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UNIT ONE

UNDERSTANDING HUMAN RIGHTS

★ Unit Introduction

Hello dear students, welcome to unit one of this course. The primary purpose of this unit is to help you understand the meaning of human rights, their historical and philosophical foundations, and basic features and classifications. Under the first section of this unit you will learn about the meaning of human rights, so that you will be acquainted with the basic definitions of human rights from different dimensions. The second section deals with the foundations of human rights in light of its historical and philosophical attribute. To that effect, you will learn about the seminal accounts of philosophers and the historical foundations by taking in to account the western tradition and universal tradition. The last section is concerned about introducing you about the basic features and classifications of human rights.

Unit Objectives

With the successful completion of this unit you will be able to;

- Define what human rights is all about
- Explain the historical and philosophical foundations of human rights

- Identify the basic features of human rights
- Identify the basic classifications of human rights

Pre test Questions

- How do you define human rights?
- Can you discuss the historical and philosophical foundations of human rights?
- What are the basic features of human rights?
- Can you list down the basic classifications of human rights?

Section One: Meaning of Human Rights

Section Overview


Dear students, welcome to the first section of this unit and the whole course in human rights and humanitarian assistance. In this first section of the first unit, you will be introduced with what human rights is all about. Dear students, you might have some clue about what human rights is because it is a term that is often used by people especially in academic institutions.

Section Objectives

After the completion of this section you will be able to;

- Define what human rights is all about
- Explain the difference between human rights and human rights law.

1. Meaning of Human Rights

 *Dear student, what do we mean by “human rights”?*

Dear distance learner, much lip service is paid nowadays to the notion of human rights. At the same time, these human rights are being violated all over the world. Human rights are a matter of law, but they have increasingly become a matter of politics as well.

Lawyers, politicians and governments, non-organizations, men and women, the elderly as well as children, violators as well as victims-all of them are involved in human rights.

? *What, then, are human rights?*

Human rights are internationally agreed values, standards or rules regulating the conduct of states towards their own citizens and towards non-citizens. Human rights are, in the words of the preamble of the Universal Declaration of Human Rights: ‘a common standard of achievement for all peoples and all nations’. These rules, which states have imposed upon themselves, serve to restrict the freedom of states to act towards their entire population: citizens as well as non-citizens, men as well as women, adults as well as children, whites and non-whites, believers and non-believers, married persons and the unmarried. This situation is different from the past, when states, or rather their princes, were absolute sovereign who could treat their subjects in any way they wanted. Nowadays, human beings have rights: *human rights*.

The term “human right” came into being very recently particularly after WWII. It replaced early notions like “Natural rights”/ “the rights of man”. It has been stated that the history of rights reflects the various demands forwarded by human beings at different times and conditions. Human beings demand the realization of diverse values to ensure their individual and collective being. In addition, the prevalence of exploitation, oppression and persecution led to the emergence of the consciousness about human rights. Human rights are understood to represent individual and group demands shaping and sharing of power, wealth, enlightenment and other values (values of respect and its constituent elements of reciprocal tolerance, mutual clemency).

Human rights also refer to the "basic rights and freedoms to which all humans are entitled." Examples of rights and freedoms which have come to be commonly thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and economic, social and cultural

rights, including the right to participate in culture, the right to food, the right to work, and the right to education and equality before the law.

A more common definition of human right is that they are universal legal guarantees protecting individuals and groups against actions by governments, which interfere with fundamental freedoms and human dignity. Human rights law obliges governments to do something, and prevents them from doing others. They are also universal moral rights that belong equally to all people simply because they are human beings. In other words, they are inherent. Human rights are also often described as generally accepted principles of fairness and justice.

Human rights are frequently held to be universal in the sense that all people have and should enjoy them and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country.

Earlier in this century, the term “human rights” was defined as those rights guaranteed by the International Bill of Human Rights (comprised of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights with its Optional Protocols). Over the years, however, international and regional human rights instruments have made more explicit the rights set forth in the International Bill of Human Rights. “Human rights” are now defined with far more detail and specificity. International human rights law is, therefore, more protective of vulnerable individuals and groups, including children, indigenous groups, refugees and displaced persons and women. In addition, some human rights instruments have expanded the definition by elaborating new rights.

? *Are all human rights applied to mere state actors?*

Absolutely no! while most human rights are perceived as individual rights vis-à-vis the Government, human rights norms may also apply to non-State actors (such as *armed*

opposition groups, corporations, international financial institutions and individuals who perpetrate domestic violence) and to those who commit human rights abuses. The campaign to abolish slavery, one of the oldest efforts to protect human rights, was an attempt to prevent private actors from keeping or trading in slaves.

By Common Article 3 of the 1949 Geneva Conventions and their 1977 Protocols, international humanitarian law applies to armed opposition groups. Further, a series of treaties exist relating to hijackers, kidnappers of diplomats, etc. More recently, international human rights norms have been addressing the responsibility of governments to restrain individuals from committing human rights abuses in the areas of domestic violence, female genital mutilation, etc. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights state:

... The obligation to protect requires states to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the rights to work or the right to just and favorable conditions of work...

Human rights tell states what they may not do (state abstention), but also what they are supposed to do (state obligations). These prohibitions and obligations are strongly interrelated. For, example, states may not summarily, arbitrarily arrest people, or put them to death, they may not torture people, they may not deny them freedom of expression and freedom of association and peaceful assembly. On the other hand, they must care for fair trials, for the equal protection of the law, for a minimum standard of living, including food, clothing, housing, medical care and education.

? *Dear learner, what is the difference between the concepts human rights and human rights law?*

Human rights are legally guaranteed by human rights law, protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity.

They are expressed in treaties, customary international law, bodies of principles and other sources of law.

Human rights law places an obligation on states to act in a particular way and prohibits states from engaging in specified activities. However, the law does not establish human rights. Human rights are inherent entitlements which come to every person as a consequence of being human. Treaties and other sources of law generally serve to protect formally the rights of individuals and groups against actions or abandonment of action by governments which interfere with the enjoyment of their rights.



Activity – 1

1. Explain the meaning of human rights

2. Elaborate the difference between human rights and human rights law

Section Two: Historical and Philosophical Foundations of Human Rights



Section Overview

Dear distance learner, in the previous section you have learnt about the meaning of human rights. However, the meaning of human rights wouldn't be a full-fledged one unless its philosophical and historical genesis subjects to an insightful study. Therefore, this section deals with the historical and philosophical foundations of human rights.

Section Objectives

After the completion of this section you will be able to;

- Explain the historical genesis of human rights
- Identify the contribution made by philosophers for the emergence of the concept of human rights

1.1 Historical and Philosophical Foundations

? *Dear learner, what are the foundations of human rights?*

There are different arguments on the origin and philosophical foundations of human rights. Some argue that human rights originated in the liberal political tradition of the West, whereas as others propose that human rights have universal origin and multiple justifications. Now let us see each turn by turn.

1.1.1 The Western Tradition

? *Dear student, what are the contributions of the western tradition for the emergence of human right?*

The two most important historic human rights documents are of western origin: the Virginia Bill of Right of 1776, which was incorporated in 1791 in the United States Constitution, and the French Declaration of the Rights of Man and Citizens of 1789. Both documents contain a list of human rights in the sense of human liberties. Many of these

rights are based on the writings of political philosophers such as John Locke, Montesquieu and Jean-Jacques Rousseau.

The study of the history and philosophy of human rights is mainly related to the liberal political philosophy of the West, particularly the revolutions in France, England and North America. These developments in Western Europe and Northern America represent the demands of people against their rulers. The underlying objectives were to protect the citizen against arbitrary power and establish rule of law, i.e. constitutionalism.

A detailed formulation of the liberal political philosophy as applied to the specific problem of human rights may be found in the French Declaration of the Rights of Man and Citizen of 1789 and particularly in its second article: 'The aim of all political association is the conservation of the natural and inalienable rights of man. These rights are liberal, property, security and resistance to operation.'

The Declaration doesn't state why these rights are 'natural and inalienable'. No doubt its authors would have considered that to be self-evident. Many believed that they can be deduced from the nature of man as a conscious and intelligent being, others, following Aristotle, from his nature as a political animal, yet others, drawing inspiration from the Bible, from the nature of man created by the Almighty in his own image. The doctrine of natural law also contributed to the belief in 'natural rights'.

The doctrine of natural law holds that there are laws of nature or laws of God above and beyond positive law made by man, and these laws are the basis of certain rights and duties. This belief has even found expressions in the 20th century constitutions of some European countries, for example, the 1937 Constitution of Ireland. The notion of natural rights is an acknowledgement that there exist certain rights antecedent and superior to all positive law.

The French Declaration proclaimed a number of entitlements which are now generally called Civil and Political rights. These include, the basic principle that all men are born and remain free and equal in their rights, including equality before the law, freedom from arrest except in conformity with the law, the presumption of innocence, protection against the retroactivity of the law, freedom of opinion, freedom of expression, and the well known definition of liberty as freedom to do anything which is not harmful to others.

The French Declaration of 1789 constituted the proclamation of rights, which is the most widely known and the most far-reaching in its consequences in Europe and beyond. Its impact on the French nation and on other people struggling against authoritarian governments was such that Lord Acton, a historian, described it as ‘a single confused page....that outweighed libraries and was stronger than all the armies of Napoleon’.

Other historic texts have also incorporated the notion of human rights. In England, the concept of human rights existed at least since the time of King John who in 1215 was forced to sign the Magna Carta, also known as the Great Charter. It enumerates a number of what later came to be thought of as human rights. It guaranteed to the citizen freedom from imprisonment or from dispossession of his property and freedom from prosecution and exile unless by the lawful judgment of his peers or by the law of the land. It also included a formulation of the right to fair trial in the famous words: ‘To none will we sell, deny or delay right of justice’.

In 1628 the English parliament adopted petition of rights that prohibited the king from levying taxes and imprisoning any person without charges or law. The 1688 Glorious Revolution led to the Bill of Rights of 1689 (just a century before the French Revolution) which assured the supremacy of parliament, the right to free election, freedom of speech, the right to bail, freedom from cruel and unusual punishment and the right to trial by jury. The independence of the judiciary and freedom of the press were established shortly thereafter.

The philosopher John Locke devised a seminal political theory to sustain constitutional arrangements. He held that sovereignty pertains not to the monarch but to the people as a whole, and that government is an instrument for securing the lives, the property and the well-being of the governed without enslaving them in any way. 'Government is not their master; it is created by the people voluntarily and maintained by them to secure their own good'. Locke argued, mainly in his writings associated with the Glorious Revolution that certain rights self-evidently pertain to individuals as human beings (because they existed in the 'state of nature' before humankind entered to civil society); that chief among them are the rights to life, liberty and property; that, upon entering civil society (pursuant to a 'social contract'), humankind surrendered to the state only the right to enforce these natural rights, not the rights themselves; and the state's failure to secure these reserved natural rights (the state itself being under contract to safeguard the interests of its members) gives rise to a right to a responsible, popular revolution. The theory of reserved natural rights is the basis of the maintenance of fundamental liberties; they belong to the individual by nature, have not been surrendered to the community and therefore cannot be limited or denied by the state.

This political philosophy of Western Europe was inherited and found expressions in North America. Thomas Jefferson asserted that the Americans were a 'free people claiming their rights as derived from the laws of nature and not as a gift of their Chief-Magistrate'. The American Declaration of rights of 1774 considered 'the immutable laws of nature, as the principal source from which the colonies derived their rights. When Jefferson came to draft the Declaration of Independence in 1776 (sometimes referred to as the 'Virginia Bill of Rights'), he referred to the necessity for a people 'to assume among the powers of the Earth the separate and equal station to which the Laws of nature and of Nature's God entitled them'.

The belief in natural rights was reflected in the declaration in the famous words; 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the

pursuit of happiness'. This has much in common with the French Declaration, particularly the idea that the rights of man are 'natural and inalienable'. It is observed, however, that Jefferson selects the three cardinal rights, i.e. life, liberty and the pursuit of happiness, whereas the French declaration chooses liberty, property and security. However, 'resistance to oppression' contained in the French declaration also appear in the Declaration of Independence in a different style along the Lockean philosophy, 'that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of governments becomes destructive of these ends, it is the right of the people to alter or abolish it.....'. The Declaration contained other rights. However, it didn't form part of the positive law, and it was not made part of the Federal Constitution drafted in 1787, which was criticized for not including a statement of fundamental rights. But through amendments fundamental rights were included in the constitution, which came into force in 1791, and are generally known as the Bill of Rights, including civil and political rights.

The developments in France, England, and North America tell us rights represent people's demands against their rulers. The objectives were the same: to protect the citizen against arbitrary power and establish rule of law. The notion of natural rights had played a significant role in this struggle. The concept of natural law as implying natural rights was elaborated in the 17th and 18th century by well-known philosophers. Particularly to be noted are the writings of the 17th century English philosopher John Locke and the works of 18th century philosophers including Montesquieu, Voltaire and Jean-Jacques Rousseau. John Locke and other philosophers have formulated and postulated the notion of natural rights as derived from natural law as the underlying principle of any political association. This suggests that individuals have natural rights and the legitimacy of the government depends on the protection of these naturally existing rights.

However, other philosophers have rejected the concept as baseless. In England, Conservatives Edmund Burks and David Hume criticized the concept because the fear that the public affirmation of natural rights would lead to social upheaval. Jermy

Bentham, one of the founders of Utilitarianism, criticized the notion of natural rights as follows; 'Rights is the child of law; from real law come real rights; but from imaginary laws, from 'law of nature' come imaginary rights.... A natural right is simply non-sense. David Hume concurring to this idea stated 'natural law and natural rights are unreal metaphysical phenomena'. John Stuart Mill has proclaimed that 'rights ultimately are found on utility' thus suggesting the notion of natural rights. Others have emphasized that 'rights are a function of cultural and environmental variables unique to particular communities'. Rejecting the notion of natural rights, the Jurist John Austin and the philosopher Ludwig Wittgenstein insisted, respectively, that the only law is the command of the sovereign' (a phrase of Thomas Hobbes) and that the only truth is that which can be established by verifiable experience.

Because of these and other factors, the idea of natural rights had become a matter of general skepticism. But the role it had played in the struggle of people for freedom and equality, and its contribution to modern human rights conception is undeniable. Of course, the notion of natural rights and the 17th and 18th century revolution in the West together make up the main stream of historical and philosophical foundation for the modern idea of human rights. Some even suggest that it is the mainstream conception, which, after the horrors of WWII, found expression in the Universal Declaration of Human Rights of 1948.

1.1.2 The Universal Tradition

? *Is the emergence of human rights associated with mere western tradition?*

As already stated some people argue that human rights have their origin not only in the west but also in non-western societies and cultures. They stated that other societies had some form of concern for the protection of the individual and the limitation of power of rulers even if they might have not used the language of 'rights'.

At the International Conference on Human Rights in Tehran, in 1968, the Shah of Iran noted in his opening address that the precursor of the celebrated documents (the UDHR, ICCPR, ICESCR) recognizing the rights of man was promulgated in his country by Cyrus the Great about 2000 years ago. The author Christian Dubie has recounted the magnanimity and clemency of Cyrus to subject peoples-in marked contrast to the practice of earlier conquerors- and particularly his respect for their religion. The author deduced from the 'Charter of Cyrus' the recognition and protection of what we now call the rights to liberty and security, freedom of movement, the right to property, and even certain economic and social rights. Others also quote different sources showing the protection of some rights.

One of the Pharaohs of Egypt has been quoted as giving the instructions that ' When a petitioner arrives from Lower or Upper Egypt.....Make sure that all is done according to the law, that custom is observed and the right of each man respected'. The code of Hammourabi, king of Babylon 2000 years before Christ, recording the mission of the monarch reads as 'to make justice reign in the kingdom, to destroy the wicked and the violent, to prevent the strong from oppressing the weak....to enlighten the country and promote the good of the people'. This statement signifies the protection of certain rights.

It has also suggested that the essential problem of Sophocles' play Antigone is the perennial conflict between the positive law of sovereign maintaining order in his country and the unwritten law of gods or of nature which commands respect for the dead and love of a brother, which can now be understood as the right to practice one's religion.

Arguably, the number of cultures which have been contributed to the elaboration and dissemination of the 'rights of man' 'natural rights' or 'human rights' is very large. In International Human Rights Year in 1968, UNESCO published a collection of texts gleaned from different cultural traditions and periods of history, which tried to show the universality of the notion of individual rights. Though it may not be correct to all human

societies have subscribed to similar values, one can conclude that the moral worth of the individual is an idea which no culture can claim as uniquely its own.

The idea of individual worth can be found in the work of sages, philosophers, prophet's and poets from different countries and many faiths in all continents. It is therefore apparent that the premise for human rights is as old as history itself, because it concerns the need to protect the individual against the abuse of power by monarch, tyrant or the state. It has been suggested that the focus, in studying the history and philosophy of human rights, on the liberal philosophy of Western world is not because they have any monopoly of the subject, it is rather because they have produced its best-known formulation and instituted the most effective systems of implementation.



Activity – 2

1. Discuss the historical foundations of human rights

2. Identify the contributions made by philosophers for the emergence of the concept of human rights

Section Three: Classifications and Basic Features of Human Rights



Section Overview

Dear students, in the previous lesson you have learnt about the meaning and historical and philosophical foundations of human rights. In this lesson you will learn about the classifications and basic features of human rights.

Section Objectives

After the successful completion of this section you will be able to;

- Identify the classifications of human rights
- List down the basic features of human rights

1.1 Classification of Human Rights

Dear students, the classification of human rights facilitate our understanding of the contents of human rights. However, there is no complete agreement on the classification of human rights .This is because the difference on the grounds for and the purposes for classifications. For instance, based on the type of the right holder human rights can be classified into; individual rights and group rights. Human rights can also be classified based on the type of state obligation as negative rights and positive rights.

? *How do we classify human rights?*

However, the most-widely classification is the idea of three-generation rights proposed by the French jurist Karel Vaks. This is a classification of rights based on their evolution/generation in human history. He was inspired by the three themes of French Revolution; Liberty, Equality and Solidarity. According to Vaks's classification, human rights are classified into three generations of rights.

- First generation rights (the ‘classic’ human rights). They include civil and political rights
- Second generation rights include economic, social and cultural rights
- Third generation rights include solidarity rights/collective rights

However, some scholars assert that the term ‘generation’ is somewhat inappropriate. It suggests a succession of phenomena, whereby a new generation takes the place of the previous one. That is, however, not the case with the three ‘generations’ of human rights. On the contrary, the idea is rather that the three ‘generations’ exist and be respected simultaneously. To that effect, the word ‘generations’ should have been replaced by ‘categories’.

1.1.1 First-Generation Rights

? *Dear students, what do we mean by First-Generation Rights?*

First generation rights include civil and political rights. They are primarily the result of the 17th and 18th century reformist theories associated with the English, American and French Revolution. They are the result of liberal political philosophy of individualism. It has been suggested that the realization of these rights require state abstention rather than state intervention. However, civil and political rights can not be realized by mere non-interference. For example, the right to security and the right to fair and public trial necessarily require positive state action.

The rights contained under Article 2-22 of the UDHR and most of the rights contained in the ICCPR may be classified as first-generation rights. First-generation rights (Core rights) are rights that are indispensable for an existence in human dignity and therefore need absolute protection. They include;

- The right to life
- The right to liberty and security
- The right to equality

- Freedom from racial and other forms of discrimination
- Freedom from slavery or involuntary servitude
- Freedom from torture and from cruel, inhuman or degrading treatment or punishment
- Freedom from arbitrary arrest, detention or exile
- The right to fair and public trial
- The right to privacy
- Freedom of movement
- Freedom of opinion and expression
- Freedom of peaceful assembly and association
- The right to participate in government and equal access to public services
- The right to property

1.1.2 Second Generation rights

? *Dear students, what do we mean by Second-Generation Rights?*

They include economic, social and cultural rights. The origin of this generation of rights is associated with the socialist movements of the 19th century and the 1917 Bolshevik Revolution. The realization of these rights requires state intervention. These rights are to be implemented progressively depending on the availability of resources. However, the right to equality and the principles of non-discrimination has to be implemented immediately. However, the state has not only positive obligation, but also negative obligation, i.e. the obligation to refrain from violating these rights, particularly from taking what are called retrogressive measures.

