

Determining the coherence of Universal Human Rights and the impacts on the Bahai'i in Iran.

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Abstract:

This article explores the origins of Human Rights treaties and treaty bodies, determining if the development of International Human Rights has an impact on the rights of individuals from minority religious groups. What will be questioned is the effectiveness of the universal rights on the world. It is suggested that Human Rights as a rule of law are westernised and not accepted readily within all cultures and countries so can Human Rights be universal. Navigating the complexities of universality and the expanse of treaties and treaty bodies has led to me questioning if the rights afforded to all humans are in fact achievable on a universal scale.

Key words

***Universal Declaration of Human Rights *International Covenant on Economic Social and Cultural Rights (ICESCR) *International Covenant on Civil and Political Rights (ICCPR) *United Nations General Assembly (UNGA) *Ratify *Universal Islamic Declaration of Human Rights**

Introduction

In order to explain my research initial thought shall be given to the coherence of human rights laws. To truly understand the background of universal rights emphasis will be placed on the implementation of the Universal Declaration of Human Rights (UDHR, 1948) and the two original covenants. The International Covenant on Civil and Political Rights, ICCPR (1976), and the International Covenant on Economic Social and Cultural Rights, ICESCR (1976) which make up the International Human Rights Bill. What will be explored within this piece is the relationship between a specific state (Iran) and the treaties which that state has ratified including the diversity between the rights from a Western approach and the Sharia law which is adopted by the Islamic State of Iran. What I aim to explore is if the International Bill of Rights and the law of the state are in conflict when it comes to the protection of the rights of the individual, or individuals who reside within Iran. Attention will be given to minority groups within the state of Iran and the processes undertaken to address the concerns that have been raised by the Universal Periodic Review (UPR) and Non-Governmental Organisations (NGO's). Further thought will specifically, be given to the ICCPR (1976) and ICESCR (1976) and the UN Security Council addressing how these mechanisms aim to support treaty bodies and potentially bring a solution to the violations which have occurred which will be discussed within this piece, and are reported as still occurring. An explanation will be given to the Constitution of Iran which aims to support all non-Muslim religions enabling other religions to have the freedom to choose, which is in line with the ICESCR (1976) and is an obligation of the state.

The pathway to understanding International Human Rights

Since the Universal Declaration of Human Rights (UDHR, 1948), the Human Rights Bill and the implementation of treaties and treaty bodies there have been international obligations to Human Rights which states are bound to (United Nations, 2017). The United Nations which principally held responsibility for ensuring that the atrocities which happened in WW two did not occur again developed concepts to prevent the reoccurrence hence the United Nations Charter and all the subsidiary bodies which have arisen from this charter ¹ Developing a concept of Human Rights which were to be universal was not without difficulty initially, when considering the conception of a declaration and the cultural ideas of what is most important to specific states the UN were bound to face difficulties (United Nations, 2017). proposals to have an overarching legal system to ensure that all nations were compliant were met with some resistance as at this point different states held differing values and were wary that they may not meet all standards which were

¹ Bantekas I and Oette, L (2016) International Human Rights Law and Practice. Cambridge: University Press p.154.

proposed at this point. However, the purpose of the UDHR (1948) was and is still a declaration to propose rights for all and with fifty member states having influence on the final draft the declaration was upheld in 1946 (Bantekas and Oette, 2016:16).

