

The Enforcement of International Human Rights Law: Challenges and Solutions

Qixuan Sun^{1, *}

¹ Tianjin International School, Tianjin, China

*Corresponding author: qixuan.sun@students.tiseagles.com

Abstract. In recent decades, the rise of human rights principles has attracted the attention of governments, organizations, and scholars worldwide. The expanding institutionalization of human rights has led to the formation of various international human rights laws, ranging from binding treaties to nonbinding declarations at both regional and international levels. However, existing scholarship has demonstrated that all international human rights laws, regardless of their form, have limited capacity for enforcement. Using a systematic review method based on existing literature, governmental articles, and non-governmental organization declarations and publications, this paper determines three primary challenges to the enforcement of international human rights laws: (1) inconsistency between states' agreements and practices, which means symbolic ratification by rights-violating governments; (2) professionalization of human rights movement activities, which may diminish the influence of social movements and result in less commitment and impacts; (3) overextension of movement objectives, which provoke adverse reactions against human rights principles. This paper concludes by providing constructive advice on the implementation of international human rights laws.

Keywords: International law; human rights; world politics; United Nations.

1. Introduction

In the post-World War II era, the world witnessed a substantial rise in global human rights and their impact on international and national politics. The global human rights movement has had a tremendous and unexpected amount of success in setting high standards for governments and societies to adhere to, generating a remarkable range of international agreements as well as international governmental and non-governmental institutions focused on human rights [1, 2, 3]. At the center of these advances are international human rights laws, which outline obligations that states are required to uphold, including universality, interconnectedness, equality, and non-discrimination. The ratification of international human rights treaties by numerous states has also given rise to optimism for improved procedures throughout the world.

Nevertheless, all international laws have limited capacity for enforcement. Despite having ratified human rights treaties, a nation's actual human rights practices may be unacceptable or even harmful. States manifestly make hollow commitments to complying with international human rights legislation [4, 5]. Discerning this unfavorable phenomenon, this study aims to provide a summative insight into the academic discourse by adopting a systematic review method based on existing literature, governmental articles, and non-governmental organization declarations and publications. The following questions will be answered: What challenges does the enforcement of international human rights laws face? What direction should international human rights laws step toward?

This paper will first provide an overview of international human rights laws, introducing its history of development, types of forms, enforcement mechanisms, and the role of the United Nations in the implementation process. The author will then identify the three fundamental challenges to the enforcement of international human rights laws in the modern political society: disparity between states' agreements to human rights laws and practices, professionalization of human rights movements, and overextension of movement goals. Finally, the author will provide solutions to these challenges from the perspectives of international institutions, state governments, and individuals and present a prospect for the future of international human rights laws.

Before beginning the discussion, the scope of this paper needs to be delimited. As noted by Goodale & Merry, the term "human rights" can be characterized as either (a) a set of moral principles that are the subject of ongoing conceptual debate as to what they entail or (b) a body of positive law that derives its authority from long-standing international legal documents [6]. The subject of this paper will be the latter - the international human rights legal system. Despite acknowledging the significance of regional and bilateral human rights agreements, the author's attention will be primarily on multilateral human rights treaties supported by the United Nations.

2. Overview of International Human Rights Law

2.1 Development History of International Human Rights Law

The foundational moment for official international human rights law was when the United Nations General Assembly validated the UDHR on 10 December 1948. UDHR outlines the fundamental civil, political, economic, social, and cultural rights that every human being should be able to enjoy for the first time in human history, serving as "a common standard of achievement for all peoples and nations [7]." Over time, it has gained widespread acceptance as the rudimentary principles of human rights that all countries and individuals should uphold [8].

The existing set of widely acknowledged human rights with legal standing is attributable to the establishment of various international human rights conventions and other legislation since 1945. At the regional level, a number of enacted laws reflect the particular human rights problems in the area and provide targeted protections. The majority of countries have passed legislation that expressly protects basic human rights. At the international level, binding treaties and common agreements constitute the foundation of international human rights legislation. Other legal instruments, such as declarations, principles, recommendations, and guidelines enacted on a global scale, also contribute to the interpretation, implementation, and growth of human rights [9]. The advancement of the rule of law at both regional and international stages is crucial to respect for human rights.

Governments pledge to implement national laws and policies that are in line with their obligations and duties under international human rights accords. When a state ratifies an international treaty, they are accepting responsibilities under international law to respect, protect, and defend human rights [6]. Mechanisms and practices for individual accusations are readily accessible at the national and global levels in cases where domestic legal processes are unable to resolve human rights violations. This can help to ensure the proper affirmation, implementation, and execution of laws at global human rights standards [9].