The rights contained under Article 22-27 of the UDHR and most of the rights contained in the ICESCR may be classified as second-generation rights. These include

- The right to work and the 'right in work'
- The right to form/join trade unions

- The right to education
- The right to social security
- The right to health
- The right to adequate standard of living
- The right to participate in cultural life

Moreover, cultural rights include the right to participate in the cultural life of one's community, to share in scientific advancement and the right to the protection of the moral and material interests resulting from one's scientific, literary or artistic production.

1.1.3 Third-Generation rights

? Dear students, have you ever heard about 'Third-Generation Right'?

These include collective or group rights. Some of these rights are associated with the emergence of Third World nationalism and its demand for global redistribution of power, wealth and other values. The third-generation rights include, but not limited to, the following;

- The right to self-determination (political, economic, social and cultural self-determination)
- The right to development
- The right to participate in and benefit from the 'common heritage of mankind'
- The right to peace
- The right to healthy and balanced environment
- The right to humanitarian disaster relief
- The right to one's own natural resources

1.2 Basic Features of Human rights

Dear distance learner, knowing the major features/characteristics of human rights will help you to understand more about human rights and distinguish them from other rights. Human rights have the following three basic features. These are: Human rights are universal, natural and inalienable and interrelated, interdependent and indivisible.

? *What do we mean that human rights are universal?*

A. Human rights are universal. They are rights to which every human beings are entitled irrespective of their difference in their sex, race, religion, nationality, social origin, color etc. We have these rights by virtue of being a human. The universality character calls for their respect and protection at all places and times. However, there are some challenges to the universality of human rights. Because of the existence of various cultures across the world, proponents of cultural relativism argue that human rights are relative to culture of a given society and cannot be universal. Concerning to this controversy, the 1993 Vienna Convention on Human Rights asserts that ‘human rights and fundamental freedoms are the birth rights of all human beings, and the universal nature of the rights freedoms is beyond question’. Therefore, the universality of human rights has generally been accepted.

? *What do we mean that human rights are natural and inalienable?*

B. Human rights are natural and inalienable. As they are derived from inherent dignity of human beings, human rights exist by nature. They are neither given nor deprived. By inalienability, we mean that nobody can deprive anybody of these rights and nobody can renounce them by him/herself. Therefore, what a political society does is not to grant these rights to human beings but to recognize them and guarantee their respect and enforcement through its laws and institutions.

? *What do we mean that human rights are indivisible?*

C. Human rights are interrelated, interdependent and indivisible. The respect for human dignity requires the recognition and respect of the civil, political, economic, social, cultural and other demands. All these demands of human beings deserve due attention. The recognition and realization of economic and social rights is necessary for the realization of civil and political rights and vice versa. The recognition and realization of one right cannot be separated from the other. Therefore, all different sets of human rights shall be recognized, respected and protected.

? *What other features do you know?*

In addition to the above three basic characteristics, human rights have the following features:

A) Human rights are eternal. As far as human society exists, human rights continue to exist. In addition, any change in government and any change in social, political/economic outlooks do not have any impact on human rights. This feature can be subsumed in the universal character of human rights mentioned above.

B) Human rights contain the principles of equality and non-discrimination. There are no human beings who are more than others. They have all equal dignity. Therefore, equal dignity requires equal respect and treatment. Human rights are rights all human beings have and any form of discrimination is not acceptable. Differential treatments are justified if and only if there are well-grounded reasons (For example, well debated case of affirmative action).

C) Human rights are not absolute. Rights are subjected to limitations/restrictions whenever such is necessary to protect some legitimate public or individual interest. For

instance, the right to freedom of expression can be restricted to protect national security, public order, public morals, or the reputations/rights of others.

Therefore, some of the most frequently cited characteristics of human rights are as follow:

- focus on dignity of the human being
- legally protected
- internationally guaranteed
- protect the individual and groups
- oblige States and State actors
- cannot be waived/taken away
- equal and interdependent



Activity – 3

1. What are the different classifications of human rights?

2. Identify the basic features of human rights

Dear distance learner, this unit has given you an overarching issue concerning human rights and its attributes. Accordingly, in the first section of the unit we have defined human rights, among others, in that it is a basic rights and freedoms to which all humans are entitled. The western traditions have contributed immensely for the emergence of the

concept of human rights. Human rights are, among others, universal, natural and inalienable. We have also discussed about the three basic classifications of human rights. Accordingly, the first category i.e. First-generation rights include civil and political rights. Second-Generation rights include economic, social and cultural rights. And, Third-Generation Rights include collective or group rights.

☒ Check List

Direction: *Dear students this is the section in which you confirm your understanding of the lessons in this unit. Put a tick mark (✓) in the yes column for activities that you have clear understanding and in the no column for activities that you doubt that you have good understanding.*

I Can:

	Yes	No
▪ define human rights	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
▪ discuss the historical and philosophical foundations of human rights		
	<input type="checkbox"/>	<input type="checkbox"/>
▪ list down the classifications of human rights	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
▪ identify the basic features of human rights	<input type="checkbox"/>	<input type="checkbox"/>

~~✎~~ Self-test exercises

I – Choose the best answer from among the given alternatives

1. Which of the following is necessarily true about ‘Human Rights’?

- A. Human rights are merely a matter of law
- B. Human rights are agreed values regulating the conduct of states towards their own citizens *per se*.
- C. Human rights and Natural rights are synonymous.
- D. Human rights are moral rights equally belong to all people

2. Human rights are not

A. inalienable

B. Indivisible

B. absolute

C. Universal

3. Jermey Bentham criticized the notion of natural rights as being

A. relative

B. imaginary

C. non-inalienable

C. non-universal

4. For _____ 'Natural law and natural rights are unreal metaphysical phenomena'

A. John Locke

B. David Hume

C. Aristotle

C. Plato

5. For John Stuart Mill, 'Rights are ultimately found on__

A. Positive law

B. Utility

C. State

C. Human beings

6. Which classifications of human rights are associated with the 'English, American and French Revolution?

A. First-Generation Right

B. Second-Generation Right

C. Third-Generation Right

C. Collective Right

7. Which of the following is true about 'Human rights and Human rights Law'?

A. The 'later' is legally guaranteed by the 'former'

B. The 'former' is inherent entitlement

C. The 'later' establish the 'former'

D. The 'former' and the 'later' are synonymous

8. The right to 'Humanitarian disaster relief' is__

A. First Generation Right

B. Second-Generation Right

C. Third-Generation Right

C. Classic Human Right

9. The basic feature of human rights that state that... 'Human right are neither given nor deprived' is_____

- A. The Universal nature of human rights
- B. The inalienable nature of human rights
- C. its interdependence nature
- D. its indivisibility

10. The origin of the 'Second-Generation Rights' is associated with

- A. Third \world Nationalism
- B. Bolshevik Revolution
- C. French Revolution
- D. Globalization

II. True or false

- 1. 'The right to life' must be protected no matter what happens to other rights
- 2. The realization of 'Second-Generation Rights' requires state abstention
- 3. The study of the history and philosophy of human rights is relater solely to the liberal philosophy of the West
- 4. The term 'Human Rights' was first introduced by the ancient Greek philosophers.
- 5. Some of 'Third-Generations Rights' are associated with the demand by Third World Countries for global redistribution of power.

Part III Short Answer

- 1. Do you agree with the idea that human rights are imaginary rights and hence non-verifiable? Justify your answer.

UNIT TWO

INTERNATIONALIZATION OF HUMAN RIGHTS

Unit Introduction

Dear distance learner, the previous topic shed light on the meaning, classifications, features and historical and philosophical foundations of human rights. This unit deals with the internationalization of human rights. Accordingly, different international conventions and treaties will be given due emphasis. The first section of this unit focuses on the Geneva Convention. Subsequent conventions, especially on grave breaches and war crimes will be dealt with. Section two is about the UN Charter. The UN Charter as one instrument of internationalization of human rights will be discussed. The last section deals with the 'Universal Declaration of Human Rights' (UDHRs), and focus will be given particularly to such instruments as International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights. Hence, it is imperative for you to study closely the unit. To that end, dear students attempt all the activities and self-test question provided in the respective sections.

Unit objectives

Dear students, after successful completion of the lesson you will be able to:

- Understand the contribution of Geneva Convention to the internationalization of human rights
- Explain the attributes of UN Charter and its contribution for the internationalization of human rights
- Analyze the instruments of Universal Declaration of Human Rights (UDHRs)

Pre test questions

- What are the Geneva Conventions all about? And, their contribution for the internationalization of human rights?
- Can you identify the basic attributes of UN Charter?
- What are the contributions made by the UN Charter for the internationalization of human rights?
- Can you list down the principal components of the Universal Declaration of Human Rights (UDHRs)?

Section One– The Geneva Conventions

Section Overview

Dear distance learner, conventions are formal agreements between states at the international level. A good case in point is the Geneva Convention. This section therefore deals with the four Geneva Conventions in light of their implications for the protection of human rights internationally.

Section Objectives

Dear students, after successful completion of the lesson in this section you will be able to

- List down the four Geneva Conventions
- Identify the implications of the Geneva Conventions for the protection of human right at the international level.

1.1 Introduction

? *What do you know about the Geneva Convention?*

Geneva Conventions are series of international agreements that created and developed international humanitarian law to protect wounded combatants and those who assist them,

prisoners of war, and civilians during times of war or other conflicts. The campaign for such laws began with the publication of *Un Souvenir de Solferino* (*A Memory of Solferino*, 1862; translated 1911) by Swiss philanthropist Jean Henri Dunant. The book described the suffering of wounded soldiers at the northern Italian battlefield of Solferino in June 1859. It advocated for the creation of a relief society and the adoption of a treaty that would give protection on the battlefield to the wounded and those who assisted them. These proposals ultimately led to the adoption of the Geneva Conventions and the founding of the International Committee of the Red Cross (ICRC), which later became the International Committee of the Red Cross and Red Crescent Movement.

1.2 THE FOUR GENEVA CONVENTIONS

? *What do you know about the four subsequent Geneva conventions?*

There have been four Geneva Conventions, each of which has subsequently been amended. The name derives from Geneva, Switzerland, the city where the conventions were negotiated. The first Geneva Convention was adopted in 1864 and provided for the protection of sick and wounded soldiers on the field of battle. The second convention, formulated in 1906, extended those protections to sailors wounded in sea battles. The third convention, in 1929, protected prisoners of war (POWs). It legislated that POWs were not criminals, should be treated humanely, and should be released at the end of hostilities. The fourth convention, ratified in 1949, rewrote, expanded, and replaced the language of the first three conventions. The fourth convention also provided for the protection of civilians during wartime. It brought civilians under the protection of international laws that prohibit murder, torture, hostage-taking, and extra-judicial sentencing and executions.

What is now commonly called “the Geneva Conventions” refers to the three conventions that were recodified in 1949 and the fourth convention that was added that same year. Humanitarian law, also known as “the laws of war,” is comprised of the Geneva Conventions and the 1899 and 1907 Hague Conventions. Whereas the Geneva Conventions primarily protect victims of war, the Hague Conventions and accompanying

regulations primarily protect combatants and noncombatants by limiting the methods and means of combat. The Hague regulations protect prisoners of war; prohibit poisonous weapons and weapons calculated to cause unnecessary suffering; and killing or wounding an enemy who has surrendered. They also provide that an occupying power must respect “the laws in force in the country.”

1.2.1 THE TWO ADDITIONAL PROTOCOLS

In 1977 two protocols were added to the Geneva Conventions of 1949. Protocol I extends the law relating to protections of victims of armed conflicts to situations where people are fighting in the exercise of their right of self-determination against colonial domination, foreign occupation, or racist regimes. Protocol II extends protection to victims of internal conflicts in which an armed opposition controls enough territory to enable it to carry out sustained military operations.

1.2.2 THE THIRD GENEVA CONVENTION

? *What makes the third Geneva Convention different from the other convention?*

As amended in 1949, the Third Geneva Convention, known as the Geneva Convention Relative to the Treatment of Prisoners of War, sets forth criteria to determine who is a POW, a protected person under this convention. Where a doubt arises about whether a person is a POW, a competent tribunal must decide his or her status; in the meantime, the person must be afforded the protections of this convention. POWs are entitled at all times to humane treatment and respect for their personal dignity and honor. Their lives and health must not be endangered. They must be protected against violence or intimidation, insults, and public curiosity. They must be maintained in conditions as favorable as those for the forces of the detaining power. No physical or mental torture, nor any other form of coercion, may be inflicted on POWs to secure information from them. POWs who refuse to answer questions may not be threatened, insulted, or exposed to unpleasant or

disadvantageous treatment of any kind. POWs are bound to give only their surnames, first names and rank, date of birth, and “army, regimental, personal or serial number.”

1.2.3 THE FOURTH GENEVA CONVENTION

? *What provisions were incorporated in the fourth Geneva Convention?*

The Fourth Geneva Convention adopted in 1949, known as the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, made explicit the protections that should be extended to civilians during wartime. It requires that protected persons—civilians, the wounded, and POWs—be treated humanely. Such persons are, in all circumstances, entitled to respect for their honor and religion, and must be protected against insults and public curiosity. No physical or moral coercion shall be exercised to obtain information from them or third parties. Reprisals against protected persons and their property are prohibited.

1.3 Countries Belonging to the Conventions

? *Which countries of the world had ratified the Geneva Conventions?*

As of 2005, 192 countries had ratified (thus becoming parties to) all four of the Geneva Conventions. Additional Protocol I had been ratified by 161 states and 156 countries had ratified Additional Protocol II. Nearly every country has ratified the Geneva Conventions, so they are now considered customary international law. The United States is a party to the four Geneva Conventions, but has not ratified the two Additional Protocols. The United States refuses to ratify Protocol I because it claims the protocol will legitimize groups involved in wars of national liberation. Although the United States has not ratified Protocol I, it has indicated that most of its provisions are incorporated into customary international law. The United States also decided not to ratify Protocol II, fearing that it might enhance the status of rebels, even though there was little objection by the U.S. military to ratification of this protocol. Without the Additional Protocols, recent

conflicts in Bosnia and Herzegovina, Sierra Leone, and the Democratic Republic of the Congo might not have been covered by humanitarian law.

1.4 GRAVE BREACHES AND WAR CRIMES

? *What did the convention stipulate on cases of breaches of the Conventions?*

The Geneva Conventions and Additional Protocol I require the ratifying parties to repress grave breaches of the conventions, which are classified as war crimes under statutes of the International Criminal Court and the U.S. War Crimes Act of 1996. States parties—that is, the ratifying parties—are required to search for persons who have allegedly committed or ordered the commission of grave breaches of the conventions and bring those persons before their own courts, or hand them over to another state party for trial.

Grave breaches of the Third and Fourth Geneva Conventions include the following acts if committed against a person protected by the convention: willful killing, torture or inhuman treatment, including biological experiments; willfully causing great suffering or serious injury to body or health; compelling one to serve in the forces of a hostile power; and willfully depriving one of the right to a fair trial. Also considered grave breaches of the Fourth Geneva Convention are the following: taking of hostages; extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and unjustifiably; and unlawful deportation, transfer, or confinement.

1.5 HISTORY OF COMPLIANCE AND NONCOMPLIANCE

Many countries that have signed and ratified and thereby agreed to abide by the Geneva Conventions have nevertheless failed to live up to their commitments. Germany, for example, was a signatory to the 1929 Geneva Convention, and yet the Nazi regime of Adolf Hitler killed nearly half of the POWs it captured in fighting the Union of Soviet Socialist Republics (USSR) during World War II (1939-1945). The Nazis executed Soviet POWs at concentration camps such as Auschwitz and Sobibór. Japan, which was

not a signatory to the 1929 agreement, announced in 1942 that it would abide by its terms but nevertheless was known for its brutal treatment of POWs, including experimenting with the use of biological and chemical weapons on POWs and other captives.

Many of the provisions created by the Fourth Geneva Convention regarding the protection of civilians were added in response to war crimes committed during World War I (1914-1918) and World War II. The prohibition against collective punishment, for example, resulted from wholesale reprisals taken by the German Army against entire towns and villages in retaliation for partisan activity.



Activity – 1

1. Explain the meaning of Geneva Conventions

2. List down the Four Geneva Conventions

3. What are the provisions made by the Geneva Conventions concerning Prisoners of War (POWs)

Section Two– United Nations Charter



Section Overview

Dear distance learner, the previous section has dealt with the Geneva Conventions. That is not, however, the only sources for the internationalization of human rights. Therefore, this section will focus on the other most important sources, i.e. the UN Charter.

Section Objectives

After the completion of this section you will be able to:

- Discuss on the workings of the UN Charter
- Identify the basic components of the UN Charter.

1.1The United Nations

? *Dear distance learner, what are the historical antecedents before the establishment of UN?*

As it has been suggested in many writings, the modern conceptions of human rights are the result of the recent and most horrific experience in human history. It is rooted in the experiences of what is called ‘legal lawlessness’ when crimes were committed with authorization of the law, and when some human beings were denied their status as such. This experience is the experience of the Second World War (WWII).

As already stated the concept of human rights emerged recently to replace the phrases like, ‘natural rights’, the rights of man, and has come to every day use after WWII. The notion of natural rights played a key role in the 17th and 18th centuries struggle against political absolutism, and influenced the formulation of historic documents.

Dear distance learner, as we have noted earlier, the concept of natural rights came under powerful philosophical and historical attack. Because of these criticisms, the notion of natural rights fell into disfavor and by the First World War (WWI), there were scarcely any theories who would or could defend the 'rights of man' or natural rights' along the lines of natural law. Though the heyday of natural right proved short, the notion of human rights nonetheless endured in one form or another. The abolition of slavery, popular education, trade unionism, the adult suffrage movement and other changes and impulses serve as ample proof for the triumph of the ideas of human rights. But, it was not until the rise and fall of Nazi Germany that the idea of rights-human rights-came truly into its own.

The horrors of WWII gave momentum for the development of modern human rights. It was recognized that domestic (national) laws and institutions are not sufficient to protect individual and group interests and rights. To the contrary Nazi Germany used national laws and institutions to deprive the Jews and other minorities of basic rights and freedom. The Second World War showed the necessity of realizing the principles of human rights and marked the birth of the international human right movements.

One of the most striking development in international law since the end of WWII has been the concern with protection of human rights. This development is a reflection of the increased concern for people all over the world with the treatment accorded to their fellow human beings in other countries, particularly when that treatment fails to come up to minimum standards of civilized behaviors.

Widespread violation of human rights show that the attempts to provide international protection are not as effective as they ought to be and a great deal remains to be done to improve the existing international procedure.

Before WWII, certain aspects of human rights enjoyed international protection. The first international measures for the protection of human rights include the abolition of slavery

since the late 19th century, the evolution of humanitarian law since the mid 19th century, the protection of minorities that has evolved after WWI, and International labor Organization (ILO) conventions.

Despite some exceptions, the protection of human rights through international action is a revolutionary idea and traditional international law had no place for it. This was due to the view that international law is concerned solely with the relations between states and cannot confer rights on individuals. It was therefore the accepted doctrine that relations between individuals and the states of which they were nationals were governed only by the national laws of those states, as a matter of exclusively within their domestic jurisdiction.