Initially the United Nations which was represented by four key state members founded six principle organisations to implement Universal Human Rights, these were the General Assembly, the security council, the International Court of Justice, the Economic and Social Council, the Secretariat and the now inactive Trusteeship Council. The General Assembly (G.A or UNGA) which now consists of one hundred and ninety-three state members was established because of the United Nations Charter². ³ The main responsibilities of UNGA are provided in the Charter of the United Nations which sets out articles to be adhered to, to enable human rights. The responsibility for the UNGA presently are primarily policy making, peace keeping, overseeing responsibilities for budgets and overseeing admitting new member states, however this is understating the responsibility that the UNGA holds. Historically UNGA has maintained responsibility for ensuring that treaty bodies are implemented, for example the ICESCR, (1976) and the ICCPR, (1976) which together with the UDHR (1948) formed the international Bill of Rights which implemented legal requirements unlike the UDHR which is a declaration rather than a treaty, these were largely overlooked leading to state parties lack of adherence with the treaties in the twentieth century, at the point of implementation (1976) states were enduring several difficulties such as civil unrest and civil wars which impeded their abilities to maintain their responsibilities to the covenants in question and subsequent universal instruments (Bantekas and Oette 2016:18-24). ⁴ There have however been criticisms of UNGA more recently. There is evidence to suggest that power is being used to apply sanctions without the majority in agreement meaning the mechanisms are an ineffective tool. Considering the decision-making powers which UNGA holds as it is the only mechanism that all 193 member states have as a platform, thought will be given to the recommendations for change by Kofi Annan the Secretary General in 2005. It is suggested that not all member states are accorded a fair and valid representation within the UNGA. ⁵ However due to the nature of UNGA as in a hierarchy this may be an issue that is goes against the very structure of the purpose.

From researching further, I noticed as we moved into the twenty first century there was still a lack of respect for the fundamental rights which all humans should expect.

² General Assembly of the United Nations. Functions and Powers of the General assembly [online] Available at: <http://www.un.org/en/ga/about/background.shtml>

³ United Nations. Charter of the United Nations [online] Available at: <http://www.un.org/en/sections/un-charter/chapter-iv/index.html>

⁴ The role of the General Assembly. [online] <http://www.cfr.org/international-organizations-and-alliances/role-un-general-assembly/p13490>

⁵ Pamphlet No 3. Minorities and the United Nations: The Charter Based System of the UN and How to Use it. [online] <http://www.ohchr.org/Documents/Publications/GuideMinorities3en.pdf>.

With the implementation of the Human Rights Council in 2006 which derives authority from the United Nations Charter the responsibility for monitoring peace and security was now said to be more robust. The council was implemented in 2006 to replace the Commission on Human Rights which was identified as not achieving satisfying results. The Human Rights Council is a charter based body with a clear vision of maintaining peace, security and economic and social development, this was a vision for human rights which was held by the then Secretary General Kofi Annan. It was at this point that a more authoritarian approach was considered, the vision was to uphold the status of the council to one which would be equal to the Security Council, however at this point this was not realised as the ideology was deemed as too powerful (Terlingden, 2007). Consideration at this point must be given to treaty bodies who hold responsibility to report to the General Assembly, if there is to be a more coherent process of respect for human rights which Kofi Annan suggested as a major concern then more emphasis should be given to factors such as treaty bodies' ability to report on human rights issues. Concerns highlighted have been situations including state centric opinions which impede the committees from enforcing human rights issues, however it is acknowledged that some states have taken exception to unwarranted interferences. This has led to suggestions that the west could be using the mechanisms as a form of compliance (Bantekas and Oette, 2016: 195). It may be important to consider that perhaps there is some confusion between what states are willing to obligate themselves to achieve in relation to the protection of the public and internationally and what feels enforced. For example, any threats to an individual or individuals which are reported can be identified as breaches or violations of human rights, this in turn could lead to consideration of such issues by the Security Council (SC) The enforcing arm of the mechanism. Arguably there have been instances historically leading up to present day which have led to decisions around sanctions in accordance with Security Council (SC). Decisions have been made around rights of individuals which have been enforced within Art (39). This has led to States maintain that there are challenges to the sovereignty of the nation which are still recognised (Fassbender 2011). Additionally, reports that the SC although obligated to maintain primarily political functions does little to appease concerns of all nations and has been noted as primarily maintaining rights for the West (Dietrich, 2006).