2.2 Forms of International Human Rights Law

As discussed in the section above, international human rights law is developed from various sources including a broad range of treaties, agreements, and declarations, both internationally and nationally. This section will expand on the discussion about the forms of international human rights laws, classified into five types: (1) binding multilateral treaties, (2) nonbinding international declarations, (3) actions by UN and other international organizations, (4) national laws and policies, and (5) indirect actions by national and international institutions [2].

First off, there are various significant international human rights treaties in operation that impose legally binding responsibilities on the states who are signatories. The most essential of these is the United Nations Charter, which mandates general duties to protect and advance human rights in practically every nation in the world [10]. Many UN-sponsored international human rights agreements with a worldwide reach and the three regional human rights conventions (European, American, and African conventions) currently in effect are defining more precise international commitments [11]. These binding treaties are so-called hard laws [12].

Secondly, a significant number of international declarations and resolutions pertinent to human rights have been approved by the United Nations and other international organizations or conferences, as well as nongovernmental and professional groups. In contrast to the first type, these agreements

set widely accepted standards and are commonly referred to, yet they are not legally binding. These nonbinding agreements are soft laws. The most significant of them is UDHR, which was adopted by the UN General Assembly in 1948 without dissenting votes and served as the foundation for a great deal of the following work [2, 7].

Thirdly, numerous initiatives by UN agencies and other international organizations have backed particular initiatives to safeguard human rights. Examples include the Security Council resolutions that enacted sanctions on or authorized intervention in Rhodesia, Somalia, Haiti, Rwanda, etc.

Fourthly, numerous national laws, rules, court rulings, administrative decisions, and policy statements serve to enforce international human rights obligations, both within nations and considering those nations' interactions with other nations. For instance, the United States has introduced legal instruments including the U.S. Constitution and Bill of Rights, laws against prejudice and slavery, protection of women's political rights, and laws and regulations enforcing the genocide and Torture Conventions. Many other nations also have sizable domestic legal or policy frameworks pertaining to international human rights.

Finally, numerous national and international institutions support the protection of human rights even though their main focus may be on other concerns. Many international governmental and nongovernmental groups, for instance, are becoming increasingly interested in the connection between human rights, humanitarian aid, and development. On a national level, legislative bodies, defense, trade, and foreign relations ministries may occasionally get associated with human rights issues or act as platforms for advancing human rights goals [2].

2.3 The Role and Responsibilities of the United Nations in the Enforcement of International Human Rights Law

In the immediate aftermath of World War II, social movement actors collaborated with influential nations to approve human rights as a central fundamental concept of the world society and to maintain their consistent engagement in global human rights organizations. This marked the beginning of the institutionalization of universal human rights principles. During the institutionalization process, the United Nations plays the most significant role in managing international order and keeping nations in compliance with international human right law. Established in 1945, the United Nations is an international regulatory body with the goal of fostering strong political and economic collaboration among its member nations. It acts as the sole platform where countries from all over the globe may come together to address significant matters concerning international peace and security. With maintaining international peace as its major goal, the UN provides a public forum for nations to exchange ideas in order to address global issues like poverty, disease, and environmental impacts as well as resolve conflicts without resorting to violence [13].

The United Nations includes five major bodies, in which the Hague-based International Court of Justice and the Security Council have judicial and executive power, respectively. When the hostility between member states or a threat to peace occurs, the Security Council makes decisions. It gives options to change the conditions of a settlement and encourages parties to settle in a conflict-friendly manner. The Security Council occasionally can enforce sanctions or even support the use of military power in order to preserve or reinstate international stability. It takes the initiative to decide if an action is a violation of human rights, encourages the parties to a disagreement to resolve their disputes amicably, and offers suggestions on settlement methods [14].

As their rulings are final, the Security Council and the International Court of Justices both contribute significantly to how the UN develops and upholds international law. The Security Council should be the sole body with the authority to proclaim international uses of legal armed action, according to the UN. Although they lack the state's power for repression, the United Nations possesses the ability to deter certain actions while supporting others. United Nations' position in world politics as the leading international institution and its purpose of promoting respect for human rights gives it a prominent role in the enforcement of international human rights laws [1].

2.4 Compliance and Enforcement Mechanisms

Compliance and enforcement remained in the marginal position of UN concern for a very long period. Their position was only weakly acknowledged, much like the relatively backward family members, and nothing was expected of them. The system of UN rule-making and law enforcement operates without providing effective suggestions for the methods of assuring compliance. Some well-known international lawyers have dismissed enforcement as a political issue extraneous to the law. The expectation is that states who accepted the United Nation's legal commitments would at least generally uphold them, while actions like compelled fact-finding, mandatory jurisdiction, and coercive punishments were not regarded as appropriate or practicable when member states fail to meet this expectation.