The atrocities of WWII have resulted in the shift from this attitude to the recognition that the protection of fundamental rights of the individual (group) is not only a matter of national law, but also of international law. As a result, today we have systems of protections of human rights both at national and international level.

The emergence of international human rights system is basically related to that of United Nations, which was established in 1945 by a Charter to maintain international peace and security.

? *Dear distance learner, what were the major objectives of UN at the time of its establishment?*

United Nations (UN) is international organization of countries established to promote world peace and cooperation. The UN was founded after World War II that ended in 1945. Its mission is to maintain world peace, develop good relations between countries, promote cooperation in solving the world's problems, and encourage respect for human rights.

The UN is an organization of countries that agree to cooperate with one another. It brings together countries that are rich and poor, large and small, and have different social and

political systems. Member nations pledge to settle their disputes peacefully, to refrain from using force or the threat of force against other countries, and to refuse help to any country that opposes UN actions.

? *What provisions were subsumed in the UN Charter?*

Though the Charter does not incorporate bill of rights, its preamble reaffirms a faith in international human rights, in the dignity and worth human persons, in the equal rights of men and women of nations of large and small. Certain articles of the UN charter also make reference to human rights and fundamental freedoms. The UN prepared and adopted a number of international human right instruments. These include Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social, and Cultural Rights (1966). These three instruments are together called the International Bill of Rights.



Activity – 2

1. Explain the historical antecedent before the emergence of UN

2. List down the major components of UN Charter

Section Three – Universal Declaration of Human Rights and Other Regional Intergovernmental Organizations

Overview

Dear distance learner, one basic instrument the UN has established is the Universal Declaration of Human Rights. Thus, the focus of this section will be on the basic tenets and components subsumed in the Universal Declaration of Human Rights.

Section Objectives

Dear students, after successful completion of the lesson in this section you will be able to

- Identify the basic components incorporated under the Universal Declaration of Human Rights (UDHRs)
- Explain the contribution of UDHRs to the internationalization of Human rights
- Sort out the contribution of other regional intergovernmental organizations to the internationalization of human rights

1.1 Universal Declaration of Human Rights (UDHRs)

? *Dear Students, who adopted the UDHRs?*

The Universal Declaration of Human Rights was adopted by the General Assembly of the UN on 10 December 1948, with 48 votes in favor, 8 abstentions, none against it. Ethiopia as a founding member of UN voted in favor of it. It contained civil, political, economic, social, and cultural rights as well as the right to development. As its preamble states it was meant to serve as ‘a common standard of achievement for all peoples and nations’. It calls for states to work for the realization of the rights contained therein. It was not intending to impose legal obligation on states. As any declaration, it reflects mere moral commitments.

Universal Declaration of Human Rights is a statement affirming the dignity and rights of all human beings. It is based on principles expressed in the UN Charter. The declaration is the first section of a proposed three-part international covenant, or agreement, on human rights. When adopted, the covenant will bind the participating nations in the same way as any international treaty. The two remaining sections of the covenant amplify the initial declaration in specific and enforceable terms. One is concerned with civil and political rights, and the other with economic, social, and cultural rights.

Human rights were incorporated in these UN documents as a reaction to the outrageous crimes against humanity committed by the National Socialists in Germany between 1933 and 1945. The torture and killing of more than six million Jews, gypsies, political opponents, minorities and others was the largest-scale violation of fundamental human rights in modern times. Concepts such as ‘genocide’ and ‘crimes against humanity’ are inseparably linked to this period in world history.

The International Covenant on Civil and Political Rights was adopted by the General Assembly of UN in 1966, and came into force on March 23, 1976 after obtaining a minimum ratification. The Covenant incorporate what is traditionally called first generation rights, i.e. civil and political rights. The Covenants impose legal obligation on states that it to respect and enforce the rights contained therein.

The International Covenant on Economic, Social and Cultural Rights was adopted in 1966 and came into force in 1976. It incorporates most of the Declaration’s economic, social, and cultural rights or second-generation rights. This is also binding on states that ratify it or accede to it.

In general, the rights described in the 30 articles of the Universal Declaration of Human Rights includes the following: The right to life, liberty, and security of person; to freedom of conscience, religion, opinion, expression, association, and assembly; to freedom from arbitrary arrest; to a fair and impartial trial; to freedom from interference in privacy, home, or correspondence; to a nationality; to a secure society and an adequate standard of

living; to education; and to rest and leisure. The declaration also affirms the rights of every person to own property; to be presumed innocent until proven guilty; to travel from a home country at will and return at will; to work under favorable conditions, receive equal pay for equal work, and join labor unions at will; to marry and raise a family; and to participate in government and in the social life of the community.

1.2 Regional Intergovernmental organizations

? Dear Student, is the protection of human rights confined only to the works of UN?

The promotion and protection of human rights is not confined to the works of the UN. The different regional intergovernmental organizations, among others, the council of Europe, the Organization of American States (OAS) and the Organization of African States (recently transformed into the African Union) have developed regional human rights instruments. Among the various instruments developed by these organs, the main ones include the European Convention on Human Rights of the 1950 and the European Social Charter of the 1961, the American Convention on Human Rights of 1969 and the African Charter on Human and people's Rights of 1981.



Activity – 3

1. What is HDHRs all about?

2. Identify the basic components of UDHRs

3. Can you explain the contribution of UDHRs to the internationalization of Human rights?

Dear distance learner, the unit has dealt with some basic international conventions and charters and their implications for the internationalization of human rights. Geneva Conventions are series of international agreements that created and developed international humanitarian law to protect wounded combatants and those who assist them, prisoners of war, and civilians during times of war or other conflicts. We have also discussed that the UN Charter is basically aimed at ensuring the maintenance of international peace and security. Human right protection was at the heart of the charter. One principal instruments of the United Nations was the Universal Declaration of Human Rights. We have said that the UDHRs recognize that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world. However, the contribution of other regional intergovernmental organizations was of paramount importance for the promotion and protection of human rights.

☒ Check List

Direction: *Dear students this is the section in which you confirm your understanding of the lessons in this unit. Put a tick mark (✓) in the yes column for activities that you have clear understanding and in the no column for activities that you doubt that you have good understanding.*

<u>I Can:</u>	Yes	No
▪ Explain what Geneva Conventions is all about	<input type="checkbox"/>	<input type="checkbox"/>
▪ Identify the basic attributes of UN Charter	<input type="checkbox"/>	<input type="checkbox"/>
▪ list down the principal components of the Universal Declaration of Human Rights (UDHRs)?	<input type="checkbox"/>	<input type="checkbox"/>

Self-Test Exercise

General Direction: Try to answer all of the following questions.

Part I. Choose the best answer

1. Of the following, one is considered grave violation of the Third and Fourth Geneva conventions

- A. Willful killing
- B. Deliberately depriving one of the right to a fair trial
- C. Torture
- D. All

2. One is considered as the first international measures for the protection of human rights before Second World War

- A. The abolition of slavery
- B. The evolution of Humanitarian law
- C. International Labor Convention (ILO) Convention
- D. All

3. Geneva Convention developed international humanitarian law primarily to

- A. protect draught-prone people
- B. Protect terrorist affected
- C. Protect wounded combatants
- D. protect people dwelling on environmentally damaged areas

4. Which of the following is/are true about the 'UN Charter' at the time of its establishment?

- A. The charter incorporated bill of rights
- B. Its preamble reaffirms a faith in international human rights
- C. All articles make reference to human rights and fundamental freedoms
- D. It is the first ever attempted to bring about an international human rights system

5. The Third Geneva Convention legislated that

- A. Prisoners of Wars are criminals, but should be treated impartially
 - B. Prisoners of Wars are not criminals and should be treated humanely
 - C. Prisoners of Wars should be treated based on the domestic laws of the captors
 - D. Prisoners of Wars should be treated humanely, but should not be released thereafter.
6. Which of the following is/are true about the Universal Declaration of Human Rights?
- A. It intends to impose legal obligation on states
 - B. It reflects moral commitment
 - C. It incorporates mere civil and political rights
 - D. It is based on principles expressed in the Geneva Convention
7. The Fourth Geneva Convention is different from its predecessors, in its assertion that
- A. Protection should be conferred to prisoners of war
 - B. Protection should be extended to civilians during war
 - C. Protection should be given to sick and wounded soldiers
 - D. Protection should be extended to women soldiers
8. Of the following, one isn't stipulated in the Geneva Conventions
- A. The rights of every person to participate in government
 - B. The rights of every person to own property
 - C. The rights of every person to work under favorable condition
 - D. None
9. The grave breaches of the Geneva Convention by ratifying parties is classified as
- A. Genocide
 - B. War Crimes
 - C. Terrorism
 - D. Torture
10. The most critical challenge facing the Geneva Conventions was
- A. Non-compliance
 - B. Financial constraints
 - C. Non-enforcement
 - D. A and C

II. True or False

- _____1. The promotion and protection of human right is confined to the mere works of the UN.
- _____2. The justified hostage-taking isn't considered grave breaches of the Geneva Convention.
- _____3. The principal objective of the UN Charter was to protect human rights at the global level.
- _____4. Geneva Conventions are Customary International Law
- _____5. It was the proposal of Henri Dunant that ultimately led to the adoption of the Geneva Convention and the foundation of the International Committee of the Red Cross (ICRC)

UNIT THREE

HUMAN RIGHTS: CONTROVERSIES AND DILEMMAS

Unit Introduction

Dear distance learner, the concept of human rights has been a bone of contention among scholars and politicians to date. In the past, human rights used to be taken as a mere philosophical issues, however, nowadays; it is no more philosophical *per se*. Politics has prominently embedded in the concept of human rights. Therefore, this unit addresses major controversies hanging over human rights. In section one; you will be acquainted with the controversies emanating from the philosophical and political interpretation of human rights. Section two will address the universal and relative nature of human rights. It is section three that deals with issues of economic, social, and cultural rights on the one hand, and political and civil rights on the other. Issues of individual and collective nature of human rights are dealt in the last section.

Unit Objectives

Dear students, after successful completion of the lesson you will be able to:

- Analyze the interpretation of human rights in light of its philosophical and political sense
- Explain the universal and relative nature of human rights
- Grasp the controversy between economic/social and civil/political rights
- Understand the reason for the distinction between individual and collective rights

Pre test questions

- Can you distinguish between the philosophical and political nature of human rights?
- Why do human rights have both universal and relative nature?
- What are the points of departure between advocates of economic/social rights and civil/political rights?
- Can you provide justification for the difference between individual rights and collective rights?

Section One–Human Rights: Philosophical Versus Political Interpretation



Section Overview

Dear distance learner, this section will address the nature of controversies emanating because of the involvement of philosophy and politics in human rights.

Section Objectives

Dear students, after successful completion of the lesson in this section you will be able to

- Define human rights in its philosophical and political sense.
- Identify the causes for different meanings of human rights

1.1 Human Rights: Philosophical Versus Political Interpretation

In spite of a widespread endorsement of the general principles of human rights, there have been certain divergences of opinion and disagreements over the specific interpretations of issues in both philosophical and political contexts. In international politics, differences of culture, national traditions, and political interests must be counted for their impact on the conception of human rights. In support of this claim, a survey of UN debates and voting patterns on human rights issues indicates that many nations have

self-imposed standards for their definitions of human rights. In this context, some conclude that human rights criticism is irrelevant and interfering unless it issues from one's own internal (political) criteria. Others believe that a broad interpretation of human rights philosophy shows how to overcome narrow self-interest in the international realm as a concession to world peace and security.

? Dear distance learner, what are the philosophical definitions of Human Rights?

Human rights is viewed as a basic moral entitlement possessed only by persons. Rights are thus seen as entities that are naturally possessed rather than possessed. Morality and person hood become the qualifying factors that constitute this entitlement, furnishing the grounds for making assertions about such inalienable human rights as the right to life, liberty and the pursuit of happiness.

The other philosophical definitions of human rights emphasize that the various human rights are universal and irrevocable elements in a scheme of justice. Thus, this definition seems to imply that human rights do not always function as primary principles of a good human community, since it is conceivable that the human community may suffer if all human rights are treated as absolute or unconditional. Human rights, in this context, are 'inviolable' only in the sense that their violation is never morally right.

Human rights has been also defined as a valid moral claim based on all primary human needs. Thus, all human rights are presumably possessed equally by all individuals because persons as such have the same human needs, and human rights, or else they couldn't be regarded as human rights. In contrary to the above definitions, human rights was viewed as the mere prescriptions for taking primary moral responsibility for all other persons.

Moreover, various natural right theories define human rights as possessed by all human beings (at all times and in all places) simply in virtue of humanity. They have the

properties of universality, independence (from social or legal recognition), naturalness, inalienable, non-forfeitability and imperscriptibility. Only so understood will an account of human rights capture the central idea of rights that can always be claimed by any human being.

As a source of some political debate with correlative discussions in the philosophical literature, questions are raised about whether and under what conditions human rights should be given practical effect; but even given an appropriate codified legal structure for human rights, the criteria for their enforcement remain a matter of dispute. For example, the issue is yet unresolved whether human rights legislation and enforcement should be exclusively matters of national concern, or whether they would best be treated in the international Court of Human Rights. Discussions in the philosophical literature generally follow the world political trend toward unilateral interpretations of human rights issues, rarely incorporating other than Western liberal formulations.

? Dear distance learner, what are then the political interpretations of Human Rights?

In contrast to the philosophical interpretations of human rights, the political conceptions of human rights have been proposed recently. This approach looks first to the treatment of human right within the already existing discourse and practice of human rights or what has been called 'human rights regime.' The guiding idea is not to assess this regime by its conformity to the traditional of natural rights or some other philosophical conception, but rather to clarify the understanding(s) of human right with respect to its own aims and purposes. Thus, human rights are understood as international norms that aim to protect fundamental human interests and /or secure for individuals the opportunity to participate as members in political society.

Central to this political conception of human rights is the idea of human rights as primarily (though not exclusively) claims against political institutions and their officials as opposed to claims against arbitrary individuals. Human rights are also understood primarily in connection with the basic conditions of membership in a political society

(rather than as ‘general’ rights individuals possess ‘simply in virtue of their humanity’). Moreover, human rights are political in that the type of justification given for them is determined by their political role or function.

Another area of debate about human rights occurring on the level of international diplomacy concerns the terms in which the topic is advanced. In some instances it is denounced as an instrument of political propaganda and opportunism; an opposing view asserts that, despite the partisan treatments of human rights, outside benefits accrue that ultimately justify the continued usage of human rights ideals as a moral standard in the worlds political arena. However, many asserted that what is generally overlooked in both politics and the literature is that differences in the criteria for defining human rights must be recognized before the concept can be clarified.

Nevertheless, the human rights question today is usually raised in connection with international law and politics; philosophy plays a more tangential role. But, in the past philosophers were often at the center of ‘natural rights’ controversies along with jurists and politicians.



Activity – 1

1. What is the philosophical definition of human rights?

2. How do you define human rights politically?

3. What is the reason for difference in meaning?

Section Two—Universalism versus Cultural Relativism



Section Overview

Dear distance learner, the previous section has discussed about the philosophical and political nature of human rights. In this section, controversies revolving around the universal and relative nature of human rights will be dealt.

Section Objectives

Dear students, after successful completion of the lesson in this section you will be able to

- Define Universalism and Cultural Relativism
- Explain human right in light of universalism and relativism.

1.1 Universalism versus Cultural Relativism

? Dear distance learner, what is the difference between universalism and relativism?

One of the most pertinent issues of the past twenty years has been the conflict between two different ideologies of human rights on a national scale, universalism, and cultural relativism. Universalism holds that more “primitive” cultures will eventually evolve to have the same system of law and rights as Western cultures. Cultural relativists hold an opposite, but similarly rigid viewpoint, that a traditional culture is unchangeable.

Universal human instruments are based on the assumption that they reflect universally accepted norms of behavior. This is important, among other things, for the role of the United Nations in supervising the observation of these international standards. Unless human rights-or at least a nucleus of such rights-are universally accepted, the United Nations will lack the basis on which its supervision activities are founded. This assumption governed the approval in 1948 of the Universal Declaration of Human Rights by the General Assembly of the United Nations. It states in the beginning of its preamble

that the 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

No member-state of the United Nations voted in 1948 against adoption of the Universal Declaration of Human Rights. Eight states –the Soviet Union and five of its allies, plus Saudi Arabia and South Africa–abstained. One of the reasons why the Soviet Union abstained was that it felt that the Universal Declaration paid too little attention to the importance of the maintenance of national sovereignty. Saudi Arabia's abstention was based on its rejection of the inclusion under freedom of religion the right of changing one's religion. South Africa rejected the principle of equality because of its Apartheid nature.

However, the acceptance of these texts doesn't mean that the universal nature of human rights is a foregone conclusion. Among often-heard criticisms of the Universal Declaration of Human Rights are the following.

- It was drafted at a time when most Third World nations were still under colonial domination; developing nations that later incorporated the standards of the Universal Declaration in their national constitutions or accepted them as members of the Organization of American States or the Organization of African Unity, did so under western pressure.
- Furthermore, the rights contained in Universal Declaration are said to reflect mainly western ideological views, rather than values dominant in non-western societies;
- The Declaration uses an individualistic approach to human rights, which is supposedly not suitable for societies that emphasize collective values.

In universalism, an individual is a social unit, possessing inalienable rights, and driven by the pursuit of self-interest. In the cultural relativist model, a community is the basic social unit. In determining the universal character of human beings various criteria can be

applied. A very strong criterion would be, for example, that all human beings all over the world should agree about the meaning of human rights as well as about its implementation. Obviously, such a criterion cannot be met for the time being. Not all human beings share the same view about the meaning of human rights and there exists no agreement about the mutual relationship of various human rights. Should one want to apply such criterion, then the conclusion would likely be that there is no such universalism of human rights.

Concepts such as individualism, freedom of choice, and equality are absent. It is recognized that the community always comes first. This doctrine has been exploited by many states, which criticize any impositions of western rights as cultural imperialism. These states ignore that they have adopted the western nation state, and the goal of modernization and economic prosperity.

Cultural relativism is in itself a very arbitrary idea. Cultures are rarely unified in their viewpoints on different issues. Whenever one group denies rights to another group within a culture, it is usually for their own benefit. Therefore, human rights cannot be truly universal unless they are not bound to cultural decisions that are often not made unanimously, and thus cannot represent every individual that these rights apply to.

Even though cultural relativism has great problems and a potential for abuse, universalism in its current state is not the ideal solution. Universalism is used by many Western states to negate the validity of more 'traditional' systems of law. For example, if a tribe in Africa is ruled by a chieftain and advised by the twelve most senior villagers, is this system any less representative than the supposedly more liberal societies of the West? It is not possible to impose a universal system of human rights if the effects of social change stemming from modernization are not understood or worse yet, ignored.

In non-Western societies, industrialization, capitalism, and democracy might not have been the eventual outcome of the process of cultural evolution. These ideologies have

been shaped and created by Western imperialism, the slave trade, colonialism, modernization, and consumerism. Today's world shows signs of positive progress towards the universal system of human rights. The declaration of human rights occurred immediately after the atrocities committed during WWII. The globalization of human rights began when the world was awakened to the crimes committed by governments, and the need for a more universal system of accountability and responsibility. Through a forum such as the United Nations, Cultural differences are better able to be resolved, thereby paving the way for universalism while at the same time recognizing and compromising on the needs of certain cultures. The recent adoption of the International Criminal Court in June 1998 is an important step in enforcing and promoting the values agreed upon by the member nations. As the world becomes a smaller place with the advent of globalization, universalism makes more sense as a philosophy of human rights. In a world where many people might not be governed by national borders, having fundamental human rights instead of ones bound to certain cultures provides the best solution.

