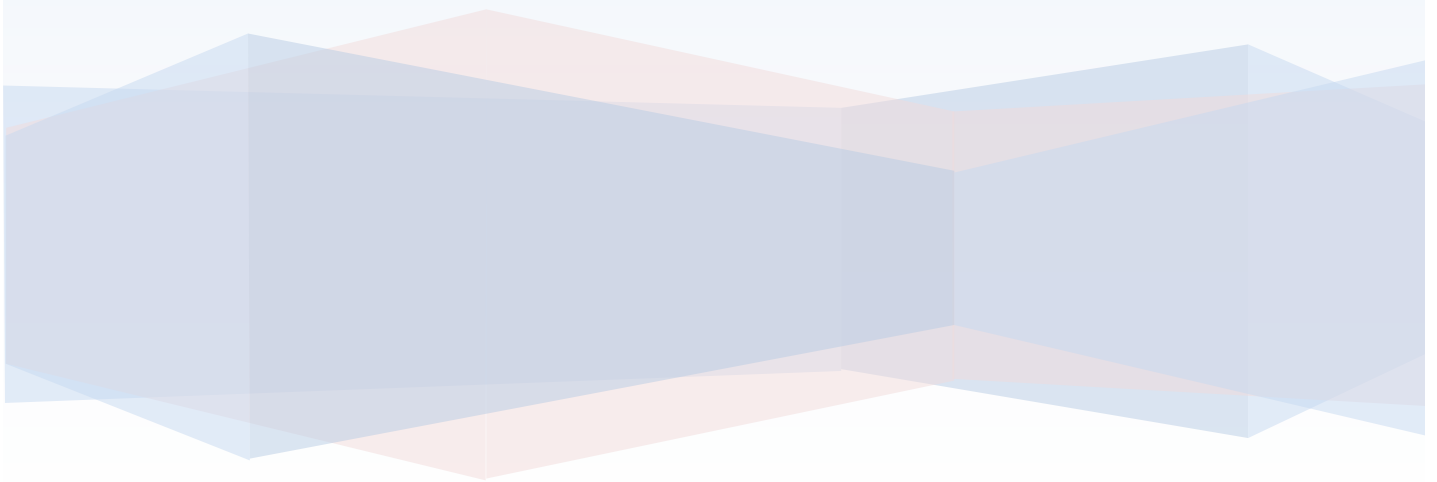
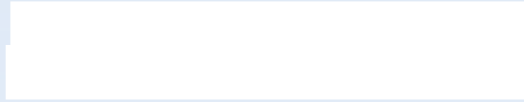


# Fundamentals of IHRL

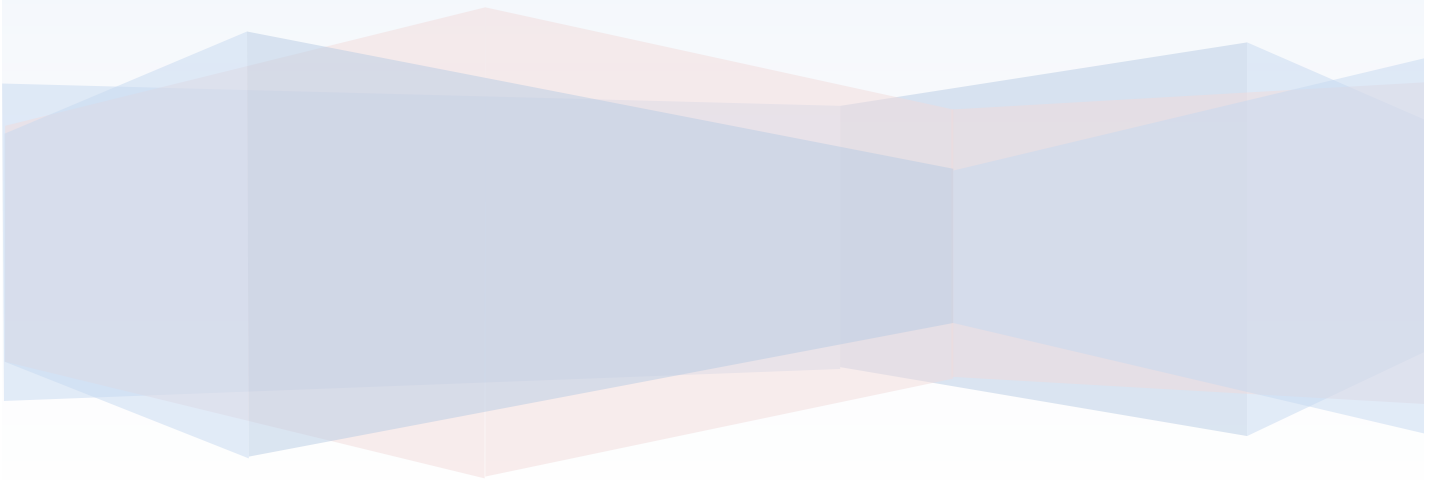
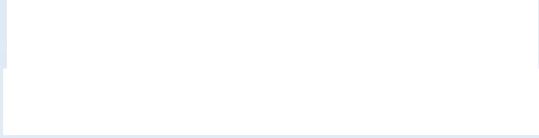