However, the situation started to alter when governments were increasingly forced to take the principles they had taken more seriously. This transformation was mostly brought about by governments being influenced by popular opinions. Fears and threats of violence and terrorism also influenced the government's actions, reminding them that more than good behavior was required [15]. International organizations were under pressure to go beyond token gestures when it came to the values they had accepted and pushed on governments due to the growing list of economic and social issues. These reasons collectively tended to influence UN bodies to pursue initiatives beyond exhortation and rebuke [16].

Generally, the international human rights law supervisory system operates according to the following procedures. States must submit regulatory periodic reports in accordance with specific guidelines. A committee will then review the reports and ask the reporting states questions. In some cases, a subcommittee or individual researcher will conduct a thorough investigation. A committee report will highlight any inconsistencies between the reporting states' actions and the requirements of the treaty or the relevant law [15, 16].

3. Challenges to the Enforcement of International Human Rights Law

Why do international human rights laws lack effective enforcement despite states' agreement to the principles codified in them? The author identified three issues: (1) discrepancy between states' agreements and actual practices, which results in superficial commitments to human rights laws by rights-violating governments; (2) professionalization of human rights movement activities, which may reduce the impact of social movements; (3) overextension of movement goals, which leads to negative attitudes against human rights principles.

3.1 Inconsistency Between States' Agreements and Practices

The first major obstacle to the implementation of human rights norms is the contradiction between repressive states' sign onto policies and treaties and their lack of willingness or capacity to comply. Through the statistical analysis, Hafner-Burton and Tsutsui pointed out that human rights treaties are least effective in the most repressive states where human rights face the worst violations [17]. The reason is obvious: international human rights conventions intrinsically violate states' right to sovereignty and offer no clear advantages to state actors [18]. Cognitive and social pressures to conform often acts as the most significant factor leading repressive states to accept human rights agreements. However, repressive nations are characterized by authoritarians that exercise repression purposefully and strategically. Improving respect for human rights often requires government officials to yield some powers and privileges that they rely on to govern their state and have become accustomed to enjoying. Consequently, the implementation of human rights laws becomes impossible in repressive states when rulers fear that their authorities will be restricted [3, 19, 20, 21].

It is unclear if the outcomes are the consequence of a selection impact or the limited successes of the treaties themselves, and it is likely that the conventions are inadvertently exerting some positive effects by discouraging politicians from abusing their power even more [18]. Nevertheless, if oppressive governments are embracing new ideas about human rights principles or being integrated

into the human rights legal structure, either they are learning the wrong idea—that oppression in defiance of adherence to international human rights law is acceptable—or integration of new ideas is vulnerable due to the inability of political leaders to reform [20]. These barriers to more effective human rights practices seem to be enduring throughout recent decades.

3.2 Professionalization of Human Rights Movement Activities

When social activists initiate movements with promoting respect for human rights as their main goal, they are easily constrained by the conventional setting of international human rights guidelines, leading to the professionalization of all actions. As international human rights treaties provide a more consistent and authoritative basis, social movements tend to adopt these fixed standards as they extend their engagement along established rules and forms of participation in actions. While employing a streamlined method may be helpful to other types of reforms, human rights movements are in fact restrained by defined structure [1]. According to Keck & Sikkink from Cornell University, the international human rights movement places a greater emphasis on "insider" strategies, in other words, actions that necessitate some degree of formal access to political organizations and usually demand more resources such as expertise and funds than do "outsider" tactics (like boycotts and protests) [22]. Consequently, the enforcement of international human rights legislation may have influenced social movements to take on more formal and professionalized forms.

One of the main issues with the professionalization of social movement activities in relation to international human rights legislation has been the risk of co-optation. Direct cooperation with international organizations carries the danger of co-optation, in which the unique strategies necessary for a regional movement are submerged in the broader international framework. This problem is especially critical when examining the cross-national effects of international human rights law. Regional movements frequently lose their edge and are appropriated by global political organizations when international mechanisms provide more resources for activists [1]. Brown-Nagin, dean of the Harvard Radcliffe Institute, suggests that social movements that are based on law face the risk of losing their potential to act as political rebels and establish political agendas [23]. In his evaluation of the social movement's contributions to the United Nations' First Decade for Indigenous People, Cornassel noted how concerns with indigenous rights have become institutionalized and co-opted within the United Nations system. This contributed to the organizations' inadequacies, namely the inability to establish a guideline that acknowledged the common rights and self-determination of the indigenous population [24]. In sum, although professionalization has assisted the development of human rights movements, over-professionalization and subsequent co-optation act as underlying obstacles to contemporary international human rights law implementation.