At the level of non-governmental organization, the universalism of human rights has indeed been 'universally' accepted. Hence, universal human rights standards are rooted in many cultures. It is important to affirm the basis of universality of human rights which afford protection to all of humanity, including special groups such as women, children, minorities, and indigenous peoples, workers, refugees and displaced persons, the disabled and the elderly. While advocating cultural pluralism, those cultural practices which derogate from universally accepted human rights including women's rights, must not be tolerated. As human rights are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty.



Activity – 2

1. What is Universalism all about?

2. Explain the meaning of cultural relativism

3. Who is advocating universalism and Cultural relativism?

Section Three–Individual Rights versus Collective Rights



Section Overview

Dear distance learner, this section outlines the difference between individual and collective rights.

Section Objectives

Dear students, after successful completion of the lesson in this section you will be able to

- Define individual and collective rights
- Identify who is advocating individual rights and collective rights

1.1 Individual and collective rights

? *What is individual right or collective rights?*

Another distinction often made is that between individual and collective rights. Many human rights are by their very nature the rights of individuals. Some human rights combine individual and collective aspects. For example, the freedom to manifest religion or belief can be exercised individually or in community with others. With respect to other human rights, collective aspects prevail. This is the case with the rights of the family and trade union freedoms.

There are also rights which give attention to the special needs of groups as such. By virtue of their nature and subject matter these are collective rights. Collective rights include the rights of ethnic minorities, the rights of indigenous peoples and peoples' rights.

Peoples' rights include the right to self-determination, to development, to peace and security and to a safe and healthy environment.

The African Charter on Human and Peoples' Rights (1981) was the first human rights instrument to recognize the relationship between individual and collective rights and to enumerate a catalogue of people's rights.

Critics of collective rights have argued that individual and collective rights are inherently irreconcilable. Increasingly it is accepted that individual and collective rights are concerned with conceptually distinct claims and can exist concurrently. Collective rights can be interpreted and applied in a manner consistent with individual human rights.



Activity – 3

1. What is individual right? Collective right?

2. Explain the difference between individual rights and collective right

3. Who is advocating for individual rights or collective right?

Section Four –Economic, Social, and Cultural Rights versus Civil and Political Rights



Section Overview

Dear distance learners, the controversy hovering over human rights also involve another major issue. This section therefore discusses the debates on economic/social/ cultural rights and civil/political right.

Section Objectives

Dear students, after successful completion of the lesson in this section you will be able to

- Define economic/social right and civil/political right
- Identify who is advocating economic/social right and civil/political right

1.1 Economic, Social, and Cultural Rights versus Civil and Political Rights

The codification of right has taken place under the influence of some important differences of views, one of the oldest concerning the relationship between economic, social and cultural rights on the one hand, and civil and political rights on the other. At a very early stage, UN General Assembly decided that the Universal Declaration would give rise to different legal instruments protecting different sets of rights.

The communist states and a steadily growing number of developing countries considered political and civil rights to be subordinate to economic and social rights, which supposedly corresponded to people's primary need, whereas Western countries tended to reverse the rank order. Some of the Western countries maintained that economic rights

were in fact not rights at all, but rather political goals. Moreover, they clashed over the order in which rights should be implemented. Communist and developing states for a long time claimed that the realization of civil and political rights had to wait until economic development and economic rights had been established. Otherwise, chaos would result and development would be curbed. The Western countries typically took the opposite position. Democracy and political freedom were in fact necessary to guarantee a satisfactory level of economic progress and the realization of economic rights.

Philosophers generally agree that civil and political rights must be counted as human rights. However, there is a basic controversy about whether socio-economic, or, as they are sometimes called, welfare rights, are to count as human rights. To resolve this dispute, the same criteria must be as a common frame-of-reference for distinguishing between human rights and other rights. To illustrate, some philosophers think that civil and political rights are human rights but are unwilling to include socio-economic rights. Hence, there are three tests for determining the authenticity of a human right: practicability, paramount importance, and universality. Thus, these criteria purportedly offer a clear way of making the desired distinction, such that civil and political rights are considered to be human rights, whereas the other 'rights' are not included; at least not in the same sense.

Other philosophers hold instead that so-called welfare rights should be included in the list of human rights. They criticized antagonists using as their conceptual framework such documents as the Universal Declaration, the European Convention on Human Rights, and others that favor a similar interpretation of human rights. For them, one can not use the tests (used by antagonists) to deny status to only one sets of rights without also proscribing the other set.

These differences have not passed away but they have certainly lost their vigour over the years. Later on, the UN declared that human rights are what reason requires and conscience commands. Human rights are rights any person has as a human being. We all

are human beings; we are all deserving of human rights. One cannot be true without the other. One cannot pick and choose among human rights, ignoring some while insisting on others. Only as rights equally applied can they be rights universally accepted.

However, other differences may seem more important today. A number of new rights came into fashion some decades ago under varying headings- peoples' rights, solidarity rights, third-generations rights. They include the right to peace and development, and were largely championed by developing countries, whereas objection was raised in the west. In particular, the critic maintained that right of this kind seemed to drive away the traditional individual perspective on human rights, since the focus was not on the rights of the individual in relation to the power of the state but rather the rights of some collective (state, country or population) in relation to an ill-defined other party. This has often been perceived as a way of concealing purely political ambitions.

The right to development has gone furthest towards recognition as a human rights. There was Western disquiet when the General Assembly adopted the Declaration on the Rights to Development in 1996, but resistance was finally defeated in 1993 when this right was 'reconfirmed' by the World Conference on Human Rights in Vienna.

The connotations of the right of development have not been clarified, but in the UN's continuing effort to put emphasis on it (for instance, by setting up an open-ended working group in 1998) differences have manifested themselves sharply. In essence, the conflicts concern the demands that developing countries are inclined to make on developed countries- for instance, linking the right to development to changed rules and regulations for international trade, development aid policies, foreign debt and so on.

The tricky question of the definition or identification of the possessor of right seemed to be resolved in the 1986 Declaration. Accordingly, the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political

development, in which all human rights and fundamental freedoms can be fully realized. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

By contrast, a similar semantic device by which both the individual and collective were seen as the possessors of rights does not provide a general solution. In 1984 the General Assembly adopted the Right of Peoples to Peace whereby it 'solemnly proclaims that the peoples of our planet have a sacred right to peace'. But, there is no mention of individual. On the other hand, it is clear that a people is not the same thing as a state, since states have the responsibility for the implementation of this rights.



Activity – 4

1. What are economic right, social right and cultural right?

2. Explain the meaning of civil and political right

3. Who is advocating economic/social rights and civil/political rights?

Unit Summary

Dear distance learner, the unit has shed lights on the major controversies hanging over the concept of human rights. The philosophical and political conceptions of human rights have a contentious issue among philosophers and political scientists. In this unit, human rights is philosophically viewed as a basic moral entitlement possessed only by persons, however, recently there emerged what is known as ‘the political conception of human rights’ that view human rights as international norms that aim to protect fundamental human interests and /or secure for individuals the opportunity to participate as members in political society. The unit also discussed about controversies between universalism that holds that cultures that are more “primitive” will eventually evolve to have the same system of law and rights as Western cultures and cultural relativists hold an opposite, that a traditional culture is unchangeable. In the unit mention has also already made about other dilemmas between individual and collective rights, and political/civil and economical/social/cultural rights.

☒ Check List

Direction: *Dear students this is the section in which you confirm your understanding of the lessons in this unit. Put a tick mark (✓) in the yes column for activities that you have clear understanding and in the no column for activities that you doubt that you have good understanding.*

I Can:

	Yes	No
▪ distinguish between the philosophical and political nature of human rights?	<input type="checkbox"/>	<input type="checkbox"/>
▪ Identify the universal and relative nature of human rights	<input type="checkbox"/>	<input type="checkbox"/>
▪ Understand the points of departure between advocates of economic/social rights and civil/political rights?	<input type="checkbox"/>	<input type="checkbox"/>
▪ Define both individual right and collective right	<input type="checkbox"/>	<input type="checkbox"/>

Self-Test Exercise

General Direction: Try to answer all of the following questions.

Part I. Choose the best answer

1. The right to peace and development were largely championed by
 - A. Western Countries
 - B. Developing Countries
 - C. Communist states
 - D. All

2. Of the following one is not in the category of 'Collective Rights'
 - A. The rights of ethnic minorities
 - B. The rights of indigenous people
 - C. The rights of liberty
 - D. Cultural rights

3. According to natural rights theories, human rights does not have the properties of
 - A. Naturalness
 - B. Independence
 - C. Inalienability
 - D. None

4. What is/are the main reason(s) for the current tangential (marginal) role played by philosophers in Human rights issues?
 - A. The dominance of international law
 - B. The dominance of politics
 - C. Philosophers apathy towards the issue of human rights
 - D. A and B

5. 'Cultural Relativism' could be criticized for
 - A. its arbitrariness
 - B. becoming a political goal amid universalism
 - C. disregarding national cultural development
 - D. A and B

6. Which of the following is true about a statement, viewing 'human right as a basic moral entitlement possessed only by persons'?

- A. It is a political conception of Human rights
- B. It is a philosophical conception of human rights
- C. It is the individual interpretation of human rights
- D. It is a collective interpretation of human rights

7. According to,_____ 'Political and civil rights should be subordinate to economic and social rights'

- | | |
|----------------------|-------------------------|
| A. Western countries | C. Developing countries |
| B. Communist states | D. B and C |

8. The concept of 'Human Rights Regime' signifies that

- A. Human rights have mere philosophical orientation
- B. Human rights are no longer viewed the traditional natural rights sense
- C. Human rights have mere political connotation
- D. B and C

9. Globalization apparently promotes

- | | |
|------------------------|-------------------|
| A. Universalism | C. Collectivism |
| B. Cultural relativism | D. Cultural right |

10. 'Collective rights is to China' as Individual rights is to_____

- | | |
|------------|------------|
| A. Africa | C. Burma |
| B. England | D. N.Korea |

II. True or False

- _____1. Philosophically, Human rights can be defined as a valid moral based on all primary human needs.
- _____2. Collective rights and individual rights are utterly irreconcilable.
- _____3. Morality and personhood are the qualifying factors to enjoy human rights in light of the concept of 'Human rights regime'
- _____4. The right to development is an inalienable human right
- _____5. For cultural relativist, traditional culture is unchangeable.

III Short Answer

1. Explain the points of arguments and justifications forwarded by proponents of individualism and collectivism
2. Do you personally believe that the right to development is a human right? Justify

UNIT FOUR

HUMAN RIGHTS AND CONTEMPORARY ISSUES



Introduction

Dear distance learner, the concept of human rights have gone through a host of evolutionary process. Ever since, it was conceived in terms of mere philosophical connotations, many issues seemed to have been subsumed under human rights overtime. Dear student, this unit aims to have a look at the relationship between human rights and contemporary issues. Unit one attempts to address the apparent relationship between human rights and women. In unit two, due emphasis will be given to the ostensible link between human rights and the environment. Unit three is geared towards assessing gross and systematic violation of human rights. To that effect, genocide will be the focal issues worth discussing. Unit four addresses human rights issues amid the unprecedented interdependence of the world i.e. Globalization.

Unit Objectives

Dear students, after successful completion of the lesson in this unit you will be able to

- Understand the apparent relationships between human rights and women
- Grasp the linkage between issues of human rights and the environment
- Discuss issues concerning gross and systematic violations of human rights
- Examine issues of human right in the face of globalization



Pre test Questions

- Is women's right a human right?
- What relationship do you think exist between human right and the environment?
- What is a gross and systematic violation of human rights all about?
- Does globalization has impact on issues of human rights?

Section one–Human Rights and Women



Overview

Dear distance learner, women's right has already gained currency globally. Thus, women's right is nothing more than a human right. This section therefore addresses the apparent relation between human right and women.

Section Objectives

Dear students, after successful completion of the lesson in this unit you will be able to

- Define the concept women's human right
- Explain the historical origin of the movement of women's right
- Identify the current status of women's right in the world

Women's Rights are rights that establish the same social, economic, and political status for women as for men. Women's rights guarantee that women will not face discrimination on the basis of their sex. Until the second half of the 20th century, women in most societies were denied some of the legal and political rights accorded to men. Although women in much of the world have gained significant legal rights, many people believe that women still do not have complete political, economic, and social equality with men.

1.2 Origins of the movements for women's right

The struggle for women's rights began in the 18th century during a period of intense intellectual activity known as the Age of Enlightenment. During the Enlightenment, political philosophers in Europe began to question traditional ideas that based the rights of citizens on their wealth and social status. Instead, leaders of the Enlightenment argued that all individuals were born with natural rights that made them free and equal. They maintained that all inequalities that existed among citizens were the result of an inadequate education system and an imperfect social environment. Enlightenment

philosophers argued that improved education and more egalitarian social structures could correct these inequalities.

Such radical ideas about equality and the rights of citizens helped inspire both the American Revolution in 1775 and the French Revolution in 1789. However, the ideas of the Enlightenment initially had little impact on the legal and political status of women. Most Enlightenment thinkers had little to say about the position women held in society, and many of their followers assumed that the concepts of liberty, equality, and political representation applied only to men. For example, one of the most influential writers from this period, French philosopher Jean Jacques Rousseau, claimed that women were sentimental and frivolous. Rousseau argued that women were naturally suited to be subordinate companions of men.

British philosopher and economist John Stuart Mill, though a leading proponent of utilitarianism during the 19th century, came to understand that utilitarian thought was flawed because it failed to take account of people's emotions. He became outspoken on the subject of equality for women, an unpopular cause at the time. His essay *The Subjection of Women* (1869) sought to shift the law and public perceptions in order to free women from what was effectively slavery, and to allow them to live as individuals.

In response to Rousseau and others who belittled the role of women in society, English writer Mary Wollstonecraft wrote *A Vindication of the Rights of Woman* (1791). In this book, Wollstonecraft argued that, like men, women were naturally rational but their inferior education often taught them to be silly and emotional. Education, she believed, should cultivate the natural reasoning capacity in girls. She also claimed that the best marriages were marriages of equals, in which husband and wife were friends as well as legal partners. Wollstonecraft argued that equality in marriage would only come about with equality of education.

1.4 International women's right

Women's rights supporters from the United States and other countries have attempted to build international ties among activists since the late 19th century. They have formed international advocacy groups and organized women's conferences with the aim of attaining equal rights for women. Women have used these meetings to focus on such issues as equal pay and equal economic and educational opportunities for women. For example, the International Congress of Women, founded in 1888, demanded equality of access to education and industrial training, equal wages for equal work, and a single standard of moral conduct for men and women. In 1904 activists Susan B. Anthony and Carrie Chapman Catt established the International Woman Suffrage Alliance to secure the right to vote for women of all nations.

During the 1930s another group known as Equal Rights International campaigned for the passage of a treaty that would establish equal rights between men and women. In 1935 a coalition of international women's rights organizations brought the treaty before the League of Nations, which voted to further study the issue of women's legal status.

Since the 1940s, most international women's rights efforts have been organized by the Commission on the Status of Women (CSW), an office established in 1947 by the United Nations (UN). The Commission is the only existing intergovernmental body that issues reports on and recommendations for the promotion of women's political, social, economic, and cultural rights. The CSW also acts as an advocate for women's rights and can urge immediate international action in cases of severe violations of women's rights.

The UN encouraged equality in the workplace for men and women when it sponsored the Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value in 1953 and the Convention Concerning Discrimination in Respect of Employment and Occupation in 1960. Over 100 countries ratified these measures. In 1975 the UN launched the Decade for Women, a ten-year effort to focus on women's issues. From 1975 to 1985 international groups formed a series of conferences organized around the themes of equality, development, and peace. The conferences took place

throughout the world and drew leaders and delegates from developing and industrialized nations alike. Until these conferences, most international women's groups had consisted of middle-class or upper-class women from industrialized countries. The Decade for Women culminated in the 1985 UN Nairobi Conference, held in Nairobi, Kenya, which was attended by 375 delegations of women from nations around the world.

The United Nations' Fourth World Conference on Women was held in Beijing, China, in 1995. Over 17,000 people registered for the event, including delegates from nearly 200 countries. The Platform for Action that emerged from the conference focused on the removal of obstacles to women's equal participation in society. The most controversial sections of the platform concerned reproductive rights, particularly the right to have an abortion. The final document declared that "the ability of women to control their own fertility forms an important basis for the enjoyment of other rights," and asserted the right of women and men to have access to all legal methods of fertility regulation.

1.5 Women's Rights Today

In recent decades women around the world have made strides in political participation. By the 1980s women could vote virtually everywhere in the world, except for a few Muslim countries. As of mid-2005, when women in Kuwait won suffrage, women could vote in all countries where men could vote except Saudi Arabia. The right to vote usually included the right to run for elected office. In 2005 there were 12 female national leaders in the world, including 8 heads of state (3 monarchs and 5 presidents) and 4 heads of government (prime ministers). In 2005 women made up almost 16 percent of legislative bodies worldwide, compared to 11 percent in 1999 and 9 percent in 1987. Despite these advancements, women's role in governmental decision-making remains limited.

Many disparities persist between women's legal rights and their economic status. Women today constitute nearly 70 percent of the world's poor, despite international efforts to compensate women and men equally in the workplace. While women made up about 32 percent of the world's labor force in 1990, the percentage of women in positions to make important decisions was far lower. In 2002 women held only 15.7 percent of corporate

executive positions in the 500 largest companies in the United States—an increase of 7 percentage points since 1995. In the mid-1990s women comprised only 1 percent of executives in the 1,000 largest corporations outside the United States.

Women remain at a distinct disadvantage in education as well. While primary school enrollment for girls now roughly equals that of boys, women constitute about two-thirds of the world's one billion illiterate adults. Of the more than 100 million children who drop out of school before completing the fourth grade, two-thirds are girls. On the other hand, women are entering colleges and universities in increasing numbers. In Eastern Europe, Latin America, and the Caribbean, more women than men enrolled in institutions of higher education during the 1990s.

Reproductive rights for women vary greatly from country to country. Contraception is available in most countries, with the exception of a few fundamentalist Islamic nations, such as Iran. However, women in many countries are too poor or uneducated to obtain effective birth control. Abortion is legal under specific circumstances in many industrialized Western nations. Some countries with severe overpopulation have the most liberal abortion policies. For example, China, which encourages families to have only one child, places no restrictions on when a woman can have an abortion.



Activity – 1

1. Define the concept of women's human right

2. Explain the origin of the movement for women's right

3. Discuss is the current status of women's right in the world

Section – II-Human Rights and the Environment

Overview

Dear distance learner, the previous section threw some light on issues on women's human right. The other issue that has gained momentum to date is the environment. This unit address issues revolving in the environment-human rights nexus.

Section Objectives

Dear students, after successful completion of the lesson in this unit you will be able to

- Identify impacts of manmade environmental damage
- Explain the interrelationships between environment issues and human rights
- Identify definitional problems surrounding environmental rights

? *Is environmental damage caused by mere nature*

Section – III-Gross and Systematic Human Rights Violations

Overview

Dear students, currently, issues of gross and systematic human rights violation were largely heeded internationally. This unit explains thoroughly human right violations and abuses in light of clarifying genocide.

Section Objectives

Dear students, after successful completion of the lesson in this unit you will be able to

- Define human right violations and human rights abuses
- Explain the meaning of gross and systematic Human rights violation
- Identify the meaning of genocide
- Define crimes against humanity

1.1 Human rights violations and Human rights abuses

? *Dear distance learner, what is human right violation?*

Human rights violations include governmental transgression of the rights guaranteed by national, regional and international human rights law and acts and omissions directly attributable to the state involving the failure to implement legal obligations derived from human rights standards. Violations occur when a law, policy or practice deliberately contravenes or ignores obligations held by the State concerned or when the State fails to achieve a required standard of conduct or result. Additional violations occur when a state withdraws or removes existing human rights protections.