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# Fundamentals of IHRL





**What is international law?**

- International law was a law created by, between and for states with its main concept as sovereignty.
- International law is about protecting state sovereignty while human rights law is concerned with proclaiming and enforcing certain fundamental guarantees for individuals against the state.
- IHRL outlines minimum rights with a strong principles component and its focus is on the beneficiaries of obligations.
- IHRL and international law have converged to the extent that human rights obligations are typically given their binding character by being recognised in international sources such as custom or treaty.

**What is international human rights law (IHRL)?**

- International human rights law sets forth the core obligations of governments toward their people, prescribing the basic freedoms that governments must respect and the steps they must take to uphold public welfare.
- International human rights law should be seen as a backdrop; a law of last resort when domestic rights legislation fails.
- International human rights law is a specialist regime within general public international law.

**What do we know about human rights in the 21<sup>st</sup> century?**

- Know 2 things:
  - It is constantly evolving; it has become one of the most popular and powerful ideas of the 21<sup>st</sup> century in law, philosophy, politics and activism.
  - It is also one of the most contested discourses in politics and philosophy since WWII and more so in the 21<sup>st</sup> century.
- All human rights were recognised as inherent and inalienable entitlements of all people rather than privileges bestowed upon them or denied to them by the powerful.

**What are human rights?**

- A way of thinking, claim making and protest.
- An appeal to humanity: rights humans have by virtue of their humanity in organised societies.
- An appeal to universality: all individuals have a claim to them.
- An appeal to equality: all individuals must enjoy them equally.
- An appeal to non-legal rights: individuals have a claim to them regardless of domestic legal recognition of these rights.

**What human rights do we have in IHRL?**

- Civil, economic, social, political and cultural (UDHR, ICCPR, ICESCR, ACHPR)
- Emphasis on non-discrimination and elimination of non-discrimination (CERD, CEDAW, CRPD)
- Focus on everyone having rights (CRC, CRPD, MWC)
- Concern for excesses of sovereignty (CAT, CED)
- Emphasis on democratic regimes as guardians of IHRL (ECHR)

***Universal Declaration of Human Rights (UDHR)***

- Article 1: All human beings are born free and equal in dignity and rights.
- Article 1 is a pre-social statement – it assumes that you come into the community with rights.
- Rights are given to us through social connection; rights are socially constructed and they will be negotiated through social connections.

**How do we reach a list of human rights?**

- Will based theories: everyone has a will to pursue their life.
- Dignity based theories
- Overlapping consensus based theories: look at what everyone agrees on and derive human right from those issues they agree on.
- Practice-based theories: only have human rights that are to legitimately criticize other countries.
- Look at universal interests and create rights out of these core human interests.

### **Why do we need human rights?**

- The power of rights made it possible for people to claim freedom, equality, justice and well-being.
- Human rights makes manifest the relationship between fundamental freedoms and social justice and peace and security.
- Human rights underpin the aspiration to a world in which every man, woman and child lives free from hunger and protected from oppression, violence and discrimination, with benefits of housing, healthcare, education and opportunity.
- Human rights framework also provides the standard that must be reached in order for rights to be realised through the combined medium of state responsibility and the rule of law.
- Individuals can then have the same expectations from the law, national institutions, state policy and methods of government at domestic and international level.
- To clarify goals/protect goals of the human beings (knowledge, family, movement, education etc).
- To protect human beings.
- If there are no human rights there is no social justice.
- As a way to draw the line between universality and legitimate cultural difference and customs.
- To ensure justice and equality.
- To support and protect the rule of law.
- Defence of liberal freedom and social rights.
- Defence of civil political rights (1<sup>st</sup> generation) and social, cultural and economic rights (2<sup>nd</sup> generation)
- As a way to interpret the law.

### Human rights defenders

- Support for human rights is essential to create the environment in which to exercise the freedoms necessary to carry out activities for advocacy, monitoring and report on respect for human rights.

### Victims of human rights violations

- For victims of violations, the human rights framework provides the essential components for effective remedies in the form of redress, compensation and reparation through institutions that are independent and impartial and adhere to the basic principles of human dignity, equality and non-discrimination.