3.3 Overextension of Movement Goals

Similar to every social movement, human rights advocacy runs the risk of losing support from the general public if demands exceed what the other involved parties perceive as fair. The line between rational and irrational is constantly vague, and the purpose of international human rights law is to draw clear boundaries to that line. On top of that, there are social movements that work to enforce international laws and bring about social change. Nevertheless, advocates for human rights may go beyond what is appropriate and encounter resistance. Social movements may be successful in forming alliances with governments that support them and adopting new international laws, but the treaty may take a while to gain enough ratification to be put into effect.

For example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW) is an extensive convention that outlines the rights of migrant workers and their families. The convention was backed by migrant workers' home nations, yet many others, including European nations who sign on to the majority of UN human rights conventions, have rejected it. It gained the fewest number of ratifications among primary UN treaties and has not been effective in accomplishing its objectives due to the lack of support from migrant workers' home nations [1]. Pe coud & de Guchteneire argue that political barriers, such as the political

economy of worker mobility, social and political traditions, and safety issues, constituted the greatest challenge to mainstream adoption and implementation of CRMW [25].

These issues require serious consideration. Pretending that international human rights law can immediately alter how governments and people have acted for centuries or promising any rapid and tremendous refinement to the human rights status is neither realistic nor beneficial. In the face of the elevating public demand for better human rights protection, more effective enforcement mechanisms and practices need to be established.

4. Solutions

Despite these obstacles, there is some basis for optimism. Today, human rights are a part of every government's foreign policy, even if only rhetorically. Even when governments use international human rights concepts dishonestly to achieve their own political desires, their action of ratification still uphold the ideals of human rights and set significant precedents. Non-governmental organizations have also been increasingly active in advancing human rights through measures that are challenging for governments to restrict [2]. The growing number of local and international human rights institutions has significantly expanded the impact of NGO work. Subsequently, citizens worldwide have begun to recognize the significance of human rights protection and spontaneously initiated human rights movements. In this section, the author will suggest a number of future actions to take from the perspectives of international institutions, states and governments, and scholars and individual citizens, respectively.

4.1 International Institutions

Firstly, being the main enforcer and actors devoted to the cause of human rights protection, international institutions should be committed to enhancing their role and influence in human rights movements while strengthening their accountability and transparency. Moreover, expanding cooperation and coordination among human rights institutions to avoid inconsistency and unnecessary duplication of effort would be helpful and necessary. Looking into the future, international institutions should pay increased attention to massive and urgent human rights issues, such as pervasive hunger and disease (particularly among children), widespread and deeply entrenched discrimination against women, recurrent infringement of human rights principles in international and regional conflicts, and the continuing issue of internally displaced persons and refugees. Devising criteria to guide forceful intervention intended to prevent or terminate violations of human rights would be useful to achieve such goals.

4.2 State Governments

Moreover, states and governments must recognize that any policymaking necessitates consideration for human rights, as they are the fundamental rights of their citizens that governments have agreed to uphold. Not only is supporting human freedom moral and virtuous, but it is also in every country's rational interest to win the regard and cooperation of other nations and to create a peaceful and equal world for the citizens. They need to make greater efforts to encompass international human rights standards into national legal frameworks and educate attorneys, judges, and other authorities about the value of using international human rights law to advance human rights in their respective countries. As part of the global society, states should also strengthen and provide adequate resources for various human rights courts, institutions, and commissions.

4.3 Scholars and Citizens

Finally, citizens should learn more about the root causes of discrimination and intolerance, in order to devise better ways of trying to eliminate them. In particular, researchers in the field should work toward developing more comprehensive criteria for measuring and supervising the observance of human rights and better fact-finding mechanisms and techniques. Together, these can contribute to a

broader discernment of human rights among people around the world and ensure that people have access to national and international institutions to obtain remedies for abuses.

5. Conclusion

Scholars have long believed that laws have the power to improve the present-day human right status, and optimism for development is common. Human rights legislation can strike up procedures that eventually lead to a shift in beliefs regarding what constitutes reasonable or proper behavior. They provide a reason and a guideline that can influence nations' political ambitions and conceptions of appropriateness, acting as policy structures that restrain national sovereignty. Additionally, convincing arguments support the idea that governments ratify human rights treaties not only as symbolic gestures but also as assertions of their desire for reform. According to almost all of these perspectives, because human rights legislation is crucial for political transformation, it will require time for them to take place, as changing beliefs and establishing the necessary capacity for enforcement is unlikely to happen in a short period. Assuredly, the enforcement of international human rights laws will continue to encounter reverses as well as progress, and commitment, determination, and much more efforts are imperative to achieve the goal of bringing human rights to people everywhere.

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