All human rights, civil, cultural, economic, political and social-impose three distinct types of obligations on governments: obligations to respect protect and fulfill. The failure of a government to perform any of these obligations constitutes a violation of human rights.

Obligation to respect requires a state to respect their human rights and hence not to interfere with or impair the exercise of these rights. Such states obligation has often been described as negative obligation or as a hands-off obligation.

The obligation to protect involves the protection of human rights against violations of rights by third parties. The obligation to fulfill involves the taking positive measures for the realization of human rights.

The obligation to fulfill contains obligations to facilitate, provide and promote. The obligation to fulfill requires states to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures. The failure of a government to perform any of these obligations constitutes a violation of human rights.

Although the full realization of some aspects of certain rights might only be achievable in a progressive manner, this does not alter the nature of the legal obligations of States, nor does it mean that all rights possess some components which are always subject to immediate implementation.

With specific regard to economic, social and cultural rights, violations can also occur when a state fails to satisfy “minimum essential levels of the rights” found in the ICESCR and thus a state in which “any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is *prima facie*, violating the ICESCR”. such minimum core obligations apply irrespective of the availability of resources in the country concerned or any other actors or difficulties. Any discrimination on ground of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of any human rights constitutes a violation of human rights.

The phrase “human rights abuses” is used as a broader term than “violations”, and includes violative conduct committed by non-state actors.

? *What is then Gross and systematic human rights violation?*

The term 'gross, systematic violations' refers to violations, instrumental to the achievement of governmental policies, perpetrated in such quantity and in such a manner as to create a situation in which the right to life, to personal integrity or to personal liberty of the population as a whole or of one or more sectors of the population of the country are continuously infringed or threatened.

1.2 Genocide

? *Dear distance learner, what is genocide?*

The term 'genocide' was coined in 1944 by the Polish jurist Raphael Lemkin. He referred to the coordinated and planned elimination of national, religious or racial groups by activities directed to undermine the foundations of survival of the group in question. The immediate causes for formulating the term were the Nazi activities to eliminate the Jews.

In 1948, the General Assembly of the United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide. Article II of the convention describes genocide as any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such

- Killing members of a group
- Causing serious bodily or mental harm to members of a group
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- Imposing measures intended to prevent births within the group
- Forcibly transferring children of the group to another group

Though difficult to come across consensus on the notion of 'group', some international instruments (The court in the *Akayesu case*) has adopted a working definition of four groups:

- A national group is defined as a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties
- An ethnic group is defined as a group whose members share a common language and culture.
- A racial group as a group based on the hereditary physical traits often identifies with a geographical region, irrespective of linguistic, cultural, national or religious factors.
- Religion group is one whose members share the same religion, denomination or mode of worship.

The common characteristic of the four groups is that these groups are stable and membership to the group would seem to be normally not challengeable by its members, who belong to it automatically, by birth, in a continuous and often irremediable manner.

Canadian scholars Frank Chalk and Kurt Jonassohn have identified four main types of genocide. These types can be called: (1) ideological, (2) retributive, (3) developmental, and (4) despotic. However, any genocide may have characteristics of more than one of these types.

1.2.1 Ideological Genocide

The Nazi Holocaust, the Armenian massacres, and the Cambodian genocide are examples of ideological genocide. Most often, this type of genocide is committed in an effort to achieve an ideal social structure in which all members of society are alike or hold the same beliefs. Fascism and communism are the major 20th-century ideologies that seek to establish societies based on likeness. In these cases the governments in power instituted

policies that led to mass deaths as part of a plan to achieve a country based on a single racial or ethnic group. The Holocaust, for example, was driven by the Nazi racial theory that Germans belonged to a superior race, which they called Aryans. The Khmer Rouge goal was to eliminate difference. They killed members of minorities—including all ethnic Vietnamese, many educated and urban people, some rural people, and anyone suspected of disloyalty to the Communist regime.

1.2.2. Retributive Genocide

Retributive genocide is undertaken to eliminate a real or potential threat. It is most likely to occur when one group dominates another group and fears its rebellion or when the other group actually rebels. The attempted extermination of the Tutsi in Rwanda by the Hutu in 1994 is one example of this type of genocide. The Hutu tried to maintain control of the government in Rwanda by destroying the Tutsi.

1.2.3 Developmental Genocide

Genocide undertaken for economic gain is known as developmental genocide. A government might use this type of genocide against people native to an area that the government wants to use for building, mining, and other development. An example of this type of genocide occurred in Paraguay in the late 1960s and early 1970s. To allow for the expansion of logging and cattle-raising enterprises in the nation's interior, Paraguay's government collaborated in the forced relocation and execution of an estimated half of the native Indian population.

1.2.4. Despotic Genocide

Despotic genocide is intended to spread terror among real or potential enemies. The killings orchestrated by Ugandan presidents Idi Amin and Milton Obote during the 1970s and early 1980s are examples of this type of genocide. Both Amin and Obote ordered the deaths of hundreds of thousands of Ugandans belonging to groups who had opposed or who they feared might oppose their tyrannical rule.

The United Nations has always been reluctant to employ the term-‘genocide’, as this might rule out negotiations with the government that has been so accused. But in regard to the situation in the former Yugoslavia and in Rwanda the term ‘genocide’ has been used nevertheless.

The prohibition of genocide is a collective human right. Genocide can only be practiced against groups of persons. There can be no doubt that the prohibition of genocide is of fundamental importance to human dignity. It is a human right to be free from elimination as a group.



Activity – 3

1. How is human rights violation and abuse all about?

2. Explain the meaning of gross and systematic human rights violation

3. Discuss on meaning, and type of genocide



Overview

Dear students, as shown in the previous sections it is plausible to assert that human right has embraced a number of contemporary issues. It is now worthwhile to have some

understanding about human rights issues in globalization era. This section address those issues.

Section Objectives

Dear students, after successful completion of the lesson in this unit you will be able to

- Define globalization
- Explain human rights in a global arena
- Identify the patterns of human rights impacts of globalization

1.Introduction

? Dear students, what is globalization?

Globalization—the growing interpenetration of states, markets, communications, and ideas across borders—is one of the leading characteristics of the contemporary world. International norms and institutions for the protection of human rights are more developed than at any previous point in history, while global civil society fosters growing avenues of appeal for citizens repressed by their own states. But assaults on fundamental human dignity continue, and the very blurring of borders and rise of transnational actors that facilitated the development of a global human rights regime may also be generating *new* sources of human rights abuse. Even as they are more broadly articulated and accepted, the rights of individuals have come to depend ever more on a broad array of global actors and forces, from ministries to multinationals to missionaries.

Globalization is a package of transnational flows of people, production, investment, information, ideas, and authority (not new, but stronger and faster). Human rights are a set of claims and entitlements to human dignity, which the existing international regime assumes will be provided (or threatened) by the state. A more cosmopolitan and open

international system should free individuals to pursue their rights, but large numbers of people seem to be suffering from both long-standing state repression and new denials of rights linked to transnational forces.

The challenge of globalization includes unaccountable flows of migration and open markets present new threats, which are not amenable to state-based human rights regimes, while the new opportunities of global information and institutions are insufficiently accessible and distorted by persistent state intervention. Globalization is an ensemble of developments that make the world a single place, changing the meaning and importance of distance and national identity in world affairs

? Dear students, what are the effects of globalization?

Optimists suggest that transnational integration will empower citizen challenges to state power, while revisionists assert that globalization reiterates national and/or market exploitation. One attempt to resolve this debate delineates good and bad forms of globalization; "globalization from above" versus "globalization from below." Another set of scholars contend that a deeper process of globalization has transformed the fundamental forms of world politics through changing identities, evolving social forms such as networks, and the diffusion of an increasingly influential world institutional culture that includes support for human rights or at least democracy.

The emergence of an "international regime" for human rights (Donnelly 1986), growing transnational social movement networks, increasing consciousness (Willetts 1996), and information politics have the potential to address both traditional and emerging forms of human rights violations. Beyond this interaction of new solutions with old problems, *new* human rights problems may result from the integration of markets, the shrinking of states, increased transnational flows such as migration, the spread of cultures of intolerance, and the decision-making processes of new or growing global institutions.

1.1 Human Rights in a Global Arena

Human rights are a set of universal claims to safeguard human dignity from illegitimate coercion, typically enacted by state agents. These norms are codified in a widely endorsed set of international undertakings: the "International Bill of Human Rights" (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Social and Economic Rights); phenomenon-specific treaties on war crimes (Geneva Conventions), genocide, and torture; and protections for vulnerable groups such as the UN Convention on the Rights of the Child and the Convention on the Elimination of Discrimination against Women.

International dialogue on human rights has produced a distinction between three "generations" of human rights, labeled for their historical emergence. Security rights encompass life, bodily integrity, liberty, and sometimes associated rights of political participation and democratic governance. Social and economic rights, highlighted in the eponymous International Covenant, comprise both negative and positive freedoms, enacted by states and others: prominently, rights to food, health care, education, and free labor. More recently discussed collective rights may include rights such as membership in a cultural community and access to a healthy environment . These "generations" of rights often involve different sets of actors and different levels of state accountability.

While the origins of the international human rights regime, U.S. foreign policy, NGO monitoring, and much previous scholarship have focused on security rights, this project will entertain a broader conception of linked political, social, and cultural rights grounded in the Universal Declaration. A focus on security rights may be desirable for clarity and manageability, as well as because security rights of life and freedom are "basic" or enabling rights that make the pursuit of other rights possible. However, human rights claims have an inherently expanding character, which requires the consideration of every type of threat to human dignity under a range of changing social conditions. Thus, both

liberty and survival may involve social issues, such as the right to free labor and to organize for better labor conditions.

Some vulnerable groups, notably women and indigenous peoples, may face linked threats that emanate from public and private actors, and seek cultural freedoms to meaningfully participate in civic life. Furthermore, the very process of globalization blurs distinctions among categories of rights: humanitarian intervention seeks to rescue ethnic groups, women working as prostitutes are beaten by police for "bothering tourists" to feed their children, and rights to privacy and expression collide on the Internet .

Human rights values derive from and are justified by reference to philosophical constructions of human nature, cultural and religious traditions, demands from civil society, and international influence. In practical importance, the latter two political factors are the most important source of human rights in the contemporary world. Accordingly, despite frequent violations in practice, international consensus has implanted human rights as a nearly universal vocabulary of debate, aspiration, and civic challenges to state legitimacy.

Analysts of human rights have identified a variety of psychological, social, economic, and political patterns that put societies "at risk" of human rights violations. These generally include authoritarian government, civil war, strong ethnic cleavages, weak civil society, power vacuums, critical junctures in economic development, and military dominance . Above all, the study of human rights teaches us that human rights violations usually reflect a calculated (or manipulated) pursuit of political power, not inherent evil or ungovernable passions .

? Is globalization a contributing factor for human rights violation?

The effect of globalization on state-based human rights violations will depend on the type of state and its history. In newly democratizing countries with weak institutions and elite-controlled economies (Russia, Latin America, Southeast Asia), the growth of global markets and economic flows tends to destabilize coercive forces but increase crime, police abuse, and corruption. Global mobility and information flows generally stimulate ethnic mobilization, which may promote self-determination in responsive states but more often produces collective abuses in defense of dominant-group hegemony.

On the other hand, the same forces have produced slow institutional openings by less fragmented single-party states (like China and Mexico). In much of Africa, globalization has ironically increased power vacuums, by both empowering sub-state challengers and providing sporadic intervention, which displaces old regimes without consolidating new ones. Some of the most horrifying abuses of all have occurred in the transnationalized, Hobbesian civil wars of Sierra Leone, Angola, and the Congo.

But the literature on human rights has also moved beyond the conventional wisdom that situated human rights violations and remediation predominantly within the state, to suggest ways in which globalization creates new opportunities to challenge the state "from above and below" . Human rights research has produced both evidence of new capabilities for monitoring, pressure, and sanctions, along with reports of new types and venues of abuse. In general, analysts of globalization find that states' international integration improves security rights, but increases inequality and threatens the social rights of citizens.

However, neither economic development nor economic growth in and of themselves improve human rights performance (Amartya Sen). In addition to globalization and growth, findings on the effectiveness of international pressure on state human rights

policy suggest that target states must be structurally accessible, internationally sensitive, and contain local human rights activists for linkage.

There is little systematic evidence available on the overall human rights impact of *global* flows and actors, and that which does exist is often contradictory. For example, quantitative studies that demonstrate improved security rights where MNCs (multinational corporations) are present, contrast with case studies documenting multinational reinforcement of state coercion and labor suppression. Other scholars suggest that the impact of multinationals depends more on their type of production, customer base, or sending country than their globalizing nature. Similarly, some studies indicate that even within "economic globalization," different types of global economic flows at different times will have different impacts on democracy and human rights.

There is some basis for believing that new global human rights mechanisms, such as transnational NGO campaigns, may be particularly effective against transnational actors like multinationals. Analysts argue that transnational human rights threats can be most easily met by transnational human rights campaigns, since it is easier to access transnational actors than repressive states, transnationals cannot cloak their abuses in sovereignty rationales, global elites are increasingly amenable to "rights talk," and global civil society can provide local linkages for transnational networks. Researchers suggests that the human rights impact of globalization depends on three types of factors: the type of globalization involved, the level of analysis addressed, and the type of state that is filtering globalizing flows.

Researchers examine the human rights impact of globalization *across* states and conclude that transnational flows and institutions are constructing evolving responses to "the most obstreperous actor" (still usually a state). By contrast, others distinguish globalization *above* and *below* the state, attributing threats mainly to unaccountable transnational market forces and institutions, partly combated by the struggles of grassroots global civil society. Researchers introduce the missing element of globalization *through* the state, which they find highly problematic for social rights, in ways that also reiterate the

distinction between different streams of globalization and their differential effect on rights.

These levels of analysis overlap with the streams of globalization. Global mobility operates across and through the state, and the rights impact is generally more positive across and more negative through—researchers suggest that policing creates more violations than migration itself. Global markets may be across (financial flows), above (multilateral trade and financial institutions), through (economic adjustment), or below (grassroots protests, shifts in local production or consumption). This is part of the problem in assessing the contradictory effects of markets on rights.

Global information is predominantly across and below the state, hence it tends to facilitate rights unless bottlenecks develop through or above the state. Finally, global governance appears as the paradigm of globalization from above.

Finally, analysis indicated that the human rights impact of globalization is filtered through the type of receiving state. Much of the literature on globalization has overlooked the effect of globalization on the state; globalization has produced a new "globalized state"—changing rather than eroding sovereignty. As some scholars have argued, power is moving from weak states to strong states, from all states to markets, and away from state authority entirely in certain domains and functions. At the same time, the state is the main administrator of globalization. As one partisan of globalization puts it, globalization means that the quality of the state matters *more*, since the state is "the operating system for global capitalism". Thus, the struggle for human rights in a global era is now from above, from below—and still through the middle.

In the security sphere, states respond with increased repression to fragmentation, transnationalized civil war, and uncontrolled global flows such as migrants and drug trafficking. Transborder ethnic Diasporas help inspire civil conflict, while the global arms trade provides its tools. Even extreme civil conflicts where states deteriorate into warlordism are often financed if not abetted by foreign trade: diamonds in the Congo and Sierra Leone, cocaine in Colombia.

While non-state actors like insurgents and paramilitaries pose increasing threats to human rights, state response is a crucial multiplier for the effect on citizens. Since all but the most beleaguered states possess more resources and authority than rebels, they can generally cause more damage—and human rights monitoring in a wide variety of settings from Rwanda to Haiti attributes the bulk of abuses to state (or state-supported) forces. States also differ in their ability and will to provide protection from insurgent terror campaigns (like that in Algeria).

Global economic relationships can produce state policies that directly violate social and labor rights and indirectly produce social conflict that leads to state violations of civil and security rights. While globally induced economic adjustment may cut state services and intensify poverty and protest, global windfalls of wealth may also underwrite repressive and predatory states, as in Angola, where oil revenues have fueled repression and civil war (Harden 2000). It is states that largely determine labor rights and security response to labor dissidence; states also regulate multinationals, certify unions, and form joint ventures with global investors.

Just as globalized states may present new threats alongside long-standing patterns of repression, globalization offers states declining opportunities to serve as a source of human rights protection. Increasing numbers of residents of increasing numbers of states are less than full citizens. Over 25 million people are international refugees, while an estimated similar number are economic migrants—mostly undocumented and generally lacking civil rights.

Meanwhile, alongside people who are not citizens, states have diminished capacity to control the conditions of citizenship—even for those securely inscribed within the juridical and social status. Observers of states undergoing both political and economic liberalization decry the emergence of "delegative democracy," which is characterized by "low-intensity citizenship". More and more legal citizens lack effective accountability for power relationships; their lives depend on distant investment decisions, organizational resolutions, religious edicts, and information campaigns. "Economic liberalization is exacerbating the gap between rich and poor within virtually all developing regions. At the

same time, other elements of globalization are increasing the inequalities of political power and influence, as well as highlighting new dimensions of inequality. For one group of countries globalization is eroding the cohesion and viability of the state. These global forces are often translated into local conditions in opaque ways, which deepens the gap of information, knowledge, and control further. Since migration is the transnational flow with the strongest claim to state control, it is interesting that Maher and Cabezas each note a "citizenship gap" both for aliens to developed countries and citizens of developing countries (vis-à-vis tourists).

Beyond these general trends of accelerating threats and declining opportunities, the impact of globalization on human rights conditions differs in different types of states. Many analyses of transnationalism suggest that the impact of global forces on various issue-areas is filtered by domestic characteristics—even straightforward economic effects depend on a state's factor endowments, economic institutions, and policies. One scholar outlines a general pattern of types of states with different patterns of international interaction: pre-modern, Westphalian modern nation-states, and postmodern, with the former and latter departing significantly from standard scholarly assumptions of sovereignty, anarchy, and self-help.

We can further develop these distinctions, and the tendencies of different types of globalizing states for human rights performance and the citizenship gap. First, in collapsing and "failed" states such as large sectors of Africa, foreign aid and international organizations often simultaneously prop up power vacuums and assist victims. Globalization brings increased market flows and weak intervention, but little accountability and no definitive governance. Here, the citizenship gap is most severe, as victims lack control at the community, state, and international level.



Activity – 4

1. Define globalization

2. Discuss on human rights on global arena

3. Identify the effects of globalization on human rights

Unit Summary

Dear students, the unit has outlined major issues related with human rights that are prevailing presently. Women's rights are being considered as human rights. Women's rights are rights that establish the same social, economic, and political status for women as for men. The Environmental implication of human rights is also noteworthy. The enjoyment of all human rights is closely linked to the environmental issue. Not only rights to life and health in the first place, but also other social, economic, cultural, as well as political and civil rights, can be fully enjoyed only in a sound environment. More recently, human rights violations and human rights abuses mainly in the form of genocide have gained wider attention. Things have gone much complicated after the ever-rising interdependence of the world through the forces of globalization.

☒ Check List

Direction: *Dear students this is the section in which you confirm your understanding of the lessons in this unit. Put a tick mark (✓) in the yes column for activities that you have clear understanding and in the no column for activities that you doubt that you have good understanding.*

<u>I Can:</u>	Yes	No
▪ Explain the relationship between human rights and women	<input type="checkbox"/>	<input type="checkbox"/>
▪ Understand the interplay between human rights and the environment	<input type="checkbox"/>	<input type="checkbox"/>
▪ Define gross and systematic human rights violations	<input type="checkbox"/>	<input type="checkbox"/>
▪ Identify the impact of globalization on human rights	<input type="checkbox"/>	<input type="checkbox"/>

Self-Test Exercise

General Direction: Try to answer all of the following questions.

Part I. Choose the best answer

1. Which nature of human rights would be compromised when ‘women are not treated as a human being’?

- | | |
|-------------------|-------------------|
| A. Universality | C. Indivisibility |
| B. Inalienability | D. All |

2. The effect of globalization on state-based human rights violations depend on__

- | | |
|-------------------------|--------------------------------------|
| A. The type of state | C. The nature of states institutions |
| B. The history of state | D. All |

3. ____is typically intended to spread terror among real or potential enemies.

- | | |
|-------------------------|-------------------------|
| A. Despotic Genocide | C. Retributive Genocide |
| B. Development Genocide | D. Ideological Genocide |

4. All human rights but one is closely linked to environmental issue

- | | |
|------------------------|-----------------|
| A. The right to life | C. Civil rights |
| B. The right to health | D. None |

5. Why J. S. Mill asserted that ‘Utilitarianism thought was flawed’?

- A. It failed to take into account environmental issues
- B. It failed to take into account of people’s emotions
- C. It failed to take into account equality for women
- D. B and C

6. Genocide undertaken for economic gain is called

- | | |
|----------------------|-------------------------|
| A. Despotic Genocide | C. Retributive Genocide |
|----------------------|-------------------------|

B. Development Genocide

D. Ideological Genocide

7. Which of the following is/are true?

A. The worse the environment becomes, the more impaired are human rights

B. There is only one way relation between the environment and human rights

C. The worse the human rights becomes, the more damaged are the environment

D. All

8. The prohibition of genocide is_____right

A. Individual

C. Collective

B. Social

D. None

9. Which of the following is/are not true about 'The right to an adequate environment'?

A. It is Third-Generation rights

B. It is not human right

C. It is also called solidarity right

D. All except 'B'

10. Which of the following is an act of genocide according to the General Assembly?

A. Killing members of a group

B. Imposing measures intended to prevent births within the group

C. Causing serious bodily or mental harm to members of a group

D. All

True or False

- _____ 1. Genocide is the coordinated and planned elimination of national, religious or racial groups.
- _____ 2. The emergence of an international regime for human rights for human rights and growing transnational social movement networks have the potential to address emerging forms of human rights violations.
- _____ 3. The concept of women's human rights is simultaneously prosaic and revolutionary.
- _____ 4. The right to an adequate environment stipulates that all people shall have the right to a general satisfactory environment favorable to their development
- _____ 5. Human rights abuse is synonymous with human rights violation

Part III Short answer

- 1. What are the impacts of globalization on human rights?
- 2. Explain how an environmental right is considered as human rights?

UNIT FIVE

HUMAN RIGHTS AND HUMANITARIAN ASSISTANCE

★ Introduction

Dear distance learner, human right protection is no longer the sole mandate of a nation state. In the aftermath of the Second World War that caused untold miseries to humanity, there began an international movement calling for the international protection of human rights. Thus, in the first section of this unit, you will be dealt with the meaning, history and principles of humanitarianism. Section two underlines the apparent relationship between international humanitarian law and international human rights law. In section three, focus will be placed on issues hovering over humanitarian intervention and human security. Section four will be focusing on the humanitarian/political divide. In the last section, you will be informed about the interplay between and among state failure , sovereignty and humanitarian intervention.

Unit Objectives

Dear students, after successful completion of the lesson in this unit you will be able to

- Understand the meaning, history and principles of humanitarianism
- Explain the relationship between international humanitarian law and international human rights law
- Discuss issues hovering over humanitarian intervention and human security
- Analyze the humanitarian/political divide
- Analyze the interplay of State failure, Sovereignty and humanitarian intervention

☀ Pre test Questions

- How do you define humanitarianism?
- Can you explain the apparent relationship between international humanitarian law and international human rights law?
- Are humanitarian interventions free from politics?
- What relationship do you think exist between or/and among state failure, sovereignty and humanitarian intervention?

Section one- The Meaning, History and Principles of Humanitarianism

★ **Section Overview**

Dear distance learner, in the previous subsequent units, attention was placed on the mere concept of human rights. In this section, however you will be acquainted with the meaning, history and principles of humanitarianism

Section Objective

Dear students, after successful completion of the lesson in this section you will be able to

- Define humanitarianism
- Explain the historical genesis of humanitarianism
- Identify the basic principles of humanitarianism

1.1. The Meaning of Humanitarianism and humanitarian Intervention

In its most general form, humanitarianism is an ethic of kindness, benevolence and sympathy extended universally and impartially to all human beings. Humanitarianism has been an evolving concept historically but universality is a common element in its

evolution. No distinction is to be made in the face of human suffering or abuse on grounds of tribal, caste, religious or national divisions

Humanitarianism is an ethic of active compassion, which became expressed in philanthropy and social welfare. From an exclusive concern with charity, humanitarian action was led increasingly to vindication of the respect owed to the individual human being. This idea, originating in stoic natural law, became, in its Christian and secular manifestations, an important influence in European thought. Not immediately, but eventually, denial of the spiritual equality inhering in every human being became the touchstone of 'wrongness' in humanitarian action.

? *Dear students, what is humanitarian intervention?*

Dear distance learner, there are two fundamentally different paradigms of activities that have been termed 'humanitarian intervention'. The first, the 'classic' paradigm involves the use of force by one or more states in the territory of another for the declared purpose of protecting the latter's people from human rights violations. But even within this basic paradigm, different commentators view what constitutes a humanitarian intervention differently. Some view it broadly, as the use of force by one state in another state to protect anyone, including its own citizens from human rights violations. Other would restrict it to actions involving the use of force by one state in the territory of another in order to protect indigenous populations and would define acts intended to protect nationals of the intervening state as acts of self-defense, not 'humanitarian intervention.'

The second paradigm of activities defined, at least by some as acts of humanitarian intervention are those that involve the direct provision of humanitarian services (e.g. medical care, food, shelter) in the territory of other nations without the consent of the recipient nation. Such activities may be undertaken either by a state or non-state actors- examples would be the intervention of the International Committee of the Red Cross (ICRC) or Doctors Without Borders in a nation suffering a humanitarian crisis, without

the explicit consent of host states. Such activities fall under the definition of humanitarian intervention, supporters argue, because they involve the intervention of outside parties in a state without its consent, with the stated purpose of preventing human rights abuse and alleviating a humanitarian crisis.

1.2 Evolution of Humanitarianism

? *Dear students, how did humanitarianism start?*

The universality of Humanitarianism is exemplified in one of the first statements of the ethic, the New Testament parable of the Good Samaritan. The answer to the lawyer's question -- 'And who is my neighbor?' is that 'your neighbor' is anyone in need who you can help.

The Enlightenment advanced the idea that humanity could be improved by reform of laws and change in social structure. This idea combined with the humanitarian ethic of active compassion. Both became the impelling influences upon humanitarian social action from the 18th century.

Humanism is associated with the Renaissance and the revival of classical learning which took place in the 15th century. This cultural and educational strand is not part of Humanitarianism but both Humanitarianism and Humanism share a common view as to the importance of 'Man'. Unlike Humanitarianism, humanism tends to exclude any religious basis for that importance. A major difference is that Humanism was not impelled to engage in action to protest abuses or move collectively for the relief of human suffering. Nevertheless, in so far as the Renaissance was a precursor to the Enlightenment, humanism and humanitarianism shared the value of autonomy, articulated in the Enlightenment, and both equally rejected superstition as a justification for socially approved cruelty.

In the 18th and 19th centuries the ethic of active compassion coalesced with other ideas and the interaction resulting from this turned humanitarianism in the direction of reform

These accompanying ideas were: rationalism, individualism and of the concept of social and legal reform.

1.2.1 The Idea of Social Reform

The Enlightenment idea of reform combined with the ethic of active compassion to inspire the social action of the humanitarian movement. It was explained that the humanitarian movement was a product of the influence of rationalism upon Puritanism. “The rationalist movement had shaken the persecutor’s sword from the hand of faith and religion had been to school with her rival reason.

The reformers diverged widely in their underlying beliefs but were united in their humanitarianism. Thus the Christian individualism of the Quakers, that each person shares the ‘inner light’-and the Arminianism of the Evangelicals were both differently based from the Lockean or Kantian individualism or a Utilitarian, but all recognized the equal moral significance of the human person and that the disregard of it was wrong. What also united them was the new idea of reform to remove those wrongs. Therefore, in many of the major areas of humanitarian reform, Christians and rationalists worked together: in the case of slavery.

The idea that humankind could be improved by deliberate social change as distinct from the conferring of charity and the doing of ‘good works’ was relatively new. For all intents and purposes social and legal reform was a product of the Enlightenment. Its origins lay in the belief in the dominance of reason and that ‘Man’ was perfectible, if only the social conditions in which he or she lived would allow it.

Most Enlightenment thinkers believed ‘man’ to be fundamentally good: “he was once free but is now everywhere in chains”. Voltaire in his Portable Dictionary said that “it is want that subjects one man to another.” Mankind would be perfected by knowledge – hence the great Encyclopaedia of Diderot and D’Alembert. Helvetius (1715-1771) made this philosophy very popular. He believed human character to be a product of social environment. The chief instruments enabling this to be done would be education and

legislation. There thus grew up the demand for legal reform. If 'laws are good, morals are good' said Diderot.

Reform distinguished the humanitarian movement from charity and philanthropy. Speaking of the charitable and philanthropic institutions of the 19th century industrial era, Ernst Troeltsch said, "their aim was a new spirit, not a new society." Christian philanthropy tended to deprecate reform as political. For the humanitarian movement, however, removal of the abuse causing suffering was the essence. The goal in almost every field of action undertaken by the humanitarian movement required changed social conditions and in many instances this could only be brought about through legislation.

1.2.2 Individualism

The question arises as to the basis for the humanitarian movement's claim of 'wrongness' in the social conditions which it sought to eradicate or reform. The criterion of wrongness was not cruelty. It is true cruelty was often a manifestation of the social abuse or 'wrongness'. Public reaction to cruelty was often vital to the mobilization of social action. But it was not the criterion. If, in the case of slavery, it had been otherwise, the movement would have been satisfied with improved treatment of the slaves. Historically, both in ancient Rome and in the southern states of America, many masters and their families were kind to their slaves and in late Rome and southern America, laws were in force prohibiting maltreatment of slaves. But this was never the aim of the humanitarian movement. It sought the abolition of slavery not its amelioration. The institution was wrong. It was wrong even if no slave were suffering cruelty in the ordinary sense of the term. It was wrong because by virtue of the institution of slavery the master was able to subjugate the freedom and autonomy of another human being.

The principle of European individualism upon which the humanitarian movement was based was that every human being was of equal moral significance and it was the disregard of that moral significance which constituted the abuses against which the movement was directed. European individualism can be traced to the Greeks. It was the stoics, who like Aristotle, attributed significance to the human soul; but who, unlike

Aristotle, considered every human being equal in that significance. Natural law, as the stoics conceived it, was based upon this principle of spiritual equality. Positive law was subject to the law of nature and, hence, uniquely to the ancient world, the stoics opposed slavery.

Medieval Christianity both conserved and transformed the ideal, largely limiting equality to the capacity of each believer to attain posthumous salvation. In 18th century Enlightenment Europe, the individualistic idea of the equal moral significance of the individual in ‘this-world’ re-emerged grounded upon reason and personal autonomy, not upon the equal capacity to escape damnation in the next world.

It was the disregard of moral significance in this sense which constituted the ‘wrongs’ identified by the humanitarian movement and justified social action in the case of slavery, the maltreatment of the working class in the 19th century; the brutality of criminal punishments and the use of torture in the criminal justice system; the treatment of the insane; the subjection of women to an inferior status and the inhumanities of colonialism.

Prevention of cruelty to animals involved an extension of the principle to non-human animals. The stoics had grounded moral significance on capacity to reason. St. Paul and St Augustine reflected this view and it became part of the Catholic tradition. But animal nature, however perfect, is far from representing the human being in its completeness, and it is in truth humanity’s humble hand maid, to serve and obey”. The humanitarian movement attributed moral significance to non-human animals and sought the introduction of laws to protect them.

1.3 The Core Principles of Humanitarianism

? *Dear students, what are the core principles of humanitarianism?*

There are many principles of humanitarianism. The following are among the most important ones:

1.3.1 Relieve life-threatening suffering

Humanitarian action should be directed towards a relief on immediate life-threatening suffering. Rather than acting on humanitarian concern, the international community frequently allows its response, or non-response to be influenced by other considerations. For instance,

- The injection of political agenda may motivate the type of response or non-response
- Bureaucratic inertia-Governments also tend to be lethargic in the face of human cataclysms.

1.3.2. Proportionality to need

Humanitarian action should correspond to the degree of suffering, wherever it occurs. It should affirm the view that life is as precious in one part of the globe as another. This idea of proportionality seems self-evident and unobjectionable.

1.3.3. Non-Partisanship

Humanitarian action responds to human suffering because people are in need, not to advance political sectarian or other extraneous agendas. It should not take sides in conflicts.

1.3.4. Independence

In order to fulfill their mission, humanitarian organizations should be free of interference from home or host political authorities. Humanitarian space is essential for effective action.

1.3.5. Appropriateness

Humanitarian action should be tailored to local circumstances and aim to enhance, not supplant, locally available resources. Considerations of appropriateness require using humanitarian initiatives to strengthen local capacity while taking into account local cultural characteristics that don't contradict international norms.

1.3.6. Contextualization

Effective humanitarian action should encompass a comprehensive view of overall needs and of the impact of interventions. Encouraging respect for human rights and addressing the underlying causes of conflict are essential elements.

1.3.7. Accountability

Humanitarian organization should report fully on their activities to sponsors and beneficiaries. Humanitarian activities should be transparent.

1.3.8. Subsidiary of sovereignty

Where humanitarianism and sovereignty clash, sovereignty should defer to the relief of life threatening suffering. This principle is undoubtedly the most controversial. In today's world apparently, the centuries old doctrine of absolute and exclusive sovereignty no longer stands and was in fact never so absolute as it was conceived in theory. This new openness at the international level to attach greater relative importance to humanitarian imperatives has not made itself felt uniformly among governments, nor have new procedures been devised to translate those imperatives into political action.



Activity – 1

1. Define humanitarianism and humanitarian intervention

2. Discuss on the historical evolution of humanitarianism

3. Identify the basic principles of humanitarianism

★ Section Overview

Dear student, the apparent interplay between human rights and humanitarianism has been contentious to date. Today there can no longer be any doubt that international humanitarian law and international human rights law are near relations. In this section therefore you will be acquainted about the relationship between international humanitarian law and international human rights law.

Section Objective

Dear students, after successful completion of the lesson in this section you will be able to

- Distinguish between humanitarianism and human rights
- Define international humanitarian law
- Explain relationship between international humanitarian law and human rights law

? *Dear students, what is the relationship between humanitarianism and human rights?*

Humanitarianism and Human Rights are closely associated. Both movements are grounded upon the moral significance of the individual human being. However, compassion and the alleviation of suffering are not necessary in order to give effect to a human right; and thus that original and basic element in humanitarianism forms no part of 'Human Rights'. The question though, in relation to humanitarian reform, is whether the denial of a human right and the abuses which humanitarians seek to reform, are generically the same or differ and, if so, in what way.

Humanitarianism did not campaign against abuses on the ground of human rights but in the name of humanity. The wrongs which the Humanitarian movement addressed related

to violation of moral duties imposed upon State or Society in relation to the treatment of human beings. These duties are substantially unqualified and do not depend upon the consent or absence of consent of persons affected. Thus, under international law slavery and the slave trade are absolutely prohibited. There is no emergency or other exception. Torture is similarly absolute. A 'right', in the strict sense, requires a 'right-holder'. It is the negation of a right if the person advantaged has no option whether to make or decline to make a moral claim. The duty consequent upon a right may not arise until the right has been exercised. The moral claims of slaves and of forced labourers exist independently of their objection. Slavery, torture, cruel punishments cannot be absolved by consent.

Indeed, the word “humanitarian” has become associated with all that is humane and positive. Like human rights, it implies helping those in need. In the case of humanitarianism specifically, and to distinguish it from human rights, this need has been constructed around helping victims. Humanitarian action may, for example involve helping victims of natural disasters, as in the recent operations in Central America. Our concern here, however, is more specifically with helping victims in times of armed conflict. It is important to remember that international humanitarian law comprises the laws of war. So the humanitarianism we are focusing on is specifically linked to violence. Without war, there would be no humanitarian law; without war, there would be no humanitarian space.

1.2 International Humanitarian Law

? Dear Students, what is International Humanitarian Law?

International Humanitarian Law (IHL) can be defined as the branch of international law limiting the use of violence in armed conflicts.

This definition leads to the basic principles of IHL

- the distinction between civilians and combatants;
- the prohibition to attack those hors de combat;

- the prohibition to inflict unnecessary suffering;
- the principle of necessity; and
- the principle of proportionality

This definition however also shows the inherent limits of IHL

- it does not prohibit the use of violence;
- it cannot protect all those affected by an armed conflict;
- it cannot distinguish according to the purpose of the conflict;
- it cannot prohibit a party to overcome the enemy;
- IHL presupposes that parties to an armed conflict have rational aims.

1.3 Relationship between International Humanitarian law and human rights law

Many believe that the close relationship between these two areas existed and was perceived “from the outset”. That is not at all the case. Formerly assigned to separate legal categories, it was only under the persistent scrutiny of modern analysts that they revealed the common attributes which would seem to promise many fruitful exchanges in the future.

The relationship between International Human Rights law and International Humanitarian Law (IHL) is one that is very much discussed in the literature. The discussions on the relationship are based on the substance of the two branches of laws and very rarely do they consider the procedural or the enforcement aspect. The discussions, as we can see later, are mainly from the standpoint of the law of human rights and not from that of humanitarian law. Even so, the relationship discussions do not seem to be broad enough as to include the whole aspect of human rights law. It basically focuses on individual rights.

International human rights law is applicable in time of peace, in states of emergency; States are, however, allowed to suspend certain rights, save the non-derogable ones, as a corollary of their sovereignty when circumstances that threaten the life of the nation arise. Such one situation is war or armed conflict.

The laws that are applicable in such situations are both law of armed conflict and the non-derogable aspect of human rights law. Some authorities describe this situation as one of complementarity while others see it as an overlap and still others opine that one is an aspect of the other. There are still other classes of writers who hold that as the two branches of laws are developed in different political sphere, they have substantive differences and yet they converge at some point, particularly after the 1968 Tehran International Conference.

As discussed elsewhere in greater detail, the literature discussing the relationships is diverse. It is, however, summarized here into four categories-complementarity, overlap and convergence between the two and one forming part of the other. These identified four relationships are not the only relations, nor are they a perfect description of the relationships. Because they are not critically examining the relations and because they are made only from the human rights perspective, they do not seem to be well considered and elaborated to the extent that they underline the accomplishments that have been made by International Humanitarian Law. It is not an effort to create competition between the two branches of laws here, but it is an effort to show how the two branches of law are so connected so that one is performing the other's job. In this regard our discussion is focused on both individual rights and group rights as protected by International Criminal Law with a view to bring about better protection of rights.

The discussion from the human rights perspective covers only individual rights. Group rights seem to be nowhere in the discussions. Group rights are highly politicized and in recent years they are excluded from the agenda of the General Assembly. IHL seems to be rescuing the rights of groups through recognition of the new international crimes

against humanity and the crime of genocide. Hence, apart from other immense accomplishments IHL has made in the formative years of international human rights law and beyond, it is still taking the place of human rights law and performing the things that are supposed to be within the purview of the latter.

The relationship between the two branches of laws is such a diverse one that it cannot be dealt with in a section. At this level, our discussion of their relationship is limited to some aspect of international human rights law and again some aspects of international humanitarian law as they appear before the International Criminal Tribunals (ITTS). Those crimes that appear before the ICTs are the crime of genocide, crimes the crime of genocide, crimes against humanity, war crimes, and the crime of aggression (crimes against the peace seem to have been overtaken by the crime of aggression). Arguably, the crimes of aggression and, to some extent, war crimes seem to be within the proper ambit of IHL. The strong connation between the two branches of laws seems to be most clearly seen in respect of crimes against humanity and the crime of genocide.

The three identified major areas of relation between of laws are:

1. IHL existed before human rights law and it protected human rights without bearing the label human rights, a term which is coined later,
2. Mutual influence of the two IHL has contributed to the development of International Human Rights law and is largely responsible for the shape and content of the latter while it also has been influenced by human rights law in its later development and concern, which resulted in increasing overlap and convergences.
3. Even when international human rights law exists, IHL protects certain category of rights, which are found to be highly politicized and not readily prosecutable by human rights law, such as group rights.

The relationship between the two branches of laws is extensively discussed in the literature. Those authorities do not determine the relationships though, in some cases, they employ two or more words having different meaning interchangeably.

The widely discussed relation between the two branches of laws is the complementarily relationship. Many writers opine that the relationship between international human rights and IHL is based on the analysis of the time of application. They contend that almost all international human rights instruments permit derogation from certain rights under emergency circumstances of which is war. During such period, certain rights are suspended to meet the exigencies of the situation. Some authorities held IHL is made precisely for such situations.

Others argued that there are two kinds of reasons for the almost total independence of international humanitarian law from human rights law immediately after the Second World War. The first relate to the genesis and development of the branches concerned. The law of war has its roots in Antiquity. It evolved mainly during wars between European States, and became progressively consolidated from the Middle Ages. This is one of the oldest areas of public international law; it occupies a distinguished place in the writings of the classical authors of this branch. Its international aspect is also emphasized by the contributions of Christianity and the rules of chivalry and of *jus armorum*.

Human rights are concerned with the organization of State power vis-à-vis the individual. They are the product of the theories of the Age of Enlightenment and found their natural expression in domestic constitutional law. The end of the 1940s was when human rights law was first placed beside what was still called the law of war. The question of their mutual relationship within the body of international law can be considered only from that moment. But human rights law was still too young and undeveloped to be the subject of analyses, which require a better-established sphere of application and a more advanced stage of technical development.

The other reasons are institutional in nature. The most important one relates to the fact that United Nations bodies decided to exclude all discussion of the law of war from their work, because they believed that by considering that branch of law they might undermine the force of *jus contra bellum*, as proclaimed in the Charter, and would shake confidence in the ability of the world body to maintain peace. In 1949, for example, the United Nations International Law Commission decided not to include the law of war among the subjects it would consider for codification. This attitude can be understood only in a post-war context; it had already existed in the 1930s. In addition to this there was a certain dichotomy between the ICRC and the United Nations, which was only partly due to the latter's elimination of the law of war from its discussions.

A more profound reason was the ICRC's determination to preserve its independence, a determination which was strengthened by the political nature of the United Nations. Human rights, which were seen as being within the purview of the United Nations and bodies specifically set up to promote and develop those rights, were thus distanced from the concerns of the ICRC, which continued to work solely in the area of the law of war. These institutional factors affected the development of the rules: the United Nations, the guarantor of international human rights, wanted nothing to do with the law of war, while the ICRC, the guarantor of the law of war, did not want to move any closer to an essentially political organization or to human rights law which was supposed to be its expression. The result was a clear separation of the two branches.



Activity – 2

1. Define international humanitarian law

2. Explain the argument forwarded by proponents of the independence of international humanitarian from human rights law

3. Is there a mutual relationship between International humanitarian law and human rights law? Justify

Section Three-Humanitarianism and Human Security

★ Section Overview

Dear students, in the previous section, you have learnt about the relationship between international humanitarian law and human rights. This section however discusses on the interplay between humanitarianism and human security.

Section Objective

Dear students, after successful completion of the lesson in this section you will be able to

- Define the concept of human security
- Identify the importance of human security regimes to protect vulnerable people

1.1 The concept of Human Security

? *Dear Student, what is Human Security?*

As a social construct many interpretations and those who promote it are still struggling to formulate an authoritative and consensual definition. But the idea clearly has roots in the central principle of international humanitarian law-to civilize warfare and to aid its victims.

A more immediate origin of the term is found in the 1994 report of the UN Development programme (UNDP). Human Security appears here as part of a vision for a ‘people-oriented economic development’. While offering an imprecise and controversial definition, the starting point for the UNDP was poverty rather than war-but ‘security’ suggested an escape from them.

However, both physical and economic security are incorporated later. Accordingly, in essence, human security means safety for people from both violent and non-violent

threats. It is a condition or state of being characterized by freedom from pervasive threats to people's rights, their safety or even their lives. Thus, from a foreign policy perspective, human security is perhaps best understood as a shift in perspective or orientation. It is an alternative way of seeing the world, taking people as its point of reference, rather than focusing exclusively on the security of territory or governments.

But, there are no easy answers to such questions as, who is going to provide the security? Specifically, what are the limits of humanitarian intervention? How is security to be provided? Specifically, how can assistance or sanctions be operationalized so as to minimize rather than increase human suffering? When objectives conflict, which interests are to be served?

There are two possible starting points for exploring the substantive core of 'human security'. One is in relation to the security of states, the other in relation to human development.

The UNDP report examines 'human security' in relation to 'human development' drawing on notions of justice that appeared in the development literature in the 1970s. At that time, 'human development' served as a counterpoint to economic and growth-oriented concepts of development, where the objective was to produce material goods and human were viewed mainly as inputs of labor.

By the late 1990s, the notion of 'human centered development' gained momentum. The common core was an emphasis on equity and the need to reduce the number of losers in the development process. Accordingly, 'Human Security' was presented both as an end-state of affairs- 'safety from such chronic threats as hunger, disease and repression and as a process in the sense of 'protection from sudden and hurtful disruptions in the patterns of daily life.

The core of human insecurity can be seen as extreme vulnerability. The central task of a policy inspired by human security concerns would therefore be to protect those who are most vulnerable.

However, the reasons why we are obliged to protect the vulnerable remain controversial. According to contemporary moral philosophers, the rationale lies in our responsibility for the misfortune of others, and the ultimately weak distinction between negative and positive duties (i.e. to refrain from doing something harmful, or to do something beneficial respectively). There are three categories of extremely vulnerable persons.

- Victims of war and internal conflict
- Those who live close to the subsistence level and thus are structurally positioned at the edge of socio-economic disaster and
- Victims of national disaster

1.2 Human Security Regime to Protect the Vulnerable

? *What is the implication of human security to humanitarianism?*

If the essence of human security is reduced vulnerability, policies to this end could be aggregated into a ‘human security regime’ designed to protect categories of extremely vulnerable persons. Hence, the international systems developed to aid the victims of armed conflict and natural disasters are probably most developed, although incomplete.

The present international regime to protect and assist victims of war and internal conflict has largely developed since WWII. There is both an international refugee regime (institutionally centered on UNHCR and normatively on the 1951 convention), and an International humanitarian regime (institutionally centered on the UN humanitarian agencies and the ICRC, and normatively on the 1949 Geneva Conventions and the 1977 Additional Protocols). Recent years have seen an explosive growth in NGOs and other institutions to help both refugees and victims of internal conflicts *in situ*.

Strategies for further strengthening the international regime to protect victims of conflict involve three distinct elements

- Developing norms
- Strengthening institutions (national and international)
- Operationalizing and implementing strategies

Further, norm development entails

- The elaboration and codification of rights, as well as standards for compensations that apply to particularly vulnerable people who are negatively affected by development projects
- The clarification of rights and establishment of safety nets for those most hurt and least able to compensate for losers incurred by structural adjustment policies and
- Similar safety nets for ‘the very vulnerable’ whose income or assets are arbitrarily confiscated by state or local authorities.



Activity – 3

1. Define the concept of human security

2. Explain the contribution of human security regime to humanitarianism

Section Four-Politics in Humanitarian Affairs

★ Section Overview

Dear student, have you ever thought about politics in humanitarian affairs? This section has a lot to say about the humanitarian/political divide.

Section Objective

Dear students, after successful completion of the lesson in this section you will be able to

- Explain the humanitarian/political divide
- Identify the arguments of different school of thought on humanitarianism

1. Politics in Humanitarian Affairs

There has been a recent growth in “humanitarian affairs”. Whether it be in the budgets of organizations specializing in humanitarian matters, the labelling of conflicts as humanitarian crises, concern about humanitarian action, or even the creation of the post of Under-Secretary-General of the United Nations in the new Office for the Coordination of Humanitarian Affairs. There is no question that the word “humanitarian” is much in evidence today as a descriptive term for certain events and activities. At first glance this seems a favourable development. Concern for “humanitarian affairs” like concern for human rights appears to indicate a progressive move towards greater attention to individuals and to their personal safety. Like motherhood and apple pie, greater attention to “humanitarian affairs” is something no one should be against.

? Dear student, what is the relationship between this humanitarian space and war?

If we assume that war and violence are extensions of the political, then we understand the traditional description of humanitarian space as an area separate from the political, and

that this separation is a critical ideological concept that is fundamental to organizations like the International Committee of the Red Cross (ICRC). Impartiality, neutrality and independence are predicated on separating the humanitarian from the political. One acts within the humanitarian space in the midst of, but separate from, the political. In this sense, humanitarian law represents a beacon of hope, order and civility within the barbarity of violence and chaos. The very fact that there can be humanitarian law in a situation such as war is seen as one of the crowning achievements of recent history. To have rules within the breakdown of accepted norms crystallizes man's efforts to overcome his base instincts.

Greater concern for humanitarian affairs would seem to represent an important opening of space for human values and, at the same time, a closing or limiting of the space for other less benign activities. Increasing the humanitarian space has inherent implications for the political and the relationship between them. It seems obvious that space can never be ever-expanding. Therefore, if humanitarian space is increased, or at least concretized, there is less space for the political/violent. The separation of the humanitarian from the political has implications for the occupation of a bounded area. Again, who could be against the expansion of humanitarian space and the limiting of the political/violent?

In order to re-examine this position, and to show why one might be against the extension of humanitarian space, it is necessary to go back to the fundamental premise on which the preceding arguments are based. The separation of the humanitarian from the political involves a long tradition in Western political thought and touches upon basic assumptions about who we are and how we live. From Thucydides to Hobbes, from Machiavelli to Weber, Niebuhr, Morgenthau and Kissinger, there had been a Realist political tradition with deep religious undertones and important political ramifications. The basis of this tradition, perhaps best expressed in the theology of St Augustine, is the notion of a fallen world and the separation of that fallen world from the City of God. Because this world is fallen, the tradition goes, man is limited in what he can achieve without divine assistance. Any human action without intervention, therefore, must be limited in its scope and bound

up in the necessarily “messy” affairs of that which is inherently fallen and evil. In other words, according to the Realist tradition politics must be dirty. Decisions such as the fire-bombing of Dresden and the atomic bombing of Nagasaki and Hiroshima are typical examples of what politicians must do. Ethicists study these cases under the title “the problem of dirty hands”. Any political action in this world, say the Realists, must be tainted since the very arena in which the action is taking place is fallen. And, according to this world view, within this fallen world humanitarianism becomes a tiny, possible opening which much be kept separate from the political.

For humanitarianism, unlike the political, does not involve national interest or power. Humanitarianism is a space that, while not quite divine, is separate from the “messy” affairs of the fallen world. In addition, the greater the interest in humanitarian affairs and the greater the space this occupies, the smaller the space for the political, given the zero-sum game we mentioned before. As Adam Roberts has noted in another context but mirroring this line of reasoning: “The increase in humanitarian efforts in the 1990s contained many elements of idealism, not least a hope that it was part of a larger process whereby the sovereignty of states would take second place to the human rights of citizens”.

All this seems rather obvious and is contained in the assumptions of most of the writing on the political/humanitarian divide. The separation between the humanitarian and the political is sacrosanct; the Realist tradition underlies almost all writing on the humanitarian/political divide. And even if one gets behind simplistic notions of aid agencies stereotyped as non-political, one is left with unsophisticated arguments about how and why the becomes involved in the political, such as the following.

In reality, humanitarian actors are deeply involved in the political sphere. To do their work, aid personnel and human-rights monitors usually require the permission of political authorities, which include entry visas and residency visas and permits. Relief programmes need duty-free entry for supplies, permission to exchange foreign currency,

and authorization to communicate regularly and freely with their respective headquarters. Particularly essential but also especially sensitive in times of armed conflict, aid agencies need access to distressed populations. But what would happen if we began from non-Realist assumptions? That is, what would happen if we began from the assumption that this world is not fallen, and that politics does not exist in a tainted environment? In other words, what if we began from the assumption that the political is not inherently evil, and that the humanitarian should not (cannot) be separated from the political? Or, more to the point, what would happen if we examined the notion that it is a very political move to separate the political from the humanitarian, and that Realism has its own politics?

Philosophically first, and then practically, this is a line of reasoning that has been taken up recently by more and more scholars. Much of the current post-structuralist research in international relations has attacked Realism, pointing out that it is a very particular way of looking at the world which was formed at a particular moment for a particular purpose. Re-readings of many of the canons in international relations such as the works of Hobbes and Machiavelli have opened up new possibilities in a number of areas, but the humanitarian/political divide has not yet been properly problematized.

Humanitarian organizations are not equipped to handle political crises such as civil wars or the collapse of governments. Because “political” organs such as the United Nations General Assembly and the Security Council are unwilling or unable to deal with these situations, a political move has been made to call the situations “humanitarian” and to involve relief organizations in political crises. Indeed, numerous Security Council resolutions since 1989 have addressed humanitarian issues arising from armed conflicts. One reason for the UNSC’s astonishing attention to humanitarian issues is that, in a 15-member body, it is easier to reach agreement on the lowest common denominator of humanitarianism than on more partisan or risky policies”.

Within this policy vacuum, the humanitarian space given to those organizations is

inherently limited since the abnegation of responsibility allows a mixture of activities to take place at the same time. Innumerable discussions about differences between peace-building, peace-making and peace-enforcement highlight the unfortunate situations in which organizations like the ICRC find themselves today when their humanitarian space is not clearly defined. Complex emergencies also call for complex responses, with the humanitarian community playing a limited role. Humanitarian space has traditionally been a limited space within given parameters. If those parameters disappear or are not clear, the humanitarian space does not expand automatically. In fact, without the parameters, that space becomes more diffuse and may even disappear. Part of the re-examination of the humanitarian/political divide is a re-examination of the zero-sum game assumption that the growth of humanitarian space limits the political/violent.

For example, if one examines much of the current literature on complex emergencies, one enters into systemic analyses of the relationship between human rights violations and violence. That is, one enters into mono-causal arguments that can lead certain complex emergency theorists to suggest that aid may in fact be allowing, if not producing, famine. Without going into the details of the argument, what we wish to emphasize here is that attempts to systematize the causes of conflict often lead to dichotomies similar to the Realist paradigm we pointed to earlier. And an organization like the ICRC which begins from a set of principles based on many of those dichotomies may find itself in situations where its efforts are counterproductive for those it is trying to help. In this sense, upholding humanitarian principles is a political move that may undercut the ethical basis of the organization's activities.

That is, by accepting the humanitarian/political divide and accepting mandates for operations called "humanitarian", organizations like the ICRC may in fact be working against their own objectives. Paradoxically, a practical conclusion of the situation we have described is that it may be necessary to limit humanitarian space and reduce humanitarian activities. Our argument is that if the root causes of the conflicts are properly addressed and "response-ability" developed, then when conflicts arise

humanitarian organizations will have limited functions.

For example, for an organization like UNHCR to be involved in rootcause alleviation is to go beyond its major protective function. The fact that the political/economic root causes are not being addressed by the proper organs does not justify expansion of the humanitarian space. As we have argued, diffusing the humanitarian space may cause it to disappear, not to expand. For, as in the case of UNHCR, increasing the humanitarian space gives rise to illusions because of the considerable differences between expectations and capacities, and may prove to be counterproductive to helping victims. Indeed, UNHCR, after an important period of expansion, has begun to scale down its space and to return to its primary objective, namely protection, perhaps indirectly recognizing that it had become a victim of its own success through bureaucratic overreach.

The expansion of the humanitarian space, we would argue, has not been helpful. Although this is counterintuitive, we have tried to show why it is so. The political move of focusing attention on the humanitarian has shifted attention away from the politics at the heart of conflicts and deflected responsibility for some kind of resolution from the proper organizations. It is always difficult for an organization to refuse a mandate, or to say that a particular problem is not its business.

The ICRC has tried valiantly to remain within its basic principles, and to remain faithful to its limitations. Nonetheless, the general increase in humanitarian activity has drawn the ICRC into situations in which its limited, specific mandate has been called into question. That limited role is not the subject of this reflection. Rather, we are concerned here with the original problem of when and where humanitarian organizations are called in. We look forward to the day when the heads of humanitarian organizations will throw the ball back into the court of the proper political organs in a political gesture of self-denial that we feel will be helpful to the victims of abuse.

Those are the “pre-original political decisions”, and a firm denial of the Realist tradition.

For if this world is not fallen, then the ethical can exist, although the decisions will not necessarily be based on some overarching principles and traditions etched in stone. To recognize that the ethical and the political cannot be separated is to recognize the difficulties inherent in living in this world. Much of the writing on humanitarianism is filled with a dangerous idealism of other-worldly dimensions. While people like Robert McNamara can be criticized for ordering bombing raids from Monday to Saturday and then peacefully going to church on Sunday, idealists can work in the same fallen world from Monday to Saturday and attend the same church on Sunday, for they live in a similar Realist world. Idealism and Realism are different sides of the same coin. If we are to move away from the bombings, then we must also move away from the idealism. The separation of the humanitarian from the political is part of a world in which both have specific places through a very particular relationship. Reducing the divide between the two opens up a whole host of new possibilities.

Again, and to be perfectly clear, this reasoning is not meant to deny concern for victims or the difficult ethical/political decisions involved in trying to help. Rather, it is intended to initiate a new debate about the proper relations between people categorized as victims and those people or organizations trying to assist. The categorization of certain activities as humanitarian and others as political with their radical separation has not been helpful for the resolution of conflicts and the eventual targeted aid to victims. A small step in rethinking that categorization would be to understand the ontological nature of the categories and the political moves made to separate the two spheres.

For example, questions faced by the ICRC operationally such as: “Should aid be given to populations which are either supporting aggressors or which are unable to keep aid from aggressors?” are intimately tied to political realities. Helping victims in these situations belies the impartiality and neutrality of visiting prisoners, for example, although choosing not to testify about human rights violations once again places the political in the forefront. The decision not to testify about human rights violations is a very political decision, given legal conventions outlawing certain behavior. The ICRC has clearly

chosen to place certain priorities above others.

These types of operational decisions show the limitations of the political/humanitarian divide and the politics of humanitarian activities. Given the increasing number of those activities, greater transparency in discussing the nature of the decisions would be to everyone's benefit. In order to achieve that, recognition of the politics behind the political/humanitarian divide is a first step which should include a re-examination of what humanitarian can mean. For to re-examine the political/humanitarian divide is not to suggest, that there is no space for humanitarian activities. Rather, it is to place the humanitarian squarely within the political and in so doing to offer greater possibilities not just to victims, but ultimately for a reduction in the number of victims. In order to do that, humanitarianism must be reinvigorated, politically. And this reinvigoration paradoxically includes the implosion of the political/humanitarian divide and the eventual circumscription of humanitarian activities.



Activity – 3

1. Discuss on the arguments forwarded by realists about humanitarianism

2. Explain the criticism forwarded by post-structuralists against realism

3. The relationship between politics and humanitarianism is only one-way. Comment

★ Section Overview

Dear student, this section deals with the apparent interplay between/among state failure, sovereignty and humanitarian intervention.