The status of treaties

There are to date nine core human rights treaty bodies, and eighteen treaties which have taken influences from the original six principal organisations. State members have the option to ratify treaties which then makes them a legal obligation which they

must ensure that they are taking measures to work towards achieving,⁶ additionally If it to be considered that UNGA may not always behave favourable to all state members as previously mentioned then consideration needs to be given to the purpose of a state ratifying a treaty. Considering research conducted by (Hathaway, 2011) with the suggestion that there are conflicting theories to explain why states may ratify treaties. The explanations are rational actors or coincidental compliance. If this is indeed the case it does not explain the lengths that the ratifying governments will go to with the intention of remaining compliant. Factoring in the monitoring functions which the treaty bodies maintain responsibility over the issue of remaining compliant appears to become quite mute, the responsibility to conduct confidential inquiries becomes more about the rationality of the state to protect the citizens within as dependent on which treaties are ratified will influence the committees which will have responsibility to monitor.⁷ What is suggested is that not all committees are as effective at managing the monitoring process when issues are identified. Although it is recognised as an integral process which originates within the ICCPR article 2 (2). The treaty body maintains authority over the reporting procedures and can make recommendations with the intention of improving the situation from a supportive perspective including the use of non-governmental organisations (NGO's). Ensuring that obligations are met both nationally and internationally are perhaps linked more strongly to countries which are more accepting of the majority rules which coincides with the theory of the rational actor.⁸ Alternatively, although there may be a lack of congruence between the ideology of human rights and the notion of power, it is believed that power could be a deciding factor in the choice to obey.

This leads to confusion in some instances as when a state ratifies a treaty that state is then legally obliged to make steps to fulfil the treaty, although this again is a contentious topic as proving that the state has not satisfied the conditions of the treaty can be a difficult process. Specifically, if the state has not implemented any domestic legislate with which to enforce the International Law. There is no universal statute which maintains that a country must ratify a treaty, this is a consideration of the state to choose, however if there has been a signature then the expectation is that the state will ratify within three months. A state can also sign a treaty and not ratify this, or may accept the treaty with reservation, take for example the Islamic state of Iran. Iran is a country which operates on a code of human rights which is

⁶ Why Do Countries Commit to Human Rights Treaties? Author(s): Oona A. Hathaway Source: The Journal of Conflict Resolution, Vol. 51, No. 4 (Aug., 2007), pp. 588-621.

⁷ Bantekas and Oette, (2016). International Human Rights Law and Practice. Cambridge: University Press p.194-204

⁸ How is International Human Rights Law Enforced? Author: Harold Hongju Koh Source: Indiana Law Journal, Volume. 74, No. 4 (Fall 2009), pp. 1396.

taken from the Qur'an, however the declaration which it has implemented called the Universal Islamic Declaration of Human Rights was implemented on the 19th September 1981 and Cairo Declaration on Human Rights in Islam (1990). ⁹Iran has ratified six treaties so far which are as follows, ICCPR, Convention on the elimination of all forms of discrimination (CERD), ICESCR, Convention on the rights of the child (CRC), and the optional protocol (CRP-OP-AC) and the Convention on the rights of people with disabilities (CRPD). Iran has been taking steps towards developing a new constitution and embedding new criminal procedure laws, the development which Iran has been taking have been closely monitored by NGO's and have been identified on the Universal Periodic Review from 2015 (UPR). ¹² Reports have suggested seventy-two recommendations which Iran have been working towards.

Compliance with International Law

From examining this topic in more depth led to the suggestion that Iran's compliance with human rights has improved exponentially as historically Iran has been the focus of accusations of persecution specifically in relation to minorities and women. Iran first ratified the ICCPR and the ICESCR in July 1975, from this date Iran then became obligated to comply with both treaties and the treaty bodies who monitor and adjudicate any complaints made (Bantekas and Oette, 2016:193). In accordance with both Covenants individuals civil political social and cultural rights should then have been protected. ¹⁰The Human Rights Committee (HrCtee) which monitors the ICCPR places an expectation on the state to submit regular reports to identify the progress which is being taken towards meeting the obligations, although it should be noted at this point that articles 17 through to 25 may be subject to restriction or limitation on the authority of the state¹¹. ¹²The process of the NGO's in reporting on progress highlights the view of several nations which praise Iran's attempts to progress to meet the obligations of the Covenants, in this review what is noted is recommendations that are made by Western countries apply a more negative view on the states compliance to the international framework. Areas where the state may be failing need to be taken seriously, although thought must be given to the structure of the society and the differences in cultural practices (Bantekas and Oette, 2016:35-37).