### When are human rights necessary?

- Necessary when there is:
  - Existence of a human interest;
  - Existence of menace/threat to that human interest;
  - Sufficient reason to recognise and respect and a duty to protect that interest;
  - Some possibility of that protection working.

### **Giving effect to human rights**

- Challenge for all states is how to implement human rights and ensure that they are given effect without ranking them.

### Human Rights Council (HRC)

- 2005, at their summit world leaders created the UN Human Rights Council (UNHRC) which is an intergovernmental body to replace the UN Human Rights Commission.
- UNHRC aims to promote 'universal respect for the protection of all human rights and fundamental freedoms for all'.
- UN Human Rights Council and the UN Office of the High Commissioner for Human Rights (UNHCR) are the custodians and monitors of human rights and promote and protect these rights.
- In the final instance it is the duty of states to promote and protect all human rights and fundamental freedoms.
- The UNHCR & Council's duty is to assist states to fulfil their obligations and to hold them to account when they do not.

### Courts

- Countries with the rule of law can usually rely on courts to enforce legislation.



- In other countries, the judges are often corrupt, intimidates or compromised so may not dare hold the government to account, or the government may succeed in ignoring whatever efforts the judge makes to make them accountable.

#### Pressure techniques

- Pressure techniques for governments have been developed by the human rights movement to pressure them into implementing or upholding human rights.
- One method of pressure is the process of investigation and reporting.
- The key to this enforcement is exposure and shame – the resulting publicity of an investigation can undermine a government's standing and credibility.
- Public morality plays an important role in this kind of enforcement as there can be no shame is the public approves of the conduct in question.

#### **Political action or legal action?**

- Consider what is the best way to link the fear for justice and the result achieved to respect for human rights.
- Also consider how to maximise public consciousness about the interconnectedness of a public debate and the persons who suffer the consequences of human rights violations – give the problem a human face.
- 1980's Pakistan bonded labour – Human rights community began a public campaign to raise awareness of the issue and put public opinion against the practice. It took time but it did put pressure on the government to take action.

**What is a source of law?**

- A source of law identifies what constitutes law, that is, how decision-makers can determine what instruments, practices or policies constitute legally binding obligations as opposed to moral, political or other social commitments.
- Sources of law provide us with the basis of legal obligation.
- Sources of law tell us how new rules are made and existing rules are replaced or abrogated.
- Sources are set out in Article 38(1) of the Statute of the ICJ:
  - International conventions, whether general or particular, establishing rules expressly recognised by the contesting states;
  - International custom, as evidence of a general practice accepted as law;
  - The general principles of law recognised by civilised nations;
  - 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.

**Formal sources of law**

- UN Charter adopted in 1945, but the underlying ideas are much older, they were simply legalised in 1945.
- Formal sources of international human rights law derive from state consent: states negotiate and enter into treaties; custom is drawn from state behaviour and intent.

**Treaties**What is a treaty?

- An agreement between states may be termed a treaty, convention, charter, covenant or pact.
- States are bound to treaties to which they have given formal consent generally through ratification or accession.
- This is done by the constitutionally appropriate state organ depositing an instrument of ratification with the body so designated within the treaty (usually the UN Secretary General for human rights treaties).
- IHRL treaties are unlike most other treaties in that they do not provide for reciprocal exchange of rights and duties between state parties.
- Instead, by accepting the terms of such treaties, states accept legal constraints upon their treatment of individuals within their territory and subject to their jurisdiction.

Signification, ratification and reservations

- Signing a treaty indicates an agreement not to do anything to undermine the treaty but it does not create much of an obligation to do anything else.
- There may be an expectation to ratify the treaty but this can often not follow so States may not be bound by the provisions.
- Once the treaty is ratified the state can usually not withdraw unless the treaty provides a withdrawal provision.
- Reservation: allows a state to be a party to the treaty but exclude the legal effect of a particular provision – means states don't fully commit and people in those countries are not afforded the same full protection people in other countries will receive but does allow for negotiation and concessions to get as many states as possible to be part of the majority of the treaty.
- Unless a treaty prohibits reservations, they are permissible and only if they are not contrary to the object and purpose of the treaty.
- However, a reservation is supposed to change the obligations a state accepts so it will make the purpose of the treaty more narrow.

The principal treaties

- UN Charter provides the first guarantees of human rights and fundamental freedoms within a global treaty.
- The immediate follow up to the Charter was the adoption by the General Assembly (GA) of the non-binding Universal Declaration of Human Rights (UDHR) in 1948.
- In 1966 there was the adoption of 2 UN Covenants: the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol, and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- These three instruments are often referred to as the International Bill of Rights: UDHR, ICCPR & ICESCR.