Section Objective

Dear students, after successful completion of the lesson in this section you will be able to

- Identify the relationship of state failure and human rights
- Explain the link between humanitarian intervention and sovereignty

1.1 The Features of Failed States

The inequalities in living standards and participation in the global economy are a serious political problem in an era of globalization. Some countries have been unable to function at even a minimum standard of basic competence in the globalized economy. The only profitable economic activity in some of these countries is linked to criminal behavior, such as the trade in illegal drugs, smuggling, and extortion of various kinds. Governments that are helpless to stop such activity or to collect taxes to meet basic public service needs are characterized as failed states.

Sometimes failed states can become havens for terrorists and foreign criminals who use them as bases for activities harmful to other governments and their people. These states may also provide safe haven for mercenary forces that conduct raids into neighboring countries. In parts of Africa, for example, where diamonds and other valuable resources attract criminal despots, mercenary armies have been engaged in mass killing to terrorize local populations into giving them what they want. The international arms trade and easy importation of weapons, which allows such behavior, is a serious problem.

While it is universally recognized that states are responsible for human rights condition their jurisdiction, it is less often noticed that this responsibility has two dimensions, one normative and one empirical. Normatively, most people agree that states ought to prevent human rights abuses. Empirically, however, states may not always be able to do so. In weak and failing states, agency loss and the inability to police effectively can lead to abuses by private individuals and rogue agents of the state. This on balance, weak states typically have worse human rights records than strong ones.

There is an implicit tension in the relationship between states and rights: States are simultaneously a threat to human rights and their principal protection. Many states are weak, plagued with corruption and unable to effectively police their territories.

? Dear students, what are the features of weak states? Failing states?

Weak states are those that have difficulty delivering services to citizens, owing to lack of resources, corruption, poor infrastructure and so on. This includes the most basic service: security. Failing states are a subcategory of weak state, in which there is armed opposition to the government. There is also difference between failing states and failed states, where opposition is active in the former and opposition movements have destroyed the central government but have been unable to reconstitute a new order.

1.2 Agency loss, Poor policing and Human Right Violation

The presumption that states are responsible for rights is found on the legal theory of sovereignty. Theoretically, sovereign states have legal supremacy over their territories: No greater authority exists. It has long been recognized that this legal supremacy is fictive in many places. States are not always able to control their own territories or otherwise realize the authority with which they are theoretically endowed. Some others argue, empirically the state must be treated as a variable rather than the constant supposed by legal theory.

One useful way to think about this difference between the state in theory and in practice is through principal and agent theory. Although governments as principals have the authority to give instructions to their agents, agents may or may not comply. If agents fail to accomplish what their principals intend, this is described as agency loss, a central problem in principal-agent theory. Principals may be unable to control the behavior of agents because of information asymmetries or because of conflicting incentives. In the former case, the agent often knows more than the principal and may have incentives to conceal information displeasing to the principal. In the latter case, the agent may want to do things that the principal doesn't want, or may have an incentive that does motivate the desired behavior.

Scholars have insightfully applied principal-agent theory to human rights abuse. They assume that human rights violations are a policy. As with any policy, agents of the state must be given incentives to carry it out. They recognized the problem agency loss, but their major examples of this phenomenon are instances in which principals surrendered control intentionally in order to reward followers or inflict cruelties while denying culpability. For instance, principals may exploit agency loss by creating 'artificial information asymmetries.' Choosing not to know what agents are doing in the expectation that they will likely commit abuses.

Agency loss and poor policing occur to some degree in all countries but most widespread in weak and failing states. In these 'lame leviathans' resources available to pay salaries and monitor employees are limited, encouraging corruption.

1.3 Sovereignty and Human Rights

? *What is the relationship between sovereignty and human rights?*

Protection of sovereignty was at the heart of the formation of the UN. After the turmoil of both the First and Second World Wars, the states that convened to create the UN were determined to save succeeding generations from the scourge of war. The UN Charter

codified and strengthened the existing international system based on the sovereign equality of states in order to reduce the threat of war and international strife.

But the need to protect human rights, it is argued, conflicts with state sovereignty: an argument that has gained momentum in recent years.

Globalization has impacted both the concept of national sovereignty and human right.

? Why is it that the balance has shifted from state sovereignty to human rights?

Externally, the imposition of neo-liberal economic policies and the enforcement of structural adjustment programmes, the opening up of national economies to 'free trade' and the unmitigated exploitation of resources have rendered such nation states vulnerable to the depredation of globalization, better termed corporate globalization. Internally, this has put them at risk of social, structural and economic breakdown; susceptible to conflict over borders; to armed opposition groups: to struggle over resources, to civil wars.

For these reasons, the gap between popular sovereignty and national sovereignty has grown ever larger as nation states either use repression to maintain power against popular will, or collapse into smaller ethnically-defined territories, liable to conflict and instability.

Commentators have attempted to argue that 'humanitarian interventions' are permitted under international law, despite the UN Charter's protection of sovereignty and limitations on the use of force, in several ways. First, all emphasize the importance that human rights are granted in the UN Charter, in treaty law and in international customary law. Article 1(3) of the UN Charter states that one of the purposes of the UN is to 'achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all'.

In addition, Article 2(3) emphasizes that international disputes are to be settled in the furtherance of justice, in addition to values of peace and security. Article 55 states that ‘the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all’ and Article 56 states that ‘All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55’. Therefore, the Charter mandates all members to make a commitment, in co-operation with the UN, to further human rights.

In addition to the provisions of the UN Charter protecting human rights, numerous subsequent multilateral treaties have been implemented protecting human rights which limit the sovereignty of states. These include Conventions on Torture, Genocide, Refugees, Race, Children, Discrimination against Women, and International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. These multilateral conventions, ratified by a super-majority of states, limit the range of permissible actions that a state may take vis-a-vis its own citizens, thereby limiting its sovereignty. Although none of these conventions have a specific provision, allowing for intervention in other states in order to defend the rights protected under them, their clear message is that human rights are a matter of international concern, not purely within the domestic jurisdiction of a state, and that the international community values human rights, at least to some extent, over sovereignty. A super-majority of states have agreed to this new paradigm. All of these conventions, combined with the Universal Declaration of Human Rights (UDHR), have created an evolving customary international law that protects human rights and limits sovereignty and that is binding on all states, whether or not they have ratified existing human rights treaties.

The defenders of humanitarian intervention argue that all of these – UN Charter, multilateral human rights treaties, and customary international human rights law – have created a norm of international legal protection of human rights that is at least as important as the norm protecting sovereignty and the norm of non-intervention. By virtue

of the fact that this norm, of necessity, involves the limitation of state sovereignty, human rights can be seen as being given priority above sovereignty.

Existing international human rights law, it is argued, allows for states to engage in 'humanitarian intervention' because human rights law, being of at least equal, if not superior, importance, provides an exception to the norms of sovereignty and non-intervention. Essentially, 'norms of non-intervention in addition to prohibitions on the use of force are somewhat at odds with the contemporary view that the occasion of human rights abuse provides legal and moral grounds for disregarding the sovereign rights of states'. The solution to this dilemma, supporters argue, has been decided by the international community through the importance that it attaches to human rights – sovereignty must yield to human rights.

The attempt to resolve existing norms of sovereignty and nonintervention with norms of human rights has given rise to at least two different arguments in support of humanitarian intervention. Some holds that international law creates an obligation on states to protect human rights and the international norm protecting sovereignty does not protect actions that involve substantial violations of human rights. Therefore, 'a government that engages in substantial violations of human rights betrays the very purpose for which it exists and so forfeits not only its domestic legitimacy, but its international legitimacy as well.'

Thus, sovereignty can only be justified as long as the basic right to life is preserved. In this sense, sovereignty is limited. Because substantial violations of human rights are not actions covered by international norms protecting sovereignty, interventions to eliminate substantial violations of human rights do not involve violations of sovereignty, but are, instead, actions furthering international norms protecting human rights. Sovereignty has been limited by international human rights law, it is argued, and humanitarian interventions are legal because they do not violate this new conception of state sovereignty. This argument is bolstered, say its proponents, by the series of 'humanitarian

interventions' since the end of the cold war which have been either supported or not directly opposed by most of the international community.

A second argument holds that humanitarian interventions do not violate the provisions of the UN Charter protecting sovereignty and limiting the use of force, regardless of whether international human rights law has changed the notion of sovereignty. Focusing on Article 2(4) of the UN Charter, Simon argues that a 'humanitarian intervention' does not involve the use of force for any of the three prohibited purposes. A humanitarian intervention does not violate the territorial integrity of a state because it does not involve the 'permanent loss of a portion of one's territory'. It does not violate the political independence of a state because it does not involve the permanent abrogation of a state's independence, but merely the elimination of activities that violate human rights. It does not violate the UN Charter because this specifically states that one of its purposes is to protect human rights; in fact, members of the UN must pledge, under the Charter, that they will take actions to promote human rights. Therefore, one does not even need to argue that emerging international human rights law has provided an exception to norms of sovereignty and non-intervention. A humanitarian intervention does not involve a violation of sovereignty or impermissible non-intervention at all and is therefore not covered by those provisions of the UN Charter outlawing the use of force.

Commentators acknowledge that endorsing a right to engage in 'humanitarian intervention' could lead to serious problems if it was used as a pretext for engaging in interventions for self-interested purposes. Therefore, those who argue that humanitarian interventions are authorized under international human rights law have proposed a number of ways to ensure that actions taken under this doctrine are truly humanitarian; that is, not used as a pretext to justify interventions undertaken for other reasons.

One of the more skeptical advocates of humanitarian intervention has suggested nine 'procedural and factual requirements' that would 'form the basis for an appropriate and balanced regime' for 'humanitarian intervention'. The first requirement he suggests is

proof that ‘widespread and grave international crimes, as defined in the Rome Statute of the International Criminal Court, are being committed in a state and that this state supports these criminal activities, acquiesces in them, or cannot control them’. Second, ‘a regional intergovernmental organization’ should give notice to the state that the crimes are occurring, giving it the chance to rectify the problem. Third, the intervening parties must exhaust all non-violent remedies to the problems, including ‘negotiations, political initiatives, [and] non-forcible countermeasures (such as economic sanctions)’.

Fourth, the situation must be brought to the attention of the UN General Assembly and Security Council and the intervening parties must receive explicit authorization from the Security Council, under Chapter VII of the UN Charter, to use force to remedy the problem. Fifth, the action must be taken by a regional or international organization or coalition. Sixth, the target state should receive warning of the pending intervention. Seventh, the states carrying out the intervention must consent to the jurisdiction of the International Court of Justice (ICJ) over any claims made by affected states that the intervention involved a breach of international law and to the jurisdiction of the International Criminal Court (ICC) over claims that their nationals violated international law during the intervention. Eighth, the intervention may only involve the minimal force necessary to stop the human rights violations and the ‘requirements of international humanitarian law [should be] strictly observed’.

Scholars, in discussing this requirement, has emphasized that any such U.N.-authorized forcible intervention should be limited by the humanitarian objectives. The forcible intervention should not be aimed at forcing governmental change in the invaded country or at battling the national armed forces beyond what is necessary to secure the humanitarian effort. Ninth, the intervening states must withdraw their forces once they have ‘accomplished the appropriate objectives and the future is secured’.

Others have suggested yet more requirements. Accordingly, there must be evidence that the populace as a whole desires relief. Recognizing ‘the effects of a tyrannical

government on the willingness or the ability of oppressed people to speak out', they believe that this requirement should be interpreted liberally, while ensuring 'that any request for international relief comes from a person or organization that is truly representative of the will of the oppressed populace'. It was also proposed that 'a claim of humanitarian intervention must be examined in light of the record of human rights of the intervening country'

Others argue that the list advocated by the aforementioned scholars and others is too restrictive and should be more permissive. Accordingly, it should not be a requirement that humanitarian interventions be multilateral; in certain situations in which the international system fails adequately to protect human rights, nations should be authorized to intervene unilaterally. But before a nation engages in a unilateral intervention, 'the Security Council must actually have knowledge of the situation and fail to act'. In addition, it is pointed out that 'there is no immediate or completing guarantee that armed force processed or authorized by an international institution for humanitarian purposes will *ipso facto* be less open to abusive behavior'. The Security Council is composed of nation states with political objectives and there is no reason, in logic or history, to believe that these political considerations somehow evaporate when they get together in international bodies. Thus, a unilateral intervention is not inherently more or less open to abuse than a multilateral intervention, but a flat prohibition on unilateral action would stop legitimate 'humanitarian interventions'.

The requirement of multilateralism should include the proviso that the 'Security Council is deadlocked indefinitely on the issue and has not explicitly prohibited intervention'. Simon and others have also argued that nations engaging in 'humanitarian intervention' need not be motivated solely by humanitarian concerns.

In most circumstances, with ample scrutiny in our highly integrated world community, some self-interest can inevitably be found; however, if objectively a nation intervenes for humanitarian motives, the fact that some self-interest may arise should not prevent the

nation from promoting human rights. As long as it is clear that humanitarian concerns are the ‘overriding’ motivation behind the intervention, it should be allowed. In addition to setting up a procedure, to ensure that ‘humanitarian interventions’ are truly humanitarian in nature, proponents of the doctrine have also addressed many of the concerns of opponents.

Hence they identify what they believe are the three major objections. The first objection is that the doctrine of humanitarian intervention is likely to be abused by powerful states to pursue their own self-interested agenda in the name of human rights. But they reject this on the grounds that ‘It is a big mistake, in general, to stop short of recognition of an inherently just principle [merely] because of the possibility of non-genuine intervention’. In the words of one renowned scholar: ‘Obviously, what is needed is a system that effectively targets the underlying problem of crime or human rights violations and not one that eliminates the solution . . . humanitarian intervention, without implementing another solution.’ The essence of this argument is that what is needed to prevent humanitarian intervention being used as a pretext for self-interested interventions are the proper safeguards, not the doctrine’s wholesale elimination.

The second objection cited is that the doctrine will be used selectively to promote human rights for favored victims, while the plight of disfavored victims is ignored. To this, their response is that some intervention for humanitarian reasons, even if biased in application, is better than no intervention whatsoever to protect human rights. In their view, ‘Inherent in the very conception of a right is an element of selectivity in the exercise of that right’. Thus states engaging in ‘humanitarian interventions’ have the proper authority to decide when to intervene and when to abstain. Moreover, as the ‘natural human urge to help those in need’ further develops, the doctrine will be used in a more universal manner. Essentially, helping someone in need, even if the choice of who to help is biased is better than helping no one in need.

The third objection cited is the lack of purely humanitarian motives on the part of intervening states. But, they argue, ‘There is . . . something decidedly spurious about making legal determinations on the basis of ulterior motives or hidden agendas.’ ‘What matters in such situations is not so much the nature of the motive . . . but the practical outcome of the intervention in question.’ Therefore, if a state engages in an intervention that has humanitarian outcomes, that intervention can be characterized as ‘humanitarian, whether or not ‘humanitarian’ motives were at the forefront of the decision to intervene. Essentially, as long as the doctrine promotes human rights, who cares what other motivations nations may have? Fundamentally, the argument runs that, whether or not the doctrine is perfect or the nations engaging in interventions are fully motivated by humanitarian concerns, certain actions authorized as ‘humanitarian intervention’ have real world benefits in reducing human rights abuses. Human rights advocates should therefore embrace the doctrine and, if any problems arise, attempt to amend it in such a way as to better promote human rights. Complete rejection of the doctrine, its supporters argue, leaves many people without a remedy for very serious human rights abuses.



Activity – 5

1. Define ‘state failure’

2. Explain the relationship between state failure and human rights

3. Explain the apparent link between sovereignty

Dear distance learner, the unit has dealt with issues revolving in the human rights-humanitarianism nexus. Humanitarianism and humanitarian intervention was defined in section one. In general, humanitarianism is an ethic of kindness, benevolence and sympathy extended universally and impartially to all human beings. In section two emphasis was placed on the apparent relation between international humanitarian law and human rights law. Formerly assigned to separate legal categories, it was only under the persistent scrutiny of modern analysts that they revealed the common attributes which would seem to promise many fruitful exchanges in the future. Section three of the unit defined human security as a condition or state of being characterized by freedom from pervasive threats to people's rights, their safety or even their lives and discussed on the importance of human security to address vulnerability. In section four, the involvement of politics in humanitarian affairs was discussed. The last section discussed on the self-evidently convergence between or/and among state failure, sovereignty and human rights.

☒ Check List

Direction: *Dear students this is the section in which you confirm your understanding of the lessons in this unit. Put a tick mark (✓) in the yes column for activities that you have clear understanding and in the no column for activities that you doubt that you have good understanding.*

<u>I Can:</u>	Yes	No
▪ Define humanitarianism	<input type="checkbox"/>	<input type="checkbox"/>
▪ Understand the relationship between international humanitarian law and human rights law	<input type="checkbox"/>	<input type="checkbox"/>
▪ Define the concept of human security	<input type="checkbox"/>	<input type="checkbox"/>
▪ Explain politics in humanitarianism	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>

- Analyze state failure, sovereignty and human rights

~~📝~~ Self-test exercises

I – Choose the best answer from among the given alternatives

- Which of the following is not associated with the emergence of ‘humanitarianism’?

A. The stoic natural law	C. Enlightenment
B. Christianity	D. None
- What is the relevance of Principal-Agent Theory to Human rights abuse?

A. It shows how agency loss contributes to human rights abuse
B. It depicts how principal exploit agency loss by creating artificial information asymmetry
C. It shows how human rights violation could serve as a policy
D. All
- Of the following, on is necessarily true about ‘International Humanitarian Law and International Human Rights Law’

A. There is complementarity between them
B. They are convergent
C. They overlap each other
D. The ‘former’ existed before the ‘latter’
- The principle of humanitarianism that calls for the inculcation of tailored-made approach to humanitarian action is_____

A. Independence	C. Contextualization
B. Appropriateness	D. Accountability
- One is true about ‘Human Security Regime’?

A. It is staunchly advocated by International Committee of the Red Cross (ICRC)
B. It is principally designed to protect vulnerable persons

- C. It calls for international norm development
 - D. All
6. Which of the following is/are the basic principles of International Humanitarian Law?
- A. The distinction between civilians and combatants
 - B. The principle of proportionality
 - C. The prohibition to inflict unnecessary suffering
 - D. All
7. Of the following, one is necessarily true about 'acts of humanitarian intervention'
- A. the use of force by one state in another state to protect anyone
 - B. the direct provision of humanitarian services in the territory of other nations without the consent of the recipient nation
 - C. acts intended to protect nationals of the intervening states
 - D. None
8. Of the following, one is true about the concept of human security
- A. It has roots in the central principle of international humanitarian law
 - B. It suggested an escape from mere poverty
 - C. It enjoys an authoritative and consensual definition
 - D. It suggested an escape from mere war (violence)
9. Of the core principles of humanitarianism, the most controversial is ____
- A. Accountability
 - B. Subsidiary of sovereignty
 - C. Non-partisanship
 - D. Independence
10. The movement of Humanitarianism is apparently different from human rights in that
- A. it is grounded upon the moral significance of the individual human beings
 - B. It is geared towards the campaign against abuses on the ground of human rights
 - C. It is geared towards the campaign against abuses in the name of humanity
 - D. Both are inseparably linked

Part II. True or False

- _____ 1. Failing states are where opposition is active and failed states where opposition movements destroyed central government, but unable to reconstitute a new order
- _____ 2. According to the legal theory of state, states are treated as a variable rather than constant
- _____ 3. For realists, humanitarianism should be separated from political
- _____ 4. Humanitarian interventions are legal because of they don't violate the new conception of state sovereignty, wherein sovereignty is limited by international human rights.
- _____ 5. Assuming both war and violence are extensions of political, then humanitarian space is self-evidently separated from political

Part III: Short Answer

1. What are the basis for an appropriate and balanced regime' for 'humanitarian intervention' according to the more skeptical advocates of humanitarian intervention?