⁹ Report of the Working Group on the Universal Periodic Review. *Islamic Republic of Iran*. 22nd December 2014. A.HRC.28/12.

¹⁰ Office of the High Commissioner. Human Rights Committee. Introduction of the Committee.

¹¹ Human Rights. Civil and Political Rights: The Human Rights Committee. Fact sheet No 15 (Rev.1). (2005).

¹² Report of the special Rapporteur on the Islamic republic or Iran

Consequently, what is perceived as a right within the West and the cultural differences of Iran can be a contentious topic .¹³ Highlighting the point human rights transcends political and religious differences ensuring universality, is a failure to envisage the cultural laws and the power awarded to cultural practices which have been developed over centuries. Adherence to both Covenants ICCPR and ICESCR for Iran is now a must and from the report¹⁴ provides evidence that there is important progress being made. The ICCPR art (18) of this covenant ensures that individuals have the freedom of expression of religion; however, this has not always been the case within Iran as a state.¹⁵ Historically since 1979 Iran has systemically violated the cultural rights of the Bahai'i, factoring in the obligations to international human rights this goes against the rule of law. ¹⁶Per the Office of the High Commission on Human Rights (OHCHR) dated this year emphasises that these violations are continuing and are being investigated by the HrCtee. What has been stated in the Constitution is the legal status in Iran is an oversight in recognition of the religion of the Bahai'i, although the constitution specifically states a respect for all religions which are non-Muslim, in opposition to this within the Constitution Article (14) it specifically pays attention to individuals of other religions refraining from conspiracy or activities against Islam¹⁷. What is evident from the report is that Iran as a state appears to be complying with the recommendations in several areas and improving the human rights in compliance with the Covenants ICCPR and ICESCR. Alternatively, the Islamic state believes that there are instances when violations can be sanctioned hence why adherence to the Cairo Declaration on Islamic Human Rights is favoured rather than a universal declaration (Warner, 2014).

Concluding remarks

Based on research conducted for this piece attention has been paid to the origins of the International Human Rights structure to develop more understanding, including the original covenants the International Covenant on Economic Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the International Bill of Rights. More specifically what has been explored is the relationship of the General Assembly (UNGA) the charter based and treaty based

¹³ Anver et al (2012). Islamic Law and International Human Rights Law. Oxford Scholarship online. Chapter. 3.

¹⁴ Report of the Working Group on the Universal Periodic Review. *Islamic Republic of Iran*. 22nd December 2014. A.HRC.28/12.

¹⁵ Baha'i International Community (2008). The Baha'i Question. Cultural Cleansing in Iran.

¹⁶ Office of the High Commissioner for Human Rights. Documents on Iran.

¹⁷ Contribution: 2011 expert workshops on the prohibition of incitement to national, racial or religious hatred, OCHR 2010.

bodies and how these aims to address human rights issues and violations. What became evident since the initial concept around forming Human Rights for all of humanity is the vast proportion of mechanisms and structures which have been implemented since the UDHR (1948) to effectively achieve International recognition of Human Rights. From researching the complexities more clarity was gained regarding the processes in which to achieve the monitoring and compliance to the legal jurisprudence of the treaties has become fragmented between the supportive processes of the Universal Periodic Review which intends to take a cooperative approach to ensuring that states are compliant with the treaties which have been ratified. With the focus on the Islamic state of Iran it has been evident that from the treaties which have been ratified, there have been supportive processes to ensure that human rights are being protected within this state. However even with the implementation of state laws such as the Constitution there have still been areas in which violations are still occurring. The supportive processes of the General Assembly under the UPR has recommended that the state ensure compliance with the existing treaties which have been ratified and consider ratifying other treaties. Although the successes of this state in achieving more protection of human rights have been celebrated the ideas that minorities and different ethnicities are still not receiving the protection of human rights are still apparent